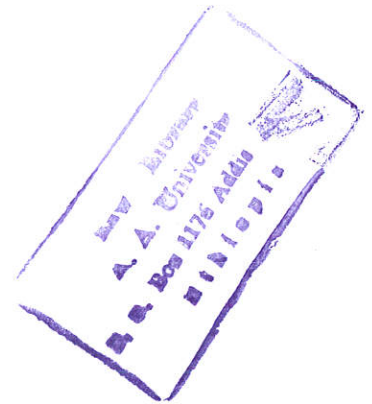


# **The Enforcement of the Employment Rights of Persons with Disabilities in Ethiopia**

**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW  
OF THE UNIVERSITY OF ADDIS ABABA, IN PARTIAL  
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The Enforcement of the Employment Rights of Persons with Disabilities in Ethiopia

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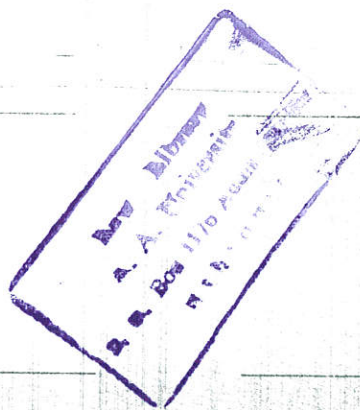
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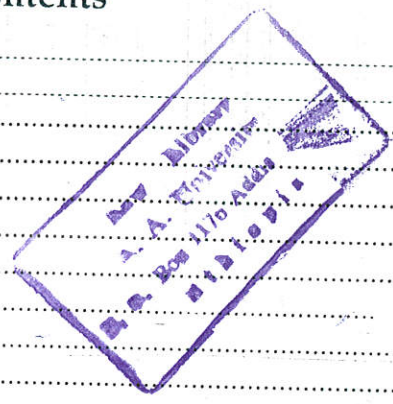
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## Table of Contents

Acknowledgement .....	i
Table of contents .....	ii
<i>Chapter One:</i> .....	1
Introduction.....	1
1.1 Background of the study .....	1
1.2 Statement of the problem.....	2
1.3 Objective and significance of the study.....	2
1.4 Methodology of the study.....	4
1.5 Scope of the study.....	4
1.6 Theoretical Basis of the Research.....	4
1.7 Overview of chapters.....	10
<i>Chapter Two:</i> .....	11
Development of Normative Standards on the Employment Right of Persons with Disabilities .....	11
2.1 The Role of ILO in the Development of the Normative Standards of Employment Right of Persons with Disabilities .....	11
2.2 The Role of the United Nations in the Normative Development of the Employment Rights of Persons with Disabilities.....	18
2.2.1 International Instruments Pre-dating the Convention on the Rights of Persons with Disabilities .....	18
2.2.2 The UN Convention on the Right of Persons with Disabilities (CRPD).....	22
2.2.2.1 The Human Rights Obligations of States Parties .....	25
2.2.2.1.1 Obligation to Respect Human Rights .....	26
2.2.2.1.2 Obligation to Protect Human Rights.....	27
2.2.2.1.3 Obligation to Fulfill .....	27
2.2.2.2 The Human Rights Obligations of States Parties under the Crpd.....	28
2.3 Regional Normative Development of the Employment Right of Persons with Disabilities .....	31
2.4 Development of Disability Specific Domestic Employment Legislations.....	33
<i>Chapter Three:</i> .....	36
Legislative Framework on the <u>Employment</u> Right of Persons with Disabilities in Ethiopia .....	36
3.1 The Constitution .....	36
3.2 The Labor and Federal Civil Service Proclamations.....	39
3.3 Disability Specific Proclamations.....	40
3.3.1 Proclamation No. 101/1994 .....	40
3.3.2 Proclamation No. 568/2008 .....	44
3.3.2.1 The Principle of Non-discrimination .....	46
3.3.2.2 Technical and Vocational training.....	57
3.3.2.3 Option of Employment .....	59
3.3.2.4 The Principle of Burden of Proof and the Available Sanctions for Discrimination .....	61
<i>Chapter Four:</i> .....	64



Enforcement of the Employment Rights of Persons with Disabilities in Ethiopia.....	64
4.1 Policy Measures Addressing the Employment Rights of Persons with Disability..	64
4.1.1 Developmental Social Welfare Policy 1997.....	66
4.1.2 National Program. of Action for the Rehabilitation of Persons with Disabilities 1999 .....	67
<b>4.2 Institutional Framework</b> .....	68
4.3 The Realities of the Employment of Persons with Disability in Ethiopia.....	73
<b>4.3.1 Barriers for Enforcement of the Employment Rights</b> .....	74
Table 2. Barriers to Employment, Retention of Employment or Advancement in Career Identified by Persons with Disability .....	74
<b>4.3.2 Suggestions for Overcoming the Barriers of Employment</b> .....	75
Table 3: Possible Ways and Means of Overcoming Barriers to Employment Suggested by respondents.....	76
<b>4.3.3 Trainings for Getting, Retaining and advancing in Employment</b> .....	77
Chapter Five: .....	80
Conclusions and Recommendations .....	80
5.1 Conclusions.....	80
5.2 Recommendations.....	83
Bibliography .....	85

## Chapter One:

### Introduction

#### 1.1 Background of the study

Throughout history, individuals with disabilities have struggled to live full and productive lives as independently as possible in a society laden with stigma, discrimination, and attitudinal and environmental barriers. Most legislation, policies and practices have regarded persons with disabilities as unfit for society, as sick, as functionally limited, and as unable to work.<sup>1</sup>

The principal essence of the Universal Declaration of Human Rights and that which has found specific application in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other international instruments is that "Human rights and fundamental freedoms are the birthright of all."<sup>2</sup>

This principle is affirmed by States again and again, including in the World Summit for Social Development, held in March 1995 in Copenhagen, which showed the "increasing momentum among the disability community and policymakers to create laws, policies, models/theories and programs that promote the inclusion of persons with disabilities into the mainstream."<sup>3</sup>

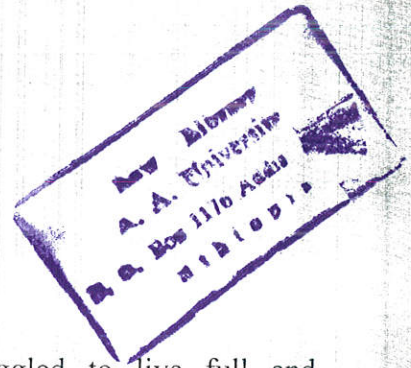
In the context of this principle, persons with disabilities seem to have been entitled to exercise their civil, political, social, economic and cultural rights on an equal basis with others. Sorrowful to state it, persons with disability have not been explicitly recognized in

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1. Brzuzy, S. "Deconstructing disability: The impact of definition" (1997) J. Poverty, vol. 1 No. 1, p. 81-91.

2. The Vienna Declaration and Programme of Action, 1993, adopted by the World Conference on Human Rights para. 64.

<sup>3</sup>Evadne Grant, "Dignity and Equality" (2008) Human Rights L. Rev., Volume 7, No. 2, pp.299-329.



Chapter One  
Introduction  
1.1 Background of the study

the binding instruments of international human rights law. None of the equality clauses of any of the three instruments comprising the International Bill of Rights--Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights-- mention persons with disability as a protected category. To add insult in to injury, "The fact that in so many countries equalization of opportunities legislation for disabled people is unenforceable and unimplemented has been well documented recently, as disabled people have struggled in vain to obtain fully comprehensive and enforceable anti-discrimination legislation."<sup>4</sup> These attitudes have procrastinated the existence of the social factors such as "ignorance, neglect, superstition and fear ... that have isolated persons with disabilities and delayed their development."<sup>5</sup>

### ***1.2 Statement of the problem***

This paper is charged with the interrogation of the issues that concern the rights of persons with disabilities with regard to their employment rights in the international human rights instruments and the federal laws of Ethiopia. In this context, the researcher will delve in to the analysis of the following issues. What is the historical background of the employment rights of persons with disabilities? What are the approaches that are advocated for the protection of those rights internationally and locally? What are the types of obligations that are encumbered on states for the fulfillment of those rights? To what extent are the constitutions and other legislations of Ethiopia compatible with the African and international standards with respect to the rights of persons with disabilities? What are the drawbacks of the enforcement? What are the policy and institutional directions of the country to enforce those rights?

### ***1.3 Objective and significance of the study***

This study is encumbered with the following objectives:

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<sup>4</sup> Rachel, Hurst, Disability & Policy - Survival of the Fittest, (Paper presented at the Dialogues in Disability Theory & Policy Seminars, City University, London, July 1, 1996).

<sup>5</sup> Standard Rules on the Equalization of Opportunities for Persons with Disabilities, A/RES/48/96, 85th Plenary Meeting 20 December 1993.

- to identify the fundamental obligations of States for safeguarding the rights of persons with disabilities;
  - to analyze, among other things, the definitions and models of disability;
  - To critically examine whether or not laws on employment of persons with disabilities are in conformity with each other and the existing international human rights standards. This is going to be done with special reference to proc. No 568/2008 and the policy guidelines of the country that are prepared under the auspices of the Ministry of Labor and Social Affairs;
  - to point out area(s) where there is/are gaps between the law and the practice and hence to forward possible suggestions and /or recommendations on what measures should be taken with a view to narrow down and to eliminate, if possible, the gap.
- To assess the prospect for future employability on the basis of the existing circumstances.

By examining the various facets of the employment rights of persons with disabilities, the study aspires to evaluate if the change in the definitions of disability bring positive things for ameliorating the lifestyle of the persons with disabilities. It makes a critique of the existing state of affair in the relationship of the society with persons with disabilities and proposes the re-definition of disability.

This is instrumental to bring into focus the importance of disability rights, which so far has held a marginal position in legal discourse and in the formulation of policy. The study aspires to interrogate the synergy between the rife stigmatization of persons with disabilities in Ethiopia and the employment right.

The primary value of the research, therefore, lies in its capacity to benefit those who seek to guide scholarship and policy making by interrogating the potential of the employment rights of persons with disabilities and theories of disability to provide a policy and legislative solution to the problems of persons with disabilities.

It may also augment the existing knowledge in the field by exploring the speciality and possible ways of approaching the subject matter and by clarifying the understanding of disability and the employment rights in the Ethiopian context.



It may contribute to the revitalization of the state policy in maintaining and creating employment of persons with disabilities.

### *1.4 Methodology of the study*

Methodologically, analysis of literature reviews and statistical data are employed in the discussion of the title. In this regard, the jurisprudence of ILO, international human rights instruments, the constitution and other legislations of Ethiopia are explored.

In this study written material was collected from the libraries of Addis Ababa University, Ministry of Labor and Social Affairs, Federal Civil Service Agency and from the internet. To support the theoretical analysis, different approaches have been used as a part of data collection. In this context, individual interviews, and questionnaires, were mainly employed.

This study makes use of concurrent method of data analysis in which different narratives, perspectives, analytical and conceptual expressions, and theoretical approaches are analyzed within the contextual frameworks of the subsequent chapters.

### *1.5 Scope of the study*

Although the topic is wide in that many things are expected to be done, this study is limited to the analysis of the employment rights of persons with disabilities who are disabled before engaging in to an active work but who have acquired their educational proficiency. This is opted for the reason of the limitations of resources and time line of the research.

### *1.6 Theoretical Basis of the Research*

There has been and continues to be a wide-ranging and fiercely contested debate about how disability should be understood. For those unfamiliar with this subject it might seem surprising that something apparently as obvious as disability should excite controversy. The objective of this Section is to outline why this has happened, why the apparently obvious is not so obvious, and why the arguments are of such importance for policies and legislations concerned with employment of persons with disabilities. Of the many

theoretical analyses provided by disability scholars, the researcher chose the medical and social-constructionist models to establish the theoretical framework of the thesis.

The dominant view of disability has been the medical model, which views disability as a functional limitation, as individual "problem", "pathology", "dysfunction", or "deviance."<sup>6</sup> This model locates the "problem" of disability within the individual and considers functional limitations or psychological losses to arise naturally from the individual deficit.<sup>7</sup> In a more-or-less similar fashion, Drimmer, Hahn and Milani, synopsized that the medical model focused "on the individual, whose condition was seen as an infirmity that precluded participation in society that countenanced the segregation and economic marginalization of individuals with disabilities."<sup>8</sup>

This view is also called the personal tragedy theory of disability, which posits that "disability is a natural disadvantage suffered by individuals with disability when placed in competitive social situations." Moreover, individuals with disability are commonly depicted as "suffering subjects, characterized by the devastating changes and crises for both themselves and their families."<sup>9</sup>

Various international human rights instruments defined the term in the context of this model. For instance, Art. 1 of the International Declaration on the Rights of Disabled Persons defined the term as "Any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities." The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, in its part, defines the term as "summarize[ing] a great number of different functional limitations occurring in any population in any country of the world [as a result of]

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<sup>6</sup> Brzuzy, S., "Deconstructing disability: The impact of definition," cited above at note 1.

<sup>7</sup> Oliver M., Understanding disability: From theory to practice, (1996), p. 50.

<sup>8</sup> Ibid.

<sup>9</sup> Hartman, Macintosh, & Engelhardt, "The neglected and forgotten sexual partner of the physically disabled" (1983) J. Social Work, vol. 28, pp. 370-374.

physical, intellectual or sensory impairment, medical conditions or mental illness [that] may be permanent or transitory in nature.<sup>10</sup>

Different countries have adopted more-or-less similar definitions to the above-cited instruments. For example, The Persons with Disabilities Act, 2003, of Kenya defines disability as “a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation.”<sup>11</sup>

The Disability Discrimination Act of Australia in a more-or-less similar fashion depicts disability as

total or partial loss of the person's bodily or mental functions or a part of the body, or the presence in the body of organisms causing or capable of disease or illness, or the malfunction, malformation or disfigurement of a part of the person's body that results in the person learning differently from a person without the disorder or malfunction, or a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behavior.<sup>12</sup>

Proclamation 101/1994 of Ethiopia defines, in its part, a person with disabilities as follows: “a person who is unable to see hear or speak or suffering from injuries to his limbs or from mental retardation, due to natural or man-made causes.”<sup>13</sup> This definition is reflected in the National Program of Action of Ethiopia that was adopted in 1999, and which goes as follows: Disability indicates “any restriction or lack (resulting from any loss or abnormality of psychological, physiological, or anatomical structure of function) of ability to perform an activity in the manner or within the range considered normal for a human being.”<sup>14</sup>

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<sup>10</sup> Standard Rules on the Equalization of Opportunities for Persons with Disabilities, cited above at note 5.

<sup>11</sup> Kenya National Commission on Human Rights, Objects of Pity or Individuals with Rights: The Right to Education for Children with Disabilities (2007), retrieved from <http://www.crin.org/resources/infodetail.asp?id=14577-24k>, accessed on April 11 2008.

<sup>12</sup> The Disability Services Act of Australia, 1986, No. 129 SS. 8 (1) and 18, retrieved from [http://www.austlii.edu.au/au/legis/cth/consol\\_act/dda1992264/](http://www.austlii.edu.au/au/legis/cth/consol_act/dda1992264/) - 12k, accessed on 12 July 2008.

<sup>13</sup> The Right to Employment of Disabled Persons Proclamation, 1994, Proc. No. 101, Art. 2 (1).

So to speak, the functional limitation, which is an element of the above definitions, has to impact adversely on the individual's social, economic or environmental participation relative to non-disabled people. Hence, while disability can result from an illness when disease reduces or nullifies the functionality of an organ, disability per se is chronic rather than temporary, and it is not a curable illness or disease.<sup>14</sup>

Meanwhile, the growth of self-organization of people with disabilities since the 1970s has led to a re-definition of disability believing that The assignment of medical meaning to disability by the society is tantamount to "collude[ing] to keep the issue within the purview of the medial establishment, to keep it a personal matter and 'treat' the condition and the person with the condition rather than 'treating' the social processes and policies that construct disabled people's lives."<sup>15</sup> This is to say, "social, cultural, political, and environmental barriers have been emphasized as more disabling than physical or cognitive disabilities."<sup>16</sup> Thereby creating a conducive situation for "a move towards the application of a social constructionist framework to disability."<sup>17</sup> Meaning, a disability-related impairment comes from the "relationship of the person with a disability to the socio-cultural environment which is seen as the primary target of intervention."<sup>18</sup>

This model focuses less on the functional impairments of the individual with a disability, and more on the limitations of a society that categorizes who is normal and who is not. Accordingly, disability itself is a social construct.<sup>19</sup> As such, it is the disabling environment, the attitudes of others as well as institutional structures that need to be changed, not the person's disability.<sup>20</sup> To state it otherwise, Disability encompasses "all

<sup>14</sup> Whyte, Susan Reynolds and Ingstad, Benedicte, Disability and Culture: An Overview, in Ingstad, Benedicte and White, Susan Reynolds: Disability and Culture (1995), p.3.

<sup>15</sup> Vanmala Hiranandani, "Towards a Critical Theory of Disability in Social Work," Cited above at note 9.

<sup>16</sup> Pfeiffer, D., "Disabling definitions: Is the World Health Organization normal?" (1992)

New England J. of Human Services, vol. 11, pp.4-9.

<sup>17</sup> Vanmala Hiranandani, "Towards a Critical Theory of Disability in Social Work," Cited at note 9.

<sup>18</sup> Gerard Quinn & Theresia Degener, Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability, Office of High Commissioner for Human Rights HR/PUB/02/1 2002.

<sup>19</sup> Asch A. & Fine M., "Shared dreams: A left perspective on disability rights and reproductive rights," 1988, In M. Fine & A. Asch (Eds.), Women with disabilities: Essays in psychology, culture and politics (pp. 297-305).

<sup>20</sup> Ibid.



factors that impose restrictions on people with disabilities, ranging from negative social attitudes to institutional discrimination, from inaccessible public buildings to unusable transport systems, from segregated education to exclusion in work arrangements, and so on.<sup>21</sup> Many of the barriers that people with disabilities face are the consequences of having those physical impairments under existing social and economic arrangements, especially the means of industrial production. These social and economic systems do not accommodate the physical conditions or integrate the struggles of peoples with disabilities into the cultural concept of everyday life.

It seems, from this understanding, that the International Convention on the Rights of Persons with Disabilities (CRPD), adopts a social-constructionist definition for persons with disabilities.<sup>21</sup> The best example of the above assertion is paragraph (e) of the Preamble that goes “‘Disability’ is conceptualized as the product of the interaction of persons with impairments with environmental barriers that hinder their full and effective participation in society on an equal basis with others. This conceptualization is also affirmed by the description of persons with disability in the second paragraph of Article 1, and in the virtually absolute emphasis placed by the substantive human rights Articles on the removal of barriers and provision of accommodations that will facilitate participation and inclusion of persons with disability within society.” In addition, Paragraph (f) of the Preamble brings into light the issue of continuity and discontinuity of the CRPD with the United Nation previous expositions of the human rights of persons with disability and related programmatic activity. Despite its benign appearance, it is intensely politically charged. The World Program of Action concerning Disabled Persons and the Standard Rules on the Equalization of Opportunities of Persons with Disabilities are explicitly acknowledged as antecedents to the CRPD but the 1971 Declaration, the 1975 Declaration and the Principles are not. These omissions are presumably dependent upon these instruments’ perceived derivation from the medical model and their approval or acceptance of institutionalization, substitute decision-making, and the compulsory treatment of persons with disability.

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21 Oliver, M., *The politics of disablement: A sociological approach* (1990), p. 32).

Disability, in the light of the new disability employment proclamation of Ethiopia, is conceptualized in the context of the social-constructionist model and it has incorporated the definition in the following manner: “physical, mental, or sensory impairments in relation with social, economic and cultural discrimination.”<sup>22</sup>

When translated into policy, as Waddington, a writer on disability scholarship, recounts, the medical model relies on “rehabilitation and welfare facilities to mediate or accommodate the effects of disabilities by establishing separate facilities, such as nursing homes, sheltered workshops, and special education schools, separate from the facilities that serve the nondisabled.”<sup>23</sup> The assumption here is that rather than “making mainstream institutions accessible, the principal assumption of the social-constructionist model, the needs for people with disabilities are better served in separate facilities that can be constructed to meet very specialized needs.”<sup>24</sup>

The above statement is assertive of the fact that different types of legislations are associated with each of these definitions. In her presentation entitled “Policy in Transition: An Overview of European Experience Regarding the Employment of Persons with Disabilities” Ms. Barbara Murray said the following regarding the difference of the nature of legislations on the basis of the understanding of disability:

Legislation associated with the medical model of disability may deal with some or all of social security and social protection, health and medical rehabilitation, employment quotas, and employee compensation. Such laws focus on providing compensation for impairment, and frequently envisage service provision in segregated settings, rather than in services available to the general population. Legislation associated with the social-constructionist model of disability includes anti-discrimination law, employment equity law and laws concerning job-retention and return to work. The focus here is on

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<sup>22</sup> The Right to Employment of Persons with Disabilities Proclamation, Proc. No. 568, Fed. Neg. Gaz., Year 14, No. 20, Art. 2 (1).

<sup>23</sup> Lisa Waddington, “Legislating to Employ People with Disabilities: The European and the American Way” (1996) *Maastricht Journal of European and Comparative Law*, vol. 1, 367–95.

<sup>24</sup> Katharina Heyer, “A Disability Lens on Sociolegal Research: Reading Rights of Inclusion from a Disability Studies Perspective” (2007) *J. Law & Social Inquiry*, vol. 32 No. 1, pp. 261–293.

integration and inclusion, the prohibition of discrimination on the basis of disability and on positive measures to compensate for disadvantage.<sup>25</sup>

### *1.7 Overview of chapters*

The study is structured into five chapters. The first chapter sets an introduction to the thesis, outlines the themes and problem formulation and the theoretical framework of the study. The methodological parts of the research - methods of data collection, challenges, strategies used and methods of data analysis - have also been dealt with under this chapter.

The second chapter covers the normative development of the employment rights of persons with disabilities under the umbrella of the International Labor Organization, the United Nations Organization, regional human rights institutions and different nations.

Chapter three focuses on the legal and policy frameworks that are developed by Ethiopia to address the employment rights of persons with disabilities this chapter gives vital information about the early legislations including the FDRE constitution.

Chapter four assesses the practice existing in the private and public sectors in the light of the legal and policy frameworks that were dealt under the previous chapter

The last chapter concludes the main themes of the thesis with particular emphasis on a paradigm to disability beyond the medical/social models. It also provides some possible steps forward in a quest to articulate disability and employment that may contribute to create more favorable life for persons with disabilities in Ethiopia.

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<sup>25</sup> Barbara, Murray. From Disability Benefits to Gainful Employment (Budapest, International Labor Office, (2006).

## *Chapter Two:*

### *Development of Normative Standards on the Employment Right of Persons with Disabilities*



International and regional human rights conventions protect the rights of persons with disabilities specifically, or have provisions concerning persons with disabilities. In addition, Their expression of generally-accepted principles, their representation of a moral and political commitment by States and their utility as guidelines for States in enacting legislation and formulating policies concerning persons with disabilities makes international instruments, such as declarations, resolutions, principles, guidelines and rules, although not technically binding, important for the realization of the right of persons with disabilities. Above all, general policy instruments, such as the outcome documents of world summits and conferences are applicable to persons with disabilities on top of the several disability-specific non-binding international instruments. Moreover, national jurisdictions have made an impact on the implementation of the employment rights of persons with disabilities.

In the following sub-sections, an assessment of the contribution and impact of the different international and regional human rights institutions on the normative development of the employment rights of people with disabilities will be made. In addition, the impact of these institutions on national jurisdictions will be visited.

#### *2.1 The Role of the International Labor Organization in the Development of the Normative Standards of Employment Right of Persons with Disabilities*

The promotion and realization of standards, and fundamental principles and rights at work, the creation of greater opportunities for women and men, the security of decent employment, and the enhancement of the coverage and effectiveness of social protection for all, as can be visualized by reading of the sections, were the principal strategic

objectives of the International Labor Organization. The aim of this section, however, is not laid for analyzing all of the above concepts. Nonetheless, a crafty utilization of them will be made to the extent they are important to topic at hand.

The first international instrument containing provisions relating to the vocational rehabilitation of workers with a disability was adopted by the International Labor Conference in 1925, just a few years after the establishment of the International Labor Organization.<sup>26</sup> This Recommendation set out principles which should be taken into account in determining compensation payment for industrial accidents. It also recommended that the vocational re-education of injured workmen should be provided by such means as the national laws or regulations deem most suitable, and urged governments to promote institutions which would provide such re-education'.

Interest in vocational rehabilitation and employment opportunities for persons with disabilities re-surfaced during the Second World War, largely because of the number of people disabled during the war and the need to find trained workers to fill jobs left vacant by mobilized workers. In May 1944, the International Labor Conference adopted a comprehensive Recommendation (No. 71) on employment services, including labor market information, vocational guidance and vocational training. One of the groups specifically covered by the Recommendation was disabled workers who, 'whatever the origin of their disability, should be provided with full opportunities for rehabilitation, specialized vocational guidance, training and retraining, and employment on useful work'. The Recommendation provides early examples of a number of concepts such as mainstreaming, equality of opportunity and affirmative action:

(39) The criterion for the training and employment of disabled workers should be the employability of the worker, whatever the origin of the disability.

(40) There should be the closest collaboration between medical services for the disabled and vocational rehabilitation and placement services.

(41) Specialized vocational guidance for the disabled should be developed in order to make it possible to assess each disabled worker's capacity and to select the most

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<sup>26</sup> The Minimum Scale of Workmen's Compensation Recommendation, 1925, No. 22.

appropriate form of employment for him.

(42) 1. Wherever possible, disabled workers should receive training in company with able-bodied workers, under the same conditions and with the same pay.

2. Training should be continued to the point where the disabled person is able to enter employment as an efficient worker in the trade or occupation for which he has been trained.

3. Wherever practicable, efforts should be made to retrain disabled workers in their former occupations or in related occupations where their previous qualifications would be useful.

4. Employers with suitable training facilities should be induced to train a reasonable proportion of disabled workers.

5. Specialized training centers, with appropriate medical supervision, should be provided for those disabled persons who require such special training.

(43) 1. Special measures should be taken to ensure equality of employment opportunity for disabled workers on the basis of their working capacity. Employers should be induced by wide publicity and other means, and where necessary compelled, to employ a reasonable quota of disabled workers.

2. In certain occupations particularly suitable for the employment of seriously disabled workers, such workers should be given preference over all other workers.

3. Efforts should be made, in close cooperation with employers' and workers' organizations, to overcome employment discriminations against disabled workers which are not related to their ability and job performance, and to overcome the obstacles to their employment including the possibility of increased liability in respect of workmen's compensation.

4. Employment on useful work in special centers under non-competitive conditions should be made available for all disabled workers who cannot be made fit for normal employment. Information should be assembled by the employment service in regard to the occupations particularly suited to different disabilities and the size, location and employability of the disabled population'.<sup>27</sup>

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<sup>27</sup> Employment (Transition from War to Peace) Recommendation, 1944, No. 71, S. X.

On top of these, in close cooperation, inducement by wide publicity and other means, and where necessary compulsion of employers, an effort should be exerted to overcome employment discriminations against disabled workers which are not related to their ability and job performance, and to overcome the obstacles to their employment and thereby ensure equality of employment opportunity for disabled workers on the basis of their working capacity.<sup>28</sup>

In addition to the above-cited instruments, Convention Nos. 77 and 78, and Recommendation No. 79, concerning medical examination of young people for fitness for employment, called for appropriate measures to be taken by the competent authority for vocational guidance and vocational rehabilitation in respect of young persons with disabilities in 1946.<sup>29</sup> Furthering its focus, ILO has issued Recommendation No. 83 and Convention No. 88, adopted in 1948, concerning the organization of employment services, called for special measures to meet the needs of workers with disabilities and recommended 'conditions or special studies' on such questions as the placement of disabled workers.<sup>30</sup> Included also was a recommendation that employment services should not, in referring workers to employment, itself discriminate against applicants on grounds of race, color, sex or belief. Above all, the 1952 Convention No. 102 on Social Security (Minimum Standards) called on the institutions or government departments administering medical care to cooperate with the general vocational rehabilitation services, with a view to the return to suitable work of disabled workers.<sup>31</sup> It also provided that 'national laws or regulations may authorize such institutions or departments to ensure provision for the vocational rehabilitation of handicapped persons.'

One of the most important instruments in relation to persons with disabilities, ILO Recommendation No. 99, adopted in 1955, served as the basis for all national legislation and practice concerning vocational guidance, vocational training and placement of

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<sup>28</sup> Degener T and Quinn G, A Survey of International, Comparative and Regional Disability Law Reform, cited above at note 19, p. 16.

<sup>29</sup> Medical Examination of Young Persons (Industry) Convention, 1946, No. 77; Medical Examination of Young Persons, (Non-Industrial Occupations) Convention, 1946, No. 78; Medical Examination of Young Persons Recommendation, 1946, No. 79.

<sup>30</sup> Employment Service Convention, 1948, No. 88; Employment Service Recommendation, 1948, No. 83.

<sup>31</sup> Social Security (Minimum Standards) Convention, 1952, No. 102, Art. 35.

persons with disability.<sup>32</sup> The Recommendation built on key provisions of earlier instruments in relation, for example, to mainstreaming of vocational training, equality of opportunity, no discrimination in pay for equal work, and promotion of research. Methods of widening employment opportunities for workers with disabilities, in close cooperation with employers' and workers' organizations, included quotas, reserved occupations, creation of cooperatives and the establishment of sheltered workshops.

Abreast, ILO Convention No. 111 and Recommendation No. 111 concerning Discrimination in Employment and Occupation, which were adopted in 1958, outline policies of non-discrimination in the promotion of equal opportunity and treatment in employment.<sup>33</sup> Given ILO's previous attention to persons with disabilities, it is somewhat surprising that disability was not specifically included in these particular instruments as a prohibited ground of discrimination. Mindful of the effects of technological change on jobs, ILO issued a Resolution in 1965 concerning techniques employed by member States in the rehabilitation and training of persons with disability for new forms of employment.<sup>34</sup>

ILO's continuing interest in workers with disabilities was reflected in the requirement in Convention No. 128 (1967) that members should, under prescribed conditions,

- (a) provide rehabilitation services designed to prepare a disabled person wherever possible for the resumption of previous activity, or, if this is not possible, the most suitable alternative gainful activity, having regard to aptitudes and capacity, and
- (b) take measures to further the placement of disabled persons in suitable employment.<sup>35</sup>

The determination of ILO to progress policy in vocational rehabilitation and to eliminate all discrimination in relation to the employment of workers with disabilities was evidenced in 1968 by a Resolution of the International Labor Conference concerning disabled workers, requesting the Director General to carry out appropriate studies to enable the Conference to consider the possible revision of the Vocational Rehabilitation

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<sup>32</sup> ILO, Vocational Rehabilitation and Employment of Disabled Persons, 1998

<sup>33</sup> Discrimination (Employment and Occupation) Convention, 1958, No. 111; Discrimination (Employment and Occupation) Recommendation, 1958, No. 111.

<sup>34</sup> Resolution concerning Vocational Rehabilitation of Disabled Persons, 1965

<sup>35</sup> Invalidity, Old-Age and Survivors' Benefits, Convention, 1967, No. 128, Art. 13.

(Disabled) Recommendation No. 99, 1955 (No. 99), or the possible adoption of a new international instrument.<sup>36</sup> In addition, ILO Convention No. 142 in 1975 called on member States to develop comprehensive and coordinated policies and programs of vocational guidance and vocational training, closely linked with employment, in particular through public employment services. Systems of vocational guidance, including continuing employment information, were to be extended to ensure that comprehensive information and the broadest possible guidance would be available to all, including persons with disabilities.<sup>37</sup> Recommendation No. 150 in spelling out in considerable detail how the provisions of Convention No. 142 should be effected articulates that “persons with disabilities should have access to mainstream vocational guidance and vocational training programs provided for the general population or, where this was not desirable, to specially adjusted programmes” [and] “recommended [in furtherance] that every effort should be made to educate the general public, employers and workers on the need to provide persons with disabilities with guidance and training to enable them to find suitable employment, on the adjustments in employment which some of them might require, and on the desirability of special support for them in their employment. Persons with disabilities were, as far as possible, to be integrated into productive life in a normal working environment.”<sup>38</sup>

Although ILO Resolution adopted on 24 June 1975 was short, it is particularly significant for a number of reasons.<sup>39</sup> The Resolution acknowledged growing public recognition of the need for special measures to integrate persons with disabilities into the community, deplored the fact that too many persons with disabilities, the majority of whom lived in developing countries, had very limited opportunity for work, and called on all public authorities and employers’ and workers’ organizations to promote maximum opportunities for persons with disabilities to perform, secure and retain suitable employment. It called for a comprehensive campaign for vocational rehabilitation and social integration of persons with disabilities.

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36 Resolution concerning Disabled Workers, adopted 24 June 1968

37 Human Resources Development Convention, 1975 No. 142.

38 Human Resources Development Recommendation, 1975, No. 150.

39 Resolution concerning Vocational Rehabilitation and Social Reintegration of Disabled or Handicapped

It is claimed that Recommendation No. 99, which was not linked to a convention, played a significant role in influencing national legislation and practice. The extent to which it did so confirmed the Director-General's comment in his 1964 Report to the effect that while conventions lay down obligations, it is possible, in certain areas, 'that a standard which can be widely accepted may well be more effective in practice than obligations which are unlikely to be equally widely assumed.'<sup>40</sup>

ILO adopted the Vocational Rehabilitation and Employment (Disabled Persons) Convention No. 159 and Recommendation No. 168 in 1983. The Convention requires member States, in accordance with national conditions, practice and possibilities, to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons. The emphasis on full participation is reflected in Article 1 (2), which describes the purpose of vocational rehabilitation as being to enable a person with disability to secure, retain and advance in suitable employment and "thereby to further such person's integration or reintegration into society". The equality goal is captured in Article 4 of the Convention:

"The said policy shall be based on the principle of equal opportunity between disabled workers and workers generally. Equality of opportunity and treatment for disabled men and women workers shall be respected. Special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers." The Convention prescribes the action to be taken at national level to implement the policy. It also reminds Members, as did Recommendation No. 99 nearly thirty years previously, of the need, not only to provide the relevant services, but to evaluate them with a view to their continual improvement.

Dragging on its accentuation, ILO has made the equality theme run through Recommendation No. 168:

- disabled persons should enjoy equality of opportunity and treatment in respect of access to, retention of and advancement in employment which, wherever possible, corresponds to their own choice and takes account of their individual suitability for such employment (Article 7);

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<sup>40</sup> ILO, Vocational Rehabilitation and Employment of Disabled Persons, 1998, p. 4

- in providing vocational rehabilitation and employment assistance to disabled persons, the principle of equality of opportunity and treatment for men and women workers should be respected (Article 8);

- measures should be taken to promote employment opportunities for disabled workers which conform to the employment and salary standards applicable to workers generally (Article 10).

Article 16 of the Recommendation reminds Members that such measures should include the making of 'reasonable adaptations to workplaces, job design, tools, machinery and work organization' to facilitate training and employment. Given the increasing shift away from the "medical" to the "social-constructionist" model which was then beginning to take place at national as well as international level, the Recommendation is forthright in stating that persons with disabilities should be informed "about their rights and opportunities in the employment field."

## ***2.2 The Role of the United Nations in the Normative Development of the Employment Rights of Persons with Disabilities***

### **2.2.1 International Instruments Pre-dating the Convention on the Rights of Persons with Disabilities**

There can be little doubt that people with disabilities are covered by the Declaration, even though not specifically mentioned, as can be understood by the reading of the pre-emptive proclamation of the UN General Assembly that makes the Declaration "a common standard of achievement for all peoples..." the statement of Art. 1 that goes "all human beings are born free and equal in dignity and rights..." and the provision of Art. 2 that states "Everyone is entitled to all the rights and freedoms set out in (the) Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." In addition to the above-cited provisions, the following Articles give us a chink of the inclusion of the employment rights of persons with disabilities.

Article 23 (1) on the right to work, to free choice of employment, to just and favorable conditions of work and to protection against employment; Article 23 (2) on the right to

equal pay for equal work; Article 23 (3) on the right of everyone who works to just and favorable remuneration ensuring for self and family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection; Article 25 (1) on the right to a standard of living adequate for the health and well-being of self and family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of .... disability ..... or other lack of livelihood in circumstances beyond control.

✓ On top of these, the attainment of some specific provisions, such as the principle of non-discrimination, to the status of customary international law makes them binding on all States.<sup>41</sup>

Together with the UDHR, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), embody the rights provided for in the Declaration. For instance, Art. 6 of the ICESCR contains a number of important provisions relating to work and equal employment opportunity. This article goes stating that “States Parties recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps”, inter alia, “technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.” Article 7, in addition, provides that the “States Parties... recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure”, in particular:  
Fair wages and equal remuneration for work of equal value without distinction of any kind;

A decent living for themselves and their families;

Safe and healthy working conditions;

Equal opportunity for everyone to be promoted in his employment to an appropriate

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<sup>41</sup> Arthur O Reilly, THE RIGHT TO DECENT WORK OF PERSONS WITH DISABILITIES, cited above at note 28.

higher level, subject to no considerations other than those of seniority and competence.....<sup>42</sup>

Although the ICCPR contains no specific provisions on employment, it does include an important safeguard against discrimination:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>43</sup>

By way of filling the gap created by the exclusion of persons with disabilities from the conventions, UN Committee on Economic, Social and Cultural Rights, in its General Comment No. 5, 1994 recounted that although disability is not explicitly included in either Covenant among the prohibited grounds of discrimination, it is encompassed by the term "or other status."<sup>44</sup>

The first major instrument in the field of disability was the UN Declaration of the Rights of Mentally Retarded Persons to be adopted as resolution 2856 (XXVI) of 20 December 1971. Article 1 of the Declaration that reads "The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings" was a significant achievement at that time. The recognition of their rights was a step forward, But the unfortunate inclusion of the phrase "to the maximum degree of feasibility" certainly diminish its value. The Declaration gives a right to employment for persons with mental retardation under Article 3 that goes: "He has a right to perform productive work or to

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<sup>42</sup> *International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), 1966, entry into force, 1976, Art. 13.*

<sup>43</sup> *International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), 1966, entry into force, 1976, Art. 2.*

<sup>44</sup> General Comment No. 5, Persons with disabilities, 1994, adopted at the Eleventh session of the UN Committee on Economic, Social and Cultural Rights.

engage in any other meaningful occupation to the fullest possible extent of his capabilities.”

The UN General Assembly, on the ninth of December 1975, Proclaimed resolution 3447 (XXX), as a Declaration on the Rights of Disabled Persons. The Declaration, the second major disability specific resolution, affirmed under Art. 4 that disabled persons had the same civil and political rights as other people, as well as the right to, inter alia, education, vocational training, counseling and placement services, the right to secure and retain employment or to engage in a useful, productive and remunerative occupation. Furthermore the Declaration proclaimed that these rights were for all persons with disability without discrimination on the basis of sex or other grounds. It addresses social aspects in its Article 2, which says: “Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.”

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities that stands out amongst the preponderant human rights instruments in the protection of the rights of persons with disabilities and adopted by the United Nations General Assembly on 20 December 1993 were described, under its preamble, as follows:

Although these Rules are not compulsory, they can become international customary rules when they are applied by a great number of States with the intention of respecting a rule in international law. They imply a strong moral and political commitment on behalf of States to take action for the equalization of opportunities. Important principles for responsibility, action and cooperation are indicated. Areas of decisive importance for the quality of life and for the achievement of full participation and equality are pointed out. These Rules offer an instrument for policy-making and action to persons with disabilities and their organizations. They provide a basis for technical and economic cooperation among States, the United Nations and other international organizations.

Of the 22 Rules that range from Awareness-raising to International Cooperation, Rule 7 covers employment and goes as follows:

“States should recognize the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment. In both rural and urban areas they must have equal opportunities for productive and gainful employment in

the labor market. In particular, laws and regulations in the employment field must not discriminate against persons with disabilities and must not raise obstacles to their employment. In addition, states should actively support the integration of persons with disabilities into open employment through a variety of measures, such as vocational training, incentive-oriented quota schemes, reserved or designated employment, loans or grants for small business, exclusive contracts or priority production rights, tax concessions, contract compliance or other technical or financial assistance to enterprises employing workers with disabilities. States should also encourage employers to make reasonable adjustments to accommodate persons with disabilities.”

In addition to the above-cited human rights instruments prepared under the auspices of the United Nations, the Vienna Declaration and Program of Action, adopted by the World Conference on Human Rights on 25 June 1993, reinforced the fact that all human rights are universal, indivisible, interdependent and interrelated. Article 22 of the Declaration noted that “special attention needs to be paid to ensuring non-discrimination, and the equal enjoyment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society.” Article 64 emphasized that “persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers, be they physical, financial, social or psychological, which exclude or restrict full participation in society.”

### **2.2.2 The UN Convention on the Right of Persons with Disabilities (CRPD)**

Developed against a backdrop of unprecedented challenges in the international environment, which impacted in aggravated ways on persons with disability, such as the 11 September 2001 terrorist attacks on the United States of America, wars in Iraq, Israel-Palestine and Lebanon, the Asian Tsunami, severe earthquakes in south Asia, hurricanes Katrina and Rita and the incessant civil wars in Africa, the Convention on the Rights of Persons with Disabilities (CRPD) and an associated Optional Protocol (CRPD Optional Protocol), a Convention with greater importance and a ground breaking effort in the quest

for the respect of the employment rights of persons with disabilities, has come to its dawn. On the 13th of December 2006 by the General Assembly (GA) of the United Nations (UN).

The international community has received the CRPD with unprecedented early enthusiasm. Eighty-one states and the European Union<sup>45</sup> signed the CRPD at its opening ceremony on 30 March 2007—the highest number of opening signatures recorded for any human rights treaty.<sup>46</sup> Forty-four states also signed the Optional Protocol. As at the end of December 2007, 120 states had signed the CRPD and 67 states had signed its Optional Protocol.<sup>47</sup>

The formulation of the CRPD has been hailed as a great landmark in the struggle to reframe the needs and concerns of persons with disability in terms of human rights. The Secretary-General of the United Nations, noting that the date of the CRPD's adoption fell, in the Western Christian calendar, on the day of St Lucy, patron saint of blindness and light, claimed that it heralded the 'dawn of a new era—an era in which disabled people will no longer have to endure the discriminatory practices and attitudes that have been permitted to prevail for all too long'.<sup>48</sup> The President of the European Disability Forum, speaking for the International Disability Caucus (IDC),<sup>49</sup> returned to the metaphor of light emerging from darkness at the CRPD's Signature Opening Ceremony, quoting Bertolt Brecht:

Some there are who live in darkness

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<sup>45</sup> The CRPD and its Optional Protocol are the first UN human rights treaties to be signed by the European Union. Under Article 44 of the CRPD and Article 12 of its Optional Protocol the European Union may act on behalf of its members in relation to the treaties to the extent of its mandate, which must be the subject of a formal declaration, deposited with the Secretary-General. While the European Union may also ratify the treaties, only the direct ratifications of its member States count towards the treaties coming into force.

<sup>46</sup> Kofi A. Annan, *The Status of the Convention on the Rights of Persons with Disabilities and the Optional Protocol*, (14 August 2007, A/62/230, at para. 4, available at: <http://www.ohchr.org/english/issues/disability/docs/A.62.230.en.doc>, accessed 13 November 2008).

<sup>47</sup> <http://www.un.org/disabilities/countries.asp?navid=12&pid=166> [last accessed 13 November 2007].

<sup>48</sup> Kofi A. Annan, *Secretary General Hails Adoption of Landmark Convention on Rights of People with Disabilities* 13—December 2006, SG/SM/10797, HR/4911, L/T/4400, available at: <http://www.un.org/News/Press/docs/2006/sgsm10797.doc.htm> [last accessed 13 November 2007].

<sup>49</sup> The International Disability Caucus was a coalition of international, regional and national non-government organisations (principally disabled peoples' organisations) accredited as observers to the GA Ad Hoc Committee responsible for the development of the CRPD. It claimed a participating membership of more than 70 such organisations

While the others live in light

We see those who live in daylight

Those in the darkness out of sight.

This is a convention to bring those in darkness into light.<sup>50</sup>

Re-iterating the claim made many times by national and non-government delegations in the course of CRPD negotiations, Ambassador MacKay, Chairman of the Ad Hoc Committee that developed the CRPD text, characterized the CRPD as embodying a 'paradigm shift' away from a social welfare response to disability to a rights-based approach.<sup>51</sup> The UN High Commissioner for Human Rights has also characterized the CRPD as enshrining this paradigm shift in attitudes. She has conceptualized the CRPD as rejecting the 'view of persons with disabilities as objects of charity, medical treatment and social protection' and as affirming persons with disability as 'subjects of rights, able to claim those rights as active members of society'.

Textually speaking, the CRPD comprises of a Preamble and 50 Articles and its Optional Protocol comprises 18 Articles. This Convention is the densest exposition of human rights by the UN to date. In part as a response to this density, the CRPD is also the first United Nations human rights convention to contain titles for each Article as an aid to its accessibility.

The Preamble to the CRPD is detailed, comprising of 25 paragraphs (a to y). Though a preamble to a document does not contain binding legal obligations, "it, unarguably, may contain many elements that will play an important role in the interpretation of the document."<sup>52</sup>

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<sup>50</sup> Rosemary Kayess and Phillip French, "Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities" (2008) **Human Rights L. Rev.**, vol. 8, No. 1, pp. 1 - 34.

<sup>51</sup> Don, MacKay, From Vision to Action: The Road to Implementation of the Convention on the Rights of Persons with Disabilities New York, 30 March 2007, available at: <http://www.un.org/disabilities/default.asp?id=160> [accessed 13 June 2008].

<sup>52</sup> Vienna Convention on the Law of Treaties, 1969, Art. 13, 1155 UNTS 31.

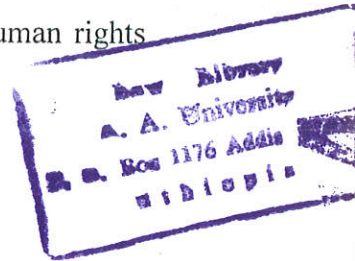
Having given the general points regarding the text and the preambular parts of the Convention, thence, the researcher will dwell a little on the States Parties Obligations emanating from the CRPD in the subsequent sections. However, before immersing me in to the discussion of the obligations envisaged under the CRPD, it will be tried to give a chink on the human rights obligations that sprung from the international human rights law in the following sub-sections briefly.

### 2.2.2.1 The Human Rights Obligations of States Parties

International human rights conventions, covenants, and protocols that are issued under the auspices of the United Nations Charter give rise to different types of obligations on the part of state depending on the nature of the rights guaranteed, on the problems that it was meant to overcome or to prevent. These obligations are subject to general classifications depending on the types of duties imposed on states. . The distinction between positive and negative duties is one of such categorizations. "Negative duties impose an obligation on the part of states not to interfere in the enjoyment of the rights. Thus, all the state is required to do is refraining from interfering. Positive duties, on the other hand, impose on states the duty of taking positive measures to ensure the realization of the rights. Noninterference in the enjoyment of rights, thus, does not suffice to discharge the obligation of a state. The state is required to take specific measures to ensure the enjoyment of the Rights. . It is questionable, however, which of the rights involve just negative duties due to the fact that most rights, which initially were assumed to entail only negative duties, have come to be understood as requiring positive measures through time."<sup>53</sup>

The other way of categorizing obligations of states under human rights treaties is between that of conduct and result. "Obligation of conduct requires states to act in a certain manner with the aim of achieving a certain end. However, such an obligation does not strictly obligate states to bring about a certain result. So long as the state is acting diligently in the manner requested by the convention, it will be considered, as having discharged its obligations despite the end the treaty aspires to achieve has not been

53 Rebecca J. cook, *State accountability under the CEDAW*, in Rebecca J. cook (ed.): *Human rights of women : National and International perspective* (1994), p.232

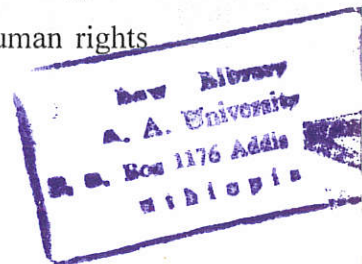


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alized. On the contrary, obligation of result gives states the liberty to choose the manner of achieving a certain end. But, it requires states to achieve a specified result.<sup>54</sup> One of such classifications, but which has been gradually become accepted in principle is that is commonly referred as “tripartite typology of states obligations”, i.e., obligation to respect, protect and fulfill all human rights.<sup>55</sup>

### 2.2.1.1 Obligation to Respect Human Rights

The obligation to respect human rights refers to the obligation of states to refrain from intervention.<sup>56</sup> In this respect, states shall refrain from directly infringing human rights, provided such intervention is not admissible under any relevant and justifiable legal limitations and reservation clauses.<sup>57</sup> This obligation corresponds more closely to the traditional conservative view, which argues that the obligation of the state is to abstain or “stand off” from arbitrary intervention on the freedom and autonomy of the individual so as to provide a shield for individuals from unjust interference by political authorities.<sup>58</sup> Both categories of rights have this negative dimension in a sense that they require the state to respect the autonomy of the individual in the exercise of his rights. For instance, as per Art. 2(1) of the ICCPR each state party undertakes to respect and ensure all individuals rights recognized in the convention without discrimination of any kind. Accordingly, the “respect” obligations of the state in relation to the right to life entail refraining from extra-judicial killing. Similarly, Art.2 (2) of ICESCR obliges states to undertake guarantee the rights enunciated in the convention be exercised without discrimination of any ground. Accordingly, it can be argued that the state has a duty not to demolish individual house without justifiable and relevant legal ground.

<sup>54</sup> Ibid

<sup>55</sup> Martin Scheinin, Women' Economic and social rights as human Rights, in Lauri Hannikainen and eev nykanen (ed.), New trends in discrimination law-international perspectives, vol., 3,no.1,1999,p.13 as quoted by Kidist Alemu Enforcement of CEDAW in Ethiopia, in light of state obligations, University of Luud, Faculty of Law(unpublished),2002,p.14

<sup>56</sup> Guy Good Win Gill, Obligation of conduct and obligation of result” in p.Alston and k. Tomasevsky (eds.) The Right to Food, (1984),p. 112

Thus, the duty to respect obliges state and the government machineries to refrain from arbitrary intervention on the enjoyment of human rights and fundamental freedoms; otherwise performing such acts constitutes violation of human rights of individuals.

### **2.2.2.1.2 Obligation to Protect Human Rights**

The obligation to protect human rights refers to the state's duty to protect against and to prevent individual's rights from unjust interferences from or violation of individual's rights by others including state actors.<sup>59</sup> This is what is commonly known as more of positive obligations of states, i.e., to take active measures to wards the effective enjoyment of the rights. This include the obligations to create normative systems as well as institutions like courts to prevent violation of rights that enable individuals to enjoy their protected rights with out interference from others and to provide remedy in cases of violation.<sup>60</sup> That is why several international human rights conventions make explicit the state's duty to protect against and to prevent violations of individual rights. When violation of individuals occurs- for example, Art.2 (3) of ICCPR obliges states to ensure any person whose right is violated to have an effective remedy determined by competent organ of the state.

### **2.2.2.1.3 Obligation to Fulfill**

The obligation to fulfill human rights ~~refers~~ refers another positive obligation of state's to take positive measures which includes legislative, administrative, judicial and practical measures necessary to ensure that the rights in question are implemented to the national societies to the greatest extent possible.<sup>61</sup> This with out doubt raises the question of resources and this is the place where states try to escape responsibility on the ground that their meager resources are not sufficient to live up to their obligation. These predominantly is justified by other issues, the issue of state priority (political program,

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<sup>59</sup> Id., p.232

<sup>60</sup> Guy Good Win Gill, Obligation of conduct and obligation of result Cited above at note 108 p.15.

<sup>61</sup> Ibid.

distribution of existing resources), issues of economic reasonableness, current social development, and measures of progressive realization of human rights.<sup>64</sup> This in effect has created an endless debate whether actual non-compliance with the positive obligation to fulfill is no longer justifiable, and therefore constitutes a violation of the human right in question since several factors have been taken in to consideration and to be weighed.

### **2.2.2.2 The Human Rights Obligations of States Parties under the CRPD**

As a groundbreaking Convention in the protection of the right of persons with disabilities, the CRPD imposes obligations on the States Parties to the Convention. In the following sub-sections, the nature of the obligations will be considered.

Before starting the consideration of the states' obligations, it demands me to set the principles upon which the Convention has rested. In this respect, Article 3 has confirmed that "Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons", "Non-discrimination", "Full and effective participation and inclusion in society", "Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity", "Equality of opportunity", "Accessibility", "Equality between men and women" and "Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities."

Articles 4 to 9 contain overarching or crosscutting principles and measures to be applied in all aspects of the implementation of the convention. Article 4 sets out the general obligations states assume on ratification or accession to the CRPD. This includes, for example, the obligation to incorporate the terms of the convention into national laws, policies and programs, and to repeal national laws that are inconsistent with the convention. Articles 6 and 7 require states to implement the CRPD in a manner that will ensure that women and children with disability are able to exercise and enjoy their human rights and fundamental freedoms on an equal basis with men and other children respectively. These gender and age equality measures are reinforced in the CRPD's Preamble and in a number of provisions containing specific obligations.

Articles 8 and 9 present what are undoubtedly two of the greatest challenges to the international community. Article 8 requires states to promote a fundamental change in societal attitudes, by fostering respect for the rights and dignity of persons with disability and by combating stereotypes and prejudice. Article 9 requires states to ensure that the 'environment' is accessible to persons with disability so that they may live independently and participate fully in all aspects of life. It is important to observe that the environment is very broadly conceptualized, and not only includes built structures, but also transportation, information and communications (including the Internet). The Article also specifically adverts to a principle of geographic equity, requiring equivalent levels of environmental accessibility in both urban and rural areas. The principle of geographic equity also underpins a number of the CRPD's economic, social and cultural rights.

Articles 24 to 28 and Article 30 are based in economic, social and cultural rights. These Articles place over-riding emphasis on inclusion and participation by persons with disability in the mainstream education system and labor market, supported by the accommodations and other positive measures required by persons with disability to realize these rights. The right to health is particularly directed towards ensuring that persons with disability enjoy non-discriminatory access to comprehensive general and specialist health services in the local communities in which they live. Article 26 extends the traditional rights to health, work, education and social security to the right to habilitation and rehabilitation, which features for the first time in a core United Nations human rights treaty. It is directed to ensuring that persons with disability have access to developmental learning and rehabilitation programmes that will enable them to develop (or recover) their maximum potential. Again, the emphasis is on inclusion and participation of persons with disability in the community both during the process of habilitation and rehabilitation and as an outcome of it.

Generally, if the CRPD is appraised in the light of the principal classification of States' obligations (the tripartite obligations), States parties are expected, to respect, protect and fulfill the rights of persons with disabilities for the accomplishment of full and successful life of those vulnerable groups of the society

Leaving aside the discussions on the general points concerning the CRPD, I will try to focus on the employment rights of persons with disabilities as incorporated under the CRPD. Article 27 (1) recognizes “the right of persons with disabilities to work, on an equal basis with others which includes the right to the opportunity to gain a living by work freely chosen or accepted in a labor market and work environment that is open, inclusive and accessible to persons with disabilities.” The second limb of Article 27 makes clear that “States Parties shall safeguard and promote the realization of the right to work by taking appropriate steps through legislation.” The legislative measures should be directed towards the “Prohibit[ion] of discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions.” Moreover, these measures should “Protect the rights of persons with disabilities, on an equal basis with others, to just and favorable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances.”

It is thought that the legislative measures should “Ensure that persons with disabilities are able to exercise their labor and trade union rights on an equal basis with others.” They have to “Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training” that would “Promote employment opportunities and career advancement for persons with disabilities in the labor market, as well as assistance in finding, obtaining, maintaining and returning to employment.” In furtherance, governments are expected to “Employ persons with disabilities in the public sector and “Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures.” More importantly, States Parties should “Ensure that reasonable accommodation is provided to persons with disabilities in the workplace.”

### *2.3 Regional Normative Development of the Employment Right of Persons with Disabilities*

Regional treaties have also been used as mechanisms to enforce human rights protection for people with disabilities. The instances of such regional conventions include the American Convention on Human Rights (1969), the European Convention on Human Rights and Fundamental Freedoms (1950), the European Social Charter, the African Charter of Human and Peoples' Rights, African Charter on the Right and Welfare of the Child and, more recently, the Charter of Fundamental Rights of the European Union.<sup>62</sup>

Convention on the Elimination of All Forms of Discrimination and the first binding human rights treaty on disability. Further, on January 29, 2003, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1592 (2003), entitled "Towards Full Social Inclusion of Persons with Disabilities."<sup>63</sup> This Recommendation provides:

The Assembly notes with satisfaction that in certain member states policies concerning people with disabilities have been gradually evolving over the last decade from an institutional approach, considering people with disabilities as "patients", to a more holistic approach viewing them as "citizens," who have a right to individual support and self-determination.<sup>64</sup>

The Recommendation goes on to state:

The right to receive support and assistance, although essential to improving the quality of life of people with disabilities, is not enough. Guaranteeing access to equal political, social, economic and cultural rights should be a common political objective for the next

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<sup>62</sup> American Convention on Human Rights, opened for signature Nov. 22, 1969, entered into force July 18, 1978, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123.

<sup>63</sup> Degener & Quinn, *A Survey of International, Comparative and Regional Disability Law Reform*, cited above at note 35.

<sup>64</sup> Towards Full Social Inclusion of Persons with Disabilities Recommendation, 2003, Recommendation No. 1592. (Doc. 9632).

decade. Equal status, inclusion, full citizenship, and the right to choose should be further promoted and implemented.<sup>65</sup>

Predating the above instruments, the best-known Council of Europe Recommendation concerning people with disabilities was adopted by the Committee of Ministers in 1992. "A Coherent Policy for the Rehabilitation of People with Disabilities" is more comprehensive than the title might suggest. In fact, its sub-title 'A model rehabilitation and integration program for national authorities' is probably a more useful description of the document, which includes detailed sections on prevention and health education, education, vocational guidance and training, employment, social integration and environment, social, economic and legal protection, personnel training, information, statistics and research.<sup>66</sup>

In the continuum, the European Commission, in a social policy White Paper published in 1994 while acknowledging that there was a need to build the fundamental right to equal opportunities into European Union policies, said in part,

"it would ensure, through appropriate mechanisms, that the needs of disabled people were taken into account in relevant legislation programmes and initiatives, ... prepare an appropriate instrument endorsing the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities and promised to prepare a code of good practice in relation to its own personnel policies and practices on employing persons with disabilities."<sup>67</sup>

To add, in December 1996, the EU Social Council adopted a Resolution which reaffirmed the commitment of the member States to the principles and values that underlie the UN Standard Rules, the ideas underlying the Council of Europe's 1992 Resolution on a coherent policy for the rehabilitation of persons with disabilities, the principle of equality of opportunity in the development of comprehensive policies in the field of rehabilitation and the principle of avoiding or eliminating any form of negative discrimination on the grounds of disability.<sup>68</sup>

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65 Ibid.

66 Id. at para. 3.

67 Arthur O'Reilly, THE RIGHT TO DECENT WORK OF PERSONS WITH DISABILITIES cited above at note 28.

68 Ibid

Africa and the Asia-Pacific regions have also tried to enact laws and programmes for the betterment of the right of persons with disabilities for employment. For instance, in December 1992, the meeting to launch the Decade of Asia and Pacific region adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region and the Agenda for Action for the Asian and Pacific Decade of Disabled Persons, 1993-2002. In April 1993, the Commission adopted the Proclamation and Agenda for Action one of the major policy categories being training and Employment.<sup>69</sup> The African region has come up with a charter that recognized the right of children with disabilities under Art. 23 thereby facilitating their rehabilitation and education among others. However, there is no specific provision dealing with the employment right of persons with disabilities excepting the equality protection clause of the charter.

#### *2.4 Development of Disability Specific Domestic Employment Legislations*

In addition to the efforts of ILO, the UN, and regional human rights systems, various countries have issued disability specific laws with the principal target of equalizing persons with disabilities with non-disabled persons in the social, political, economic and cultural life. For instance, United States, Canada, and Spain were the first countries in the world to enact laws prohibiting discrimination against people with disabilities.<sup>70</sup> The United Kingdom, Sweden, Israel, and Australia have also enacted comprehensive anti-discrimination laws designed to promote the integration of people with disabilities into all aspects of their respective societies.<sup>71</sup> Almost all of the Latin American countries have enacted laws that create equal opportunities for persons with disabilities. Moreover, some

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<sup>69</sup> Id. P.28.

<sup>70</sup> Arlene S. Kanter, "The Globalization of Disability Rights Law" (2003) *Syracuse Journal of International Law and Commerce*, vol. 30, pp. 241-69.

<sup>71</sup> Id., FN 34.

African countries including Ghana, Malawi, Ethiopia, South Africa, Namibia, Zambia, Zimbabwe and Gambia have come up with discrimination protection laws.<sup>72</sup>

The undeniable characters of the laws that have been enacted throughout the world in the past decade differ greatly in structure, scope, and coverage. Not only does the legal structure differ in these various laws, but the definition of disability varies from country to country as well. Considering that disability, as discussed above, may be seen as a social construct dependent upon the environment in which it arises, it is not surprising that there is no worldwide consensus regarding who is considered disabled and entitled to a law's protections--and who is not. Different countries will and do have different views as to which human conditions qualify within the definition of disability. The vast majority of countries do not even define the categories of individuals covered by their countries' laws.<sup>73</sup> Further, a few countries, define disability broadly to include people who are "regarded" as disabled, as well as those with drug and/or alcohol addiction.<sup>74</sup>

In addition to variation in the law's definitions of disability, these laws also differ in their scope and coverage. Four countries limit their respective laws' coverage to one area, such as employment, education, or access to public services.<sup>75</sup> At least five other countries, however, provide comprehensive protections in many spheres of life, including employment, public accommodations, education and access to government services. Other countries choose instead to include only general statements against discrimination without specifying the setting in which such discrimination is prohibited. However, the most comprehensive disability discrimination laws seek to protect people with disabilities in a wide range of daily life activities including housing, access to goods and services, and transportation.<sup>76</sup>

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<sup>72</sup> Stanley Herr, "Reforming Disability Nondiscrimination Laws: A Comparative Perspective," (2002) 36 *U. Mich.J.L. Reform* 305, pp. 319-322.

<sup>73</sup> Arlene S. Kanter, *THE GLOBALIZATION OF DISABILITY RIGHTS LAW*, cited above at note 73.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*, FN. 34.

<sup>76</sup> *Ibid.*, FN. 35.

Some countries' laws also recognize the importance of providing specific civil remedies and enforcement mechanisms.<sup>77</sup> Twelve countries, for example, include specific requirements for reasonable accommodations in their disability discrimination laws.<sup>78</sup> However, only four countries appear to provide a private right of action for violations of the anti discrimination provisions of their laws.<sup>79</sup> Twenty-nine countries fail to specify any remedies whatsoever in their laws.<sup>80</sup> For example, in Ghana, the law states that there should be no differential treatment of people with disabilities, but the law includes no mechanisms whatsoever for enforcement of this guarantee.<sup>81</sup> The most comprehensive laws, however, include specific injunctive, declaratory and/or judicial remedies, including money damages to victims of disability discrimination.<sup>82</sup>



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<sup>77</sup> Jerome E. Bickenbach, The ADA v. the Canadian Charter of Rights, in Americans with Disabilities, (2000) p. 56.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Id.*, p. 25.

<sup>80</sup> Arlene S. Kanter, THE GLOBALIZATION OF DISABILITY RIGHTS LAW, cited above at note 73.

<sup>81</sup> *Ibid.*

<sup>82</sup> *Id.* FN. 50.

## Chapter Three:

### **Legislative Framework on the Employment Right of Persons with Disabilities in Ethiopia**

Having discussed the part assumed by the International Labor Organization, the United Nations Organization and the regional organizations in the development of the normative standards of the employment rights of persons with disabilities, the author believes, as understood by the reading of the previous chapters, that international norms concerning disability are useful for setting common standards and need to be appropriately reflected in policies and programs that are one of the most effective means of bringing about social change and ameliorating the status of persons with disabilities. The other point that transpired from the reading of the previous chapters is that it is the duty of states to perfect opportunities for persons with disabilities to obtain satisfaction of those needs that are recognized in the human rights instruments, which cannot be secured by personal efforts. To this end, states must adopt certain legislative, administrative and judicial practices that are consistent with their constitutional processes to give effect to the obligations, which they undertake to implement and ensure that persons with disabilities whose rights or freedoms are violated have an effective remedy justifiable before independent and impartial tribunals. The concern of the following two chapters is, therefore, to consider the legislative, institutional and policy frameworks of Ethiopia with regard to the employment rights of persons with disability. Precedence will be taken by the consideration of the constitution.

#### **3.1 The Constitution**

"Constitution"—like nation, state, democracy, and sovereignty—is one of the central icons and one of the most ambivalent ideological structures in the pool of cultural

representations of modernity.”<sup>83</sup> It is agreed on the notion of constitution as a higher or supreme law. Highness is ascertained, technically, “by the systematic ranking of constitutional norms at the top of the legal hierarchy, above the ordinary laws, and by the methodological rule that laws have to be interpreted in conformity with the constitution.”<sup>84</sup> It can also be “underscored by the language of the document, thereby characterizing its substantive content as consisting of inalienable sacred and natural rights or “humble obligations” and “lofty duties.”<sup>85</sup> So to say, the highness of

The FDRE constitution is guaranteed under Art. 9 (1) that reads, “The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.” Beyond the incorporation of an elaborate list of fundamental rights and freedoms under chapter three, the constitution makes “all international human rights treaties ratified by Ethiopia, an integral part of the law of the land.”<sup>86</sup> The Transitional Government of Ethiopia, ratifying ILO’s Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) No. 159 (1983) in 1991, The International Covenants on Economic, Social and Cultural Rights and the Civil and Political Rights on the 11th of Jun 1993, made them an integral part of the laws of Ethiopia.<sup>87</sup>

The position of persons with disabilities is placed in constitutional documents in three forms, as traced from the writing of Workie Taye. He retorts:

First, they provide for provisions, which are aimed at achieving the purpose of prohibiting discrimination among the society in general. Second, they contain statements to the effect that every right and duty enshrined in the constitution applies to persons with disabilities, stating that discrimination is prohibited. Third, they incorporate specific

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<sup>83</sup> Günter Frankenberg, “Comparing constitutions: Ideas, ideals, and ideology—toward a layered narrative,” *Int. Jnl. of Constitutional Law*, Vol. 4, No. 3, note 33.

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

<sup>86</sup> Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No. 1, Year 1, No. 1, Art. 9 (4).

<sup>87</sup> [Http://www.ethiopar.net](http://www.ethiopar.net)

provisions, which address disability matters without derogating principle of equality, with respect to other constitutional provisions.<sup>88</sup>

The FDRE constitution falls under the first category. It guarantees the equality of all persons indiscriminately under Art. 25. A glimpse reading of the provision divulges the failure of the constitution to give an explicit recognition of the equality of persons with disabilities. A writer on the making of constitution and the entrenchment of the rights of persons with disabilities in to constitutional documents recounted to this effect as follows:

"To fail to prohibit discrimination on the grounds of disability in any constitutionally entrenched Charter of Rights and Freedoms which does prohibit discrimination on the grounds of race, national or ethnic origin, color, religion, sex or age is tantamount to rejecting the fundamental humanity of disabled [persons]."<sup>89</sup>

The provision by containing an inexhaustive listing, as can be collected from the catch-all phrase "other status", makes the above assumption a mere rhetoric. However, it is not lock, stock and barrel clear what other grounds are covered in addition to those unequivocally mentioned. In congruence with the writings of Thornberry, the unmentioned grounds must logically be "materially similar with those listed, that is, distinctions unrelated to an individual's merit, abilities or efforts."<sup>90</sup> Adopting such a definition may not qualify for our purpose because there is no such a word that denotes the necessity of the existence of material similarity. Therefore, it would be safer to adopt the observation of Scheinin and Krause, namely, "many grounds explicitly mentioned relate to inborn characteristics or

Other factors beyond the free choice of the affected person, which may be relevant in the interpretation of what constitutes "other status" under said Article."<sup>91</sup>

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<sup>88</sup> Workie Taye, *Comparative Study on the Legal Status of Disabled Persons with Particular Reference to Ethiopia* (1997, Unpublished, Kennedy Library, Addis Ababa University.), p. 29.

<sup>89</sup> Yvonne Peters, "Twenty Years of Litigating for Disability Equality Rights: Has it Made a Difference?" 2004 <http://www.ccdonline.ca/publications/20yrs/20yrs.htm> - 123k

<sup>90</sup> Patric Thornberry, *International Law and the Rights of Minorities*, Oxford (1991), p. 281.

<sup>91</sup> Scheinin & Krause, *The Right not to be discriminated Against: The Case of Social Security*, Orlin & Scheinin (2000), p. 256.

In any case, it is the opinion of the author that the constitution should be amended to expressly include disability as one of the basis of discrimination bearing in mind the supremacy of the Constitution over the other legislations.

Meanwhile, the Constitution imposes an obligation on the State to, “within its available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled.”<sup>92</sup> If nothing else, this article is a big step ahead in terms of shielding and propping up the rights of persons with disabilities, despite the fact that it lays a hand on only part of the problem in view of the fact that it does not specifically oblige the State to provide equal employment opportunities and does not rule out employment related discrimination against persons with disabilities. To add insult on injury, Article 42 of the constitution whose concern is labor related rights even does not mention the right of persons with disability to equal employment opportunities.

### **3.2 The Labor and Federal Civil Service Proclamations**

The Federal Civil Servant Proclamation Proc. No. 515/2007 under Art. 13 (1) prohibits discrimination on various grounds, inter alia, based on disability. It provides “there shall be no discrimination among jobs seekers or civil servants in filling vacancies because of their ... disability.” In fact, in recruitment, promotion and deployment preference shall be given to “candidates with disability, having equal or close scores to those other candidates.” There would be no problems were the persons with disability score equal point with a person without disability. The point is what the phrase “close scores,” mean. The consultation of Directive for the Recruitment of Civil Servants of 2000 E.C. issued under the auspices of the Federal Civil Service Agency provides the following under Para. 6 (1) (a):

Preference shall be given to persons guaranteed affirmative action (women), persons with disability and members of minority nationalities having lower representation in the institution to a person if they score at least not less than three per cent to that of the latter respectively.

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<sup>92</sup> FDRE Const., cited at Note 88, Art. 41 (5).

This shows that persons with disabilities are given a second position to women who, in fact, are with or without disability. The problem is who will take the first from women with and without disability if it happens that, both score the same result.

Meanwhile, Proclamation No. 377/2003 whose concern is to deal with the right of employees in the private sector has no specific provisions, which deal with employment opportunities for persons with disabilities. However, Art. 14(1) (f) bars employers from discriminating against workers on the basis of nationality, sex, religion, political outlook or on any other conditions. Discrimination based on disability is not unequivocally mentioned, although the catchall clause “any other conditions” can be taken to include disability as a prohibited ground.

### **3.3 Disability Specific Proclamations**

#### **3.3.1 Proclamation No. 101/1994**

The Proclamation Concerning the Rights of Disabled Persons to Employment No 101/1994 specifically addresses the issue of employment of persons with disabilities. This proclamation was the sign of the readiness of the then transitional government to proclaiming laws and developing policies to resolve the disheartening state of affairs of underemployment of persons with disability. This circumstance is divulged under Paragraph 2 of the preamble of the Proclamation as follows: “disabled persons have got less job opportunities, despite the fact that some of them have acquired the appropriate training and skills.” To this effect was made a Baseline Study by the Institute of Educational Research that claimed, “60 per cent of persons with disability in Ethiopia were unemployed in 1995, of which two-thirds were self employed in rural areas in occupations such as agriculture, animal husbandry or forest activities.”<sup>93</sup> By a recent study undertaken by ILO experts, “of over 5 million children, adults and elderly persons

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<sup>93</sup> Institute of Educational Research, Baseline Survey on Disabilities in Ethiopia (Addis Ababa University, 1995) as quoted in ILO, Employment of People with Disabilities: The Impact of Legislation (East Africa) (ILO, Geneva, March 2004), at 3.

with disabilities, representing 7.6 per cent of the population living in Ethiopia in 2003<sup>94</sup> most of them were found unemployed. It is confessed, the issuance of this Proclamation is necessitated to bring to a halt such discriminations and protect the rights of persons with disability to compete for and be employed based on their qualifications. Art. 3(1) of the Proclamation providing to this end goes: “disabled persons with the necessary qualifications can, unless the nature of the work dictates them otherwise, compete and be selected for vacant posts, promotion and training programs, to be conducted either locally or abroad.” First, no provision in the Proclamation defines the phrase “necessary qualifications” thereby opening the “pandora’s box” for the employers. Meaning, employers are given the green light to put any criteria they feel will debar the persons with disability from being employed. Surprisingly enough, no guidelines are even provided for employers to adjudge the qualification of that person. To understand the phrase, I have to make use of a definition that is provided by the American with Disabilities Act (ADA) that goes as: “an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.”<sup>95</sup> The ADA does not stop here and continues as follows: “consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.”<sup>96</sup>

Secondly, one needs to bear in mind the hazy effect of the phrase “unless the nature of the work dictates them otherwise”, which is not given a clear-cut definition, on the right to equal employment opportunity of persons with disabilities. The fear is that employers may use this silence as an excuse to differential treatment against persons with disabilities during recruitment, promotion, transfer and selection for training programs. It may be that the employer may argue that the job for which the applicant with disability is contending for is such that the temperament of the work would make it unfeasible for him to take on that job. ✓

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94 ILO, Employment of People with Disabilities: The Impact of Legislation (East Africa) (ILO, Geneva, March 2004), at 3.

95 Americans with Disabilities Act, 1990, Sec. 101 (8).

96 Ibid

Thirdly, the employer has to provide employees with disabilities with the necessary equipment and materials in order to enable them to carry out their duties or pursue training as stated by Article 3(4) of the Proclamation. Admittedly, such a requirement places additional economic burden on the employer and this may have a negative impact on candidates with disabilities. The interesting thing is that the proclamation does not specifically provide for the possible ways by which the burdens on the employers are going to be shared by the government.

In accordance with art. 4(1)-(2) of the Proclamation, “employers and training institutions are duty bound to identify and reserve posts for disabled persons from among vacancies, to be competed only by disabled persons, created in their offices and undertakings.” In essence, this provision adopts the quota system to undertake the employment of persons with disability. A quota is a “positive action, which allows for special help to a defined group on the grounds of their disadvantaged situation in getting and retaining employment.”<sup>97</sup> It is a “regulatory approach for promoting the employment of people with disabilities by directly influencing labor demand.”<sup>98</sup> By creating quotas, “States have sought to establish an alternative labor market which is only open to those people who are labeled as disabled, albeit those finding work via this route (should) work side by side with their non-disabled counterparts.”<sup>99</sup> Quotas are based on the following assumptions:

- 1) people with disabilities are able to work in the open labor market;
- 2) employers should hire a set percentage of people with a disability; and
- 3) a large number of people with disabilities are neither able to compete for jobs with

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<sup>97</sup>Daniel Mont, “Disability Employment Policy,” (2004), <http://siteresources.worldbank.org/DISABILITY/Resources/280658-1172606503948/DisabilityEmploymentMont.pdf>.

<sup>98</sup> Ibid.

<sup>99</sup> 101. Lisa Wadington, “Legislating to Employ People with Disabilities: The European and the American Way,” *Maastricht Journal of European and Comparative Law* 1: 367 – 95.

their non-disabled counterparts on an equal basis nor win jobs on their own merit, thus rendering legislative intervention necessary.<sup>100</sup>

Wadington, in addition to presenting the assumptions underlying quotas, recounts the inherent mystification of quotas. She says:

On the one hand, employers are told the persons with disabilities' employment in the open labor market is desirable and achievable, whilst on the other hand, they are told that workers with disability cannot compete for jobs in a truly open labor market. In short, the message sent out is that most workers with disability are less valuable economically and less productive, and that, if such workers are to be integrated in the (semi-)open labor market, employers need to be obliged to hire them.<sup>101</sup>

The fact is that no country has succeeded in providing an ameliorated life style for disabled by the provision of quota systems. The illustration to this conclusion was unrolled from a recent study for the European Commission, which looked at employment policies for persons with disabilities in eighteen industrialized countries that found no examples where quota systems achieved their targets. The study concluded:

It is clearly the case that in most countries the tide is swinging away from quotas – either for their abandonment altogether (as in the UK), or for other measures (active employment support for individuals and/or stronger anti-discrimination laws) to be given higher profile and greater force.”<sup>102</sup>

Article 6 of the Proclamation envisioned the issuance of regulations and Directives, “the means of assessing progress in the status of people with disabilities, as well as reflecting the stage reached in the process of equalization of opportunities”<sup>103</sup> by the Council of Ministers and the Ministry of Labor and Social Affairs and Public Servants Agency respectively for the implementation of this Proclamation. Though the benefit of issuing a

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<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Daniel Mont. “Disability Employment Policy,” cited at note 99.

<sup>103</sup> General Survey on the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), 1983, Geneva, June 1998, [http://wallis.kezenfogva.iif.hu/eu\\_konyvtar/projektek/vocational\\_rehabilitation/publ/gen\\_31.htm](http://wallis.kezenfogva.iif.hu/eu_konyvtar/projektek/vocational_rehabilitation/publ/gen_31.htm).

regulation or directive is unquestionably important, the proclamation itself is repealed and supplanted by Proclamation No. 568/2008 before the government issued regulations and directives for its implementation as envisaged under Article 6. In point of fact, several persons with disabilities capable of working are deprived of equal opportunity to be employed in vacancies available merely due to their disabilities. It is observed that even those who are employed are stumbled upon impediments, as conducive situations required to perform their jobs are not fulfilled. The gravest problem that arises from the failure of issuing the regulations and directives is that the persons with disabilities could not benefit from the quota system that was propounded under Art. 4.

### **3.3.2 Proclamation No. 568/2008**

Legislation commences with clear verbalization of the purposes that is of assistance to “unite[ing] the initial audience of the proposed legislation, namely the legislator and the ultimate audience to whom it is to be addressed and the judicial and administrative bodies responsible for ensuring the interpretation and application of the legislation that is adopted.”<sup>104</sup> By the same token, the drafters of Proc. No. 568/2008 [hereinafter, the proclamation] have provided the following purposes.

To start with, the proclamation was drafted with the aim of replacing the existing legislation on the right of persons with disabilities to employment that, “by providing for reservations of vacancies for disabled persons, created an image in the mind of the employers that people with disabilities were incapable of performing jobs based on merit.”<sup>105</sup> So to speak, the proclamation seeks to downsize “the deep rooted negative perception of persons’ disablement in society that has adversely affected the right of persons with disability to employment.”<sup>106</sup> On top of these, the proclamation is issued with the purpose of “guarantee[ing] the right of persons with disabilities to reasonable accommodation and the provision of proper protection”<sup>107</sup> from the prevalent

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<sup>104</sup> Ibid.

<sup>105</sup> . The Right to Employment of Persons with Disabilities Proclamation, cited at note 24, para. Preamble, 2.

<sup>106</sup> Id. Para. 1.

<sup>107</sup> Id. Para. 3.

discriminatory practices. In furtherance, the enactment of this law was thought to enable Ethiopia to comply with the “policy of equal employment opportunity, provision of reasonable accommodation for people with disabilities to employment and laying down simple procedural rule that enable them to prove before any judicial organ discriminations encountered in employment.”<sup>108</sup>

The other purpose of the Proclamation is to change the understanding of disability in the Laws of Ethiopia. As understood by the reading of Chapter one (sec. 1.6), the previous proclamation defined disability in the “medical model” that is principally concerned with the body and that takes disability as a problem that needs a cure. The proclamation defines disability based on the social model that has warm acceptance by the CRPD (see, sec. 1.6 above). This shift can be grasped from the reading of Art. 2 (a) and paragraph 1 of the preamble. What is more Ato Kassahun Yibeltal, the President of the Ethiopian Federation of the Associations of the Persons with Disability, recounts, to this effect as follows:

“In this regard, there existed a lengthy discussion among the members of the technical committee which was composed of members delegated by the Civil Service Agency, the Ministry of Labor and Social Affairs and our Federation which model to adopt, that is, the Charity, the medical, or the social model of disability. Of course, we have finally come to truce on the entrenchment of the social/human rights model in to the Proclamation.”<sup>109</sup>

In addition to wording differences in the two proclamations, the following departures are traceable.

One of the major departures of Present proclamation No. 568 from Previous proclamation No. 101 is that the former has guaranteed the “a right of action” in cases of blatant employment discrimination that occur against persons with disabilities for the Federation, the individual and the association to which he is a member as is traced from the reading

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108. Ibid.

109 Interview with Ato Kassahun Yibeltal, President of the Ethiopian Federation of the Associations of Persons with Disability, 23 Tir 2001.

of Art. 10 (1). The latter, however, in the light of Art. 6 (2), has guaranteed this right only to the individual who suffered from the discrimination. Coming up with a sanction, in the form of a fee not less than two thousand or more than five thousand Birr under Art. 11, the former has filled the gap on the enforcement of the rights of persons with disabilities. This takes the former a step ahead from the latter. Moreover, the former has clearly provided for the prohibition of possible discrimination that can occur on persons with disabilities, in situations of recruitment and promotion by virtue of Art. 5, the latter has provided for a quota, which, in fact, is not implemented for various reasons discussed in the previous sub-section.

An eye-catching departure of Proc. No. 568 from Proc. No. 101 is that the former has adopted the reverse burden of proof. This is to say, the defendant is expected to prove the inexistence of the discrimination claimed as per Art. 7 (2) or that the work cannot be taken care by a qualified persons with disabilities even if reasonable accommodation is in place. Similarly, Proc. No. 568 introduced the defense of “undue burden”.

With the above exposition in mind, the following sub-sections are left for the analysis of the principles underlying the proclamation, the remedies to be availed by and the options of employment proposed by the proclamation.

### **3.3.2.1 The Principle of Non-discrimination**

The principle of non-discrimination runs like a red thread throughout all human rights treaties and declarations.<sup>110</sup> It is definitely included in almost all international human rights documents and is utterly entrenched in almost all individual human rights provisions, which are by and large worded in universal tongue, such as “everyone” or “no one.” For example, the non-discrimination provision of the Universal Declaration of

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<sup>110</sup> Martin Scheinin and Catarina Krause, *The Rights not to be Discriminated Against: The Case of Social Security*, in T. Orlin and M. Scheinin, *The Jurisprudence of Human Rights Law. A Comparative Approach*, Gummerus, Jyväskylä, 2000: 255.

Human Rights, as incorporated under Art. 2 that “has had major political influence and is of theoretical importance”<sup>111</sup> reads as follows:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 7 of the same while providing for equality before the law reads:

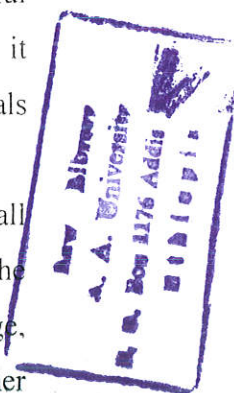
All persons ... are entitled without any discrimination to equal protection of the law (and) ... to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

It is understood that “the protection provided is extensive, as the rights guaranteed in the Declaration cover nearly the entire range of what today are recognized as human rights and fundamental freedoms.”<sup>112</sup>

The International Covenant on Civil and Political Rights contains two powerful provisions on non-discrimination. The first one is to be found in Article 2 (1) and it relates to the obligation to ensure the rights recognized in the Covenant to all individuals without discrimination:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

States are thus obliged both to refrain from restricting the rights guaranteed in the Covenant, as well as to take positive steps to give effect to these rights. Similarly, the level of protection afforded by the Article cannot vary from group to group, but has to be the same for all.



<sup>111</sup> Hernández Trujol, *Human Rights through a Gendered Lens: Emergence, Evolution, Revolution*, in Askin & Koenig, *Women and International Human Rights*, Transnational Publishers, New York, 1999, 19.

<sup>112</sup> . Ashjörn Eide & Allan Rosas, *Economic, Social and Cultural Rights: A Universal Challenge*, in Eide et al. (Eds.) *Economic, Social and Cultural Rights: a Textbook*, Kluwer Law International, The Hague, 1995: 15.

The list of grounds is not exhaustive, as is indicated by the words “such as” and “other status.” However, the Covenant does not speak of “other such status” or of “other similar status”, but only of “other status”, which is wider in scope and does not seem to require that the other protected grounds are materially similar to those explicitly mentioned. Therefore, and given that the aim of the Article is to ensure to all individuals these fundamental human rights without distinction of any kind, one can conclude along Nowak that “every conceivable distinction that cannot be objectively justified is, in the final analysis, impermissible.”<sup>113</sup>

The phrase “distinctions of any kind” should be understood as prohibitive of “only arbitrary or otherwise unjust distinctions.”<sup>114</sup> To quote the observation of the Human Rights Committee, “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”<sup>115</sup> Therefore, positive action or other preferential action measures are allowed and may even be required, if they are needed to correct discrimination in fact and are used only as long as is necessary.

Article 26 of the International Covenant of Civil and Political Rights, which is inspired by Article 7 of the Universal Declaration and one of the most important international provisions on discrimination, provides as follows:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

While Article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, Article 26 is not similarly limited.<sup>116</sup> The scope of

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<sup>113</sup> Manfred Nowak, *U.N. Covenant on Civil and Political Rights. CCCP Commentary*, NP Engel, Strasbourg, 1993: 45.

<sup>114</sup> Patric Thornberry, *International Law and the Rights of Minorities*, cited at note 92, p. 283.

<sup>115</sup> General Comment No. 18 (Non-discrimination), 1989, adopted at the thirty-seventh session of the UN General Assembly, para 13.

<sup>116</sup> *Ibid.*

this Article is mainly circumscribed by the concepts of “equality before the law” and “equal protection of the law”. This means, “the equal treatment obligation is binding both in the lawmaking (“equal protection of the law”) and in the application of law (“equality before the law”).<sup>117</sup>

In essence, “differentiation on grounds not explicitly mentioned (such as disability) is likely to be tested less strictly (i.e. such differentiation is more readily accepted as legitimate) than differentiation on grounds that are explicitly mentioned, even if they are regarded as belonging to the “other status” category.”<sup>118</sup>

Understanding the failure of the Covenant to define discrimination, the Committee has provided such a definition:

discrimination as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.<sup>119</sup>

To determine whether the facts of the case disclose a violation of the non-discrimination rule, the Human Rights Committee usually examines whether “the criteria used for the differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”<sup>120</sup>

The discussion of non-discrimination issues is particularly important in the areas of economic and social rights, “since it is in this area in which vertical discrimination between an individual and authorities often arise, particularly as regards people with

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<sup>117</sup> . LL.M Timo MAKKONEN, “THE PRINCIPLE OF NON-DISCRIMINATION IN INTERNATIONAL HUMAN RIGHTS LAW AND EU LAW”, [http://iom.fi/elearning/files/european\\_law/essential\\_reading/Principle\\_of\\_Non\\_Discrimination.pdf](http://iom.fi/elearning/files/european_law/essential_reading/Principle_of_Non_Discrimination.pdf).

<sup>118</sup> Irene P. Asscher-Vonk. *Towards One Concept of Objective Justification*, in Loenen & Rodrigues (Eds.). *Non-Discrimination Law: Comparative Perspectives*. Kluwer Law International. The Hague, 1999: 50.

<sup>119</sup> General Comment No. 18 (Non-discrimination), cited at note 117, Para 7.

<sup>120</sup> Ibid.

disabilities.<sup>121</sup> Article 2(2) of the International Covenant of Economic, Social and Cultural Rights, to this effect, provides:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In addition to being formulated in a practice-oriented manner, as implied by the words “guarantee” and “will be exercised,” The list of prohibited grounds of discrimination is not exhaustive, meaning that other grounds can qualify under the “other status” category. As regards disability, the Committee on Economic, Social and Cultural Rights has taken the position that Article 2 (2) “clearly applies to discrimination on the basis of disability.”<sup>122</sup> To add, the Committee has submitted that “regarding people with disabilities the obligation in the case of such a vulnerable and disadvantaged group [people with disabilities] is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities.”<sup>123</sup> So to speak, “such actions are not to be considered discriminatory in the sense of Article 2 (2) as long as they are based on the principle of equality and are employed only to the extent necessary to achieve that objective.”<sup>124</sup> In any case, if it occurs, disability-related discrimination is to be understood as “any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights.”<sup>125</sup>

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<sup>121</sup> Martin Scheinin and Catarina Krause, *The Rights not to be Discriminated Against: The Case of Social Security*, cited at note 117, p. 2.

<sup>122</sup> General Comment No. 5 Persons with disabilities, cited above at note 46, para 11.

<sup>123</sup> *Id.*, para 9.

<sup>124</sup> *Id.*, para 18.

<sup>125</sup> *Id.*, para 15.

Although the above instruments do not specify disability as a prohibited ground of discrimination, the UNGA, most recently, has come up with the CRPD, an instrument reserved for the treatment of the exclusive right of persons with disabilities, to prohibit disability-related discrimination explicitly. In this respect, Art. 5 (2) requires States Parties to “prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.” Specifically, Art. 27 (1) (a) that “prohibit(s) discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions” is an earnest manifestation of the community of the world to do away with the rampant discriminatory situation that is encountered by persons with disabilities.

As a last resort, ILO’s principal instrument concerning discrimination in respect of employment and occupation, less to definition, refers explicitly to the following seven prohibited grounds of discrimination: “race, color, sex, religion, political opinion, national extraction and social origin.”<sup>126</sup> ILO’s supervisory and policy-making bodies have recently examined the desirability of expanding the seven grounds listed in Convention No. 111 to include disability<sup>127</sup> the inclusion of which is based on the assumption that “persons whose capacity is reduced by physical or mental disability often encounter discrimination even in respect of jobs which their disability would not prevent them from discharging efficiently and that disabled persons need special help in order to enjoy equality of opportunity in employment that is adapted to their particular condition.”<sup>128</sup> In addition, the more recent European Community Directive establishing a general framework for equal treatment in employment and occupation states that “discrimination based on ... disability ... may undermine the attainment of a high level of

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<sup>126</sup> ILO Convention No. 111, Cited above at note 35, Art. 1, para. 1(a).

<sup>127</sup> General Survey on the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), cited at note 105.

<sup>128</sup> Ibid.

employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.”<sup>129</sup> In any case, “anyone who receives less favorable treatment on one of the grounds of distinction listed under [arts. 2 (1) and 26 of the International Covenant of Civil and Political Rights and 2 (2) of International Covenant of Economic, Social and Cultural Rights and ILO Convention No. 111] will be a victim of discrimination.”<sup>130</sup>

Yet, discrimination in many guises remains unwaveringly entrenched in all societies. In giving cognition to the above assertion, the ADA Provides as follows: “historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.”<sup>131</sup> To note such a discrimination may take an “outright intentional exclusion, architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.”<sup>132</sup>

So to say, the principle of non-discrimination perseveres upon “equal treatment to the extent that people should be assessed without regard to certain characteristics that have often been a source of disadvantage in the past.”<sup>133</sup> This being true Hugh Collins, in his Article entitled “Discrimination, Equality and Social Inclusion,”<sup>134</sup> claims that there exist

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<sup>129</sup> EU Council Directive 2000/78/EC, 2000, Art. 14.

<sup>130</sup> M Sepúlveda *the Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (Intersentia nv Publishers, 2003) 123.

<sup>131</sup> The American Disabilities Act, cited at note 97, Sec. 2 (a)(2).

<sup>132</sup> *Id.* Sec. 2 (a) (5).

<sup>133</sup> I. M. Young, *Justice and the Politics of Difference*, Princeton: Princeton University Press, (1990), p. 15.

<sup>134</sup> Hugh Collins, “Discrimination, Equality and Social Inclusion”. (Modern Law Review vol. 66 (1), 2003, 16–43 doi:10.1111/1468-2230.6601002

three deviations from “equal treatment” that are “justified by reference to the pursuit of goals such as equality of results, equality of resources, or equality of opportunity.”<sup>135</sup>

They are:

First, in some cases, different rather than the same treatment is required. [For instance], different treatment of disabled persons is required in many respects, in order to enable them to gain access to work and other opportunities. Secondly, equal treatment is itself not permitted, if it causes unjustifiable ‘indirect discrimination’ or ‘disparate impact’. Meaning, equal treatment becomes unlawful where a rule or practice disproportionately operates to the disadvantage of one of the protected groups, and the rule or practice cannot be objectively justified. A third kind of deviation permits preferential treatment for protected groups in certain circumstances, in order to redress a prior history of disadvantage.<sup>136</sup>

In the intervening time, the enactment of anti-discrimination laws focused on employment is intended for taking in hand “access to employment, or, more precisely, the ability to earn a living through the provision of services to others.”<sup>137</sup> This focus rests on “the significance we attach to the distribution of jobs in society.”<sup>138</sup> More of import, however, is that the principle of non-discrimination is one of the “core labor standards”<sup>139</sup> as envisioned by ILO. The remaining principles are “the freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor and effective abolition of child labor.”<sup>140</sup> These standards are targeted towards the realization of “decent work.”<sup>141</sup> As Juan Somavia put it “by decent

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<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> I. M. Young, *Justice and the Politics of Difference*, cited at note 135.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> [http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static\\_jump?var\\_language=EN&var\\_pagename=DECLARATIONTEXT](http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=DECLARATIONTEXT) (accessed 25 August 2008).

<sup>141</sup> Ibid.

work we understand labor in conditions of freedom, equity, safety and human dignity.”<sup>142</sup> Additionally, the selection of non-discrimination as a core labor standard is based on two criteria. First, it is regarded to be a fundamental component of basic human rights. Second, it plays a role in supporting the efficient function of labor markets by granting labor certain freedoms.”<sup>143</sup>

Ethiopia, cognizant of the significance of the realization of the right to decent work and the necessity of guaranteeing the prohibition of discriminatory treatment of persons with disabilities, reviewed the proclamation in operation since 1994. The new Proclamation, evaluated against the international instruments, has the following to say about discrimination. First and foremost, the Proclamation illegalizes “any law, practice, custom, attitude, or other discriminatory situations that impair the equal opportunities of employment of disabled person.”<sup>144</sup> In context, the “accord[ance] of different treatment in employment opportunity as a result of disability”<sup>145</sup> is one of the situations that can nullify the equal opportunity of persons with disability for employment. In addition, “selection criteria which can impair the equal opportunity of employment of disabled persons in recruitment, promotion, placement, transfer or other employment conditions shall be regarded as discriminatory acts.”<sup>146</sup> On top of these, the “absence of a reasonable accommodation that would result in the inability of the equal opportunity of the disabled person is discriminatory act.”<sup>147</sup> However, “any inherent requirement of the job or measures of affirmative actions may not be considered as discrimination.”<sup>148</sup>

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<sup>142</sup> Juan Somavia, Decent jobs for all in a global economy; an ILO perspective. Document submitted to the Third WTO Ministerial Meeting (30 Nov. 3 Dec. 1999).

<sup>143</sup> Drusilla K. Brown, “International Trade and Core Labor Standards A Survey of the Recent Literature”, <http://ase.tufts.edu/econ/papers/200005.pdf>.

<sup>144</sup> The Right to Employment of Persons with Disabilities Proclamation, cited at note 24, Art. 5 (1)

<sup>145</sup> Id., Art. 2 (4).

<sup>146</sup> Id., Art. 5 (2).

<sup>147</sup> Id., Art. 5 (3)

<sup>148</sup> Id., Art. 5 (4).

Essentially, the need for a differential treatment is indicated under the previous paragraphs with regard to the realization of the equal treatment of employees with disabilities. As a matter of fact, reasonable accommodation is taken as a mechanism of guaranteeing the right to a differential treatment. In the following paragraphs, the need, rational and importance of reasonable accommodation will be dealt with.

One of the obligations encumbered on States Parties under the CRPD, as envisaged under Art. 27 (1) (I), is to “ensure that reasonable accommodation is provided to persons with disabilities in the workplace.” Indeed, an anti-discrimination legislation that embraces the concept of reasonable accommodation draws on the idea that some adjustments in the workplace is necessary in order to place people with disabilities on an equal footing. These requirements constitute recognition that treating people the same does not always constitute equal treatment. In the following paragraphs, a discussion of reasonable accommodation will be done.

Equality cannot be efficaciously applied to persons with disabilities without first adjusting the conditions of their situation as judged against that of other workers. The implication being that the obstacles intrinsic in the environment of work that are not adapted to the needs of people with disabilities are to be removed. To note, persons with disabilities stumble upon hurdles that are unpremeditated but that discriminate against them. McIntyre J., in this regard, stated:

An employment rule honestly made for sound economic and business reasons and equally applicable to all to whom it is intended to apply, may nevertheless be discriminatory if it affects a person or persons differently from others to whom it is intended to apply. The intent to discriminate is not a governing factor in construing human rights legislation aimed at eliminating discrimination. Rather, it is the result or effect of the alleged discriminatory action that is significant.<sup>149</sup>

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<sup>149</sup> Daniel Mont. “Disability Employment Policy,” cited at note 99.

Hence, the incidence of premeditated or unpremeditated discrimination coerces the employer to "adjust the work environment, job requirement, and job function in order to give a chance for the qualified disabled individual to take equal benefits and privileges of employment"<sup>150</sup> "short of undue hardship in the operation of the employer's business."<sup>151</sup>

For example, an employer who enables a blind employee to use a computer can eliminate employment barriers for that person by installing speech reader software on the computer, thereby accommodating that employees need to access print information.

Nonetheless, employers would not be required to provide accommodations where they could prove that it would cause an undue hardship. Wilson J. had the following to say about undue hardship:

I do not find it necessary to provide a comprehensive definition of what constitutes undue hardship but I believe it may be helpful to list some of the factors that may be relevant to such an appraisal. I begin by adopting those identified by the board of inquiry in the case at bar - financial cost, disruption of a collective agreement, problems of morale of other employees, interchangeability of work force and facilities. The size of the employer's operation may influence the assessment of whether a given financial cost is undue or the ease with which the work force and facilities can be adapted to the circumstances. This list is not intended to be exhaustive and the results, which will obtain from a balancing of these factors against the right of the employee to be free from discrimination, will necessarily vary from case to case.<sup>152</sup>

In a comparatively similar fashion, the Proclamation accommodated undue burden as follows: " an action that entails considerable difficulty or expense on the employer in accommodating persons with disabilities when considered in light of the nature and cost of adjustments, the size and structure of the business, the cost of its operations, and the number and composition of its employees."<sup>153</sup> In this case, an employer may avoid the

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150 Yvonne Peters, "Twenty Years of Litigating for Disability Equality Rights: Has it Made a Difference?" cited at note 91.

151 Daniel Mont, "Disability Employment Policy," cited at note 99.

152 Ibid.

153 The Right to Employment of Persons with Disabilities Proclamation, cited at note 24, Art. 2 (6).

responsibility in either of the following two cases using the defense of “undue burden” in the light of Art. 5 (2). Firstly, tak[ing] measures to provide appropriate working and training conditions and working and training materials for persons with disability.; Secondly, tak[ing] all reasonable accommodation and measures of affirmative action to women with disability taking in to account their multiple burden that arise from their sex and disability. However, no defense of undue burden may justify the failure of assigning of an assistant for a person with a disability.

In addition to the inappropriateness of the burden, employers can also escape the duty to accommodate by arguing that the discriminatory action protested of was a bona fide occupational requirement or qualification which alludes to “a standard that has been demonstrated to be rationally connected to the business in question, has been imposed in good faith, and is reasonably necessary to carry out the objectives of the business.”<sup>154</sup> Additionally, the employers can also make use of the defense based on the nature of the job. The Proclamation states the following: “a job that could not be performed by a qualified person with disabilities even if reasonable accommodation is provided.”<sup>155</sup>

### 3.3.2.2 Technical and Vocational training

Advocates of equality attach sizeable meaning to the existence of unambiguous legislative requisites providing for training that in due course determines an individual’s real possibilities of obtaining a job. This support is justified on the belief that “an access to employment or occupation or to a specialized form of further vocational training necessitates the completion of certain studies.”<sup>156</sup> To this effect, ILO Recommendation No. 99 of 1955 pronounced the following:

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<sup>154</sup> Yvonne Peters, “Twenty Years of Litigating for Disability Equality Rights: Has it Made a Difference?” cited at note 91.

<sup>155</sup> The Right to Employment of Persons with Disabilities Proclamation, cited at note 24, Art. 2 )9).

<sup>156</sup> General Survey on the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), cited at note 105.

The training of disabled persons should, wherever possible, enable them to carry on an economic activity in which they can use their vocational qualifications or aptitudes in the light of employment prospects.<sup>157</sup>

Such training should be provided, "wherever possible and appropriate, in the occupation in which the disabled person was previously employed or in a related occupation (and it should continue until the disabled person has acquired the skill necessary for working normally on an equal basis with non-disabled workers if he is capable of doing so."<sup>158</sup> In addition to the above principles, Art. 5 of the same provides that "the principles, measures and methods of vocational training generally applied in the training of non-disabled persons should apply to disabled persons in so far as medical and educational conditions permit."

Moving a stride further, ILO's Convention No. 159 of 1983 makes it an obligation on "The competent authorities of ratifying state to take measures with a view to providing and evaluating vocational guidance, vocational training, placement, employment and other related services to enable disabled persons to secure, retain and advance in employment."<sup>159</sup> Above all, the CRPD has commended the necessity of "enable(ing) persons with disabilities to have effective access to general technical and vocational guidance programs, placement services and vocational and continuing training."<sup>160</sup>

Unless the employers maintain that an applied for job "cannot be performed by a qualified person with disabilities even if reasonable accommodation is provided,"<sup>161</sup> "a person with disability having the necessary qualification and scored more to that of other

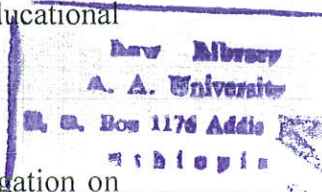
<sup>157</sup> Recommendation concerning Vocational Rehabilitation of the Disabled, 1955, No. 99, adopted by the 38<sup>th</sup> session of the International Labor Organization.

<sup>158</sup> Id., Art. 6 (B)-(c)

<sup>159</sup> Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) Art. 7.

<sup>160</sup> CRPD, cited above at note 23, Art. 27 (1) (d).

<sup>161</sup> The Right to Employment of Persons with Disabilities, cited at note 24, Art. 2 (8).



candidates shall have the right without any discrimination to participate in a training program to be conducted either locally or abroad.”<sup>162</sup> For the purpose of assuring the complete participation of the person with disabilities in the training and education, an employer is obligated to “take measures to provide appropriate working and training conditions and working and training materials for persons with disability.”<sup>163</sup> The Proclamation, except incorporating the necessity of the provision of appropriate working and training conditions and working and training materials, failed to mention which materials are appropriate for the proper completion of the training and work and the conditions thereof. The American Disabilities Act, in this regard, provided:

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; and (C) acquisition or modification of equipment or devices.<sup>164</sup>

### 3.3.2.3 Option of Employment

Different human rights instruments do propose for the adoption of the open/competitive option to obtain employment for persons with disabilities. For instance, the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities states, “the aim should always be for persons with disabilities to obtain employment in the open labor market.”<sup>165</sup> In addition, ILO Recommendation No. <sup>166</sup> has recommended “establishment

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<sup>162</sup> Id., Art. 4 (a).

<sup>163</sup> Id., Art. 6 (a).

<sup>164</sup> The American Disabilities Act, cited at note 97, Sec. 3 (1).

<sup>165</sup> Standard Rules on the Equalization of Opportunities for Persons with Disabilities, cited at note 5, Rule 7 (7)

<sup>166</sup> Vocational Rehabilitation and Employment (Disabled Persons) Recommendation (No. 168), cited above at note

of various types of sheltered employment for disabled persons for whom access to open employment is not practicable.”<sup>167</sup> On top of these, the CRPD while “recognize[ing] the right of persons with disabilities to work, on an equal basis with others [which] includes the right to the opportunity to gain a living by work freely chosen or accepted in a labor market and work environment that is open, inclusive and accessible to persons with disabilities.”<sup>168</sup> promotes the adoption of the open/competitive employment for persons with disability. This proposal seems not to have improved the employment rate of persons with disability in different countries as can be understood from a recent survey undertaken in some countries. For instance,

In Australia, only 53 per cent of disabled persons, as compared to more than 80 per cent of non-disabled persons, are employed. Similarly, in the United States, about 50 per cent of disabled persons have jobs; but only 26 per cent of those considered severely disabled are employed. In the European Union, 42 per cent of disabled persons are in employment compared to 64 per cent of non-disabled persons; and significantly, 52 per cent of disabled persons are economically inactive, compared to 28 per cent of non-disabled persons.<sup>169</sup>

By the same token, the unemployment rate for persons with disabilities in Canada is 26%, over five times higher than the 5% rate for persons without disabilities.<sup>170</sup> Only 25.1% of persons with disabilities in Chile have some form of employment, in comparison to 51.6% of the general population.<sup>171</sup> The National Department of Employment, of the Ministry of Labor and Social Security of Costa Rica, estates that despite many efforts, only 10 out of 100 persons with disabilities are able to obtain a job.<sup>172</sup>

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167 . CRPD, cited above at note 23, Art. 27 (1).

168 [http://www.ilo.org/public/english/region/asro/bangkok/ability/download/empl\\_is.doc](http://www.ilo.org/public/english/region/asro/bangkok/ability/download/empl_is.doc)

169 International Disability Rights Monitor, ‘Regional Report of the Americas’, 2004

170 Ibid.

171 Ibid.

172 Institute of Educational Research, Baseline Survey on Disabilities in Ethiopia, ) as quoted in ILO, Employment of People with Disabilities: The Impact of Legislation (East Africa), cited at note 95, p. 3.

The fact is not as such different in Ethiopia. In a Baseline Study by the Institute of Educational Research claimed “60 per cent of persons with disability in Ethiopia were unemployed in 1995, of which two-thirds were self employed in rural areas in occupations such as agriculture, animal husbandry or forest activities.”<sup>173</sup> In addition, a recent study undertaken by ILO experts found that “of over 5 million children, adults and elderly persons with disabilities, representing 7.6 per cent of the population living in Ethiopia in 2003”<sup>174</sup> are unemployed.

Although the above figures show the inability of persons with disabilities to break in to the open/competitive labor market, most international human rights instruments propose for the adoption of the open/competitive option of employment. The Proclamation does not go astray in that it, under Article 4, , “Unless the nature of the work dictates otherwise, a person with a disability having the necessary qualification and scored more to that of other candidates shall have the right without any discrimination to occupy any vacant post in any office or undertaking through recruitment, promotion, placement or transfer procedures.” The fact that transpires from the reading of the provision is that “open/competitive employment” is provided as a major option of employment. The only job that cannot be competed for by persons with disabilities is a “job that cannot be performed by qualified person with disabilities even if reasonable accommodation is provided.”<sup>175</sup>

#### **3.3.2.4 The Principle of Burden of Proof and the Available Sanctions for Discrimination**

The burden of proof is “the legal duty resting upon a party litigant, at some stage in the trial of a civil case, to introduce evidence of preponderating weight on an issue which he

<sup>173</sup> . ILO, *Employment of People with Disabilities: The Impact of Legislation (East Africa)*, cited at note 96, p. 3.

<sup>174</sup> The Right to Employment of Persons with Disabilities Proclamation, cited at note 24, Art. 2 (8).

<sup>175</sup> *Miller v Minister of Pensions* (1947) 2 All ER 372.

asserts, to overcome the proof offered on that issue by his opponent.” In other words, it refers to the “duty of a party to substantiate an allegation or issue either to avoid dismissal of that issue in the trial or to convince the court of the truth of that claim and hence to prevail in a suit.”<sup>176</sup> The general rule of burden of proof is that “he who asserts must prove, i.e., the burden rests with the plaintiff (the party bringing the action). The exceptions to this rule include “an allegation of frustration where a plaintiff sues for breach of contract.”<sup>177</sup> On this situation, therefore, a defendant would have the legal burden of proving that there was no discriminatory act or it is taken as a bonafide requirement of qualification.

Art. 7 (1) of the Proclamation, in this respect, empowers “any person with disability who alleges that discrimination on the ground of his disability existed with respect to recruitment, promotion, placement, transfer or other conditions of employment may institute a suit to the competent court on the issue without the requirement of burden of proof.” Sub-article (2) of the same, therefore, requires “the defendant on whom suit is instituted pursuant to Sub-Article (1) to prove that there was no act of discrimination.”

In essence, the Proclamation provides for the “reverse principle of burden of proof as is mentioned under the above paragraph.

One of the most important improvements of the present Proclamation from its predecessor is that the present Proclamation widened the scope of the possible persons who can institute a complaint against an employer who has infringed the right of a person with disability. Article 10 reflects this stance as follows:

“Any person with disability whose rights are infringed due to non-observance of the provisions of this Proclamation, Regulations or Directives issued for the proper implementation of this Proclamation or the association of persons with disabilities of which he is a member, or the trade union of which he is a member, or the concerned

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<sup>176</sup> Ibid.

<sup>177</sup> Interview with Ato Kassahun Yibeltal, cited at note 113.

organ entrusted to implement this Proclamation may institute a suit before a competent court.”

At a first glance, the person discriminated against can institute the case in “the Federal First Instance Court or regional High Court or federal or regional civil service administrative tribunal.”<sup>178</sup> Secondly, the association he is a member to can intervene in the issue and institute the case against the employer. More importantly, the federation can also engage itself in the judicial process. Ato Kassahun, the president of the Ethiopian Federation of Associations of Persons with Disability, regarding this provision, claims “the technical Committee has negotiated a lot to come up with this article even though a lot is said against by the representatives of the Employers’ Federation.”<sup>179</sup>

Art. 11 of the Proclamation provides, with regard to the sanctions available, that “an employer who contravenes the provisions of this Proclamation or regulations or directives issued pursuant to this Proclamation shall be penalized by a fine not less than Birr 2000 or not exceeding Birr 5000 and where the employer fails to rectify the contravention, within one month, in accordance with the decision of the court, the penalty shall be increased by twofold.”

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<sup>178</sup> The Right to Employment of Persons with Disabilities Proclamation, cited at note 24, Art. 2 (2).

<sup>179</sup> Amartya Sen, Equality of What?, in Sterling M. McMurrin, ed, 1 Tanner Lectures on Human Values 217–18 (Utah 1980) (discussing the reduced marginal utility of a “cripple”).

## Chapter Four:

### Enforcement of the Employment Rights of Persons with Disabilities in Ethiopia

#### *4.1 Policy Measures Addressing the Employment Rights of Persons with Disability*

✓ “Historically, the disabled have been assumed to be less productive than other people”<sup>180</sup> and “often require more resources than other people because they need assistance, or assistive devices, or adaptation of social practice to engage in some of the fundamental activities of life.”<sup>181</sup> A standard illustration of the added expenses imposed by disability is “the individual who must acquire a wheelchair to traverse distances ordinary citizens travel across easily on their legs.”

It is understood that the change of this history is dependent upon the issuance of anti-discrimination legislations focused on persons with disabilities. Subsequent to the enactment of anti-discrimination legislation, there comes in to view the undertaking of execution, which obliges governments to endorse policies and guidelines as an implementation device. Ethiopia has taken number of policy and institutional measures for the efficient accomplishment of the employment right of persons with disabilities. This obligation is based on the ruling of Article 41 (5) of the Constitution that reads: “The State shall, within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled.” More of import, however, is the provision of Art. 2 of ILO Convention No. 159 that requires “each Member, in accordance with national conditions, practice and possibilities, [to] formulate, implement

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<sup>180</sup> Michael Ashley Stein, *Labor Markets, Rationality, and Workers with Disabilities*, 21 *Berkeley J Empl & Labor L* 314, 317–20 (2000).

• <sup>181</sup> Barbara, Murray, *From Disability Benefits to Gainful Employment*. Conference Report. Budapest, International Labor Office, 2006

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and periodically review a national policy on vocational rehabilitation and employment of disabled persons." This Convention does not set any austere rules concerning the manner or form in which the national policy is to be formulated. Article 6 leaves it to member States to formulate their national policy in such a way as to take account of all the national parameters likely to have a bearing on the nature and appropriateness of the decisions to be taken and put into operation. Not only is the adoption of policies an obligation imposed on States but also the periodical review of national policy is one of the obligations of member States as laid down by Article 2 of the Convention.

Before I engross myself in to the assessment of the policies that were adopted by Ethiopia, I will set the guidelines that were suggested to make a particular policy effective and full. Amongst those can be stated I would like to put forward the following:

1. a policy statement on disability should be fully integrated into its goals and objectives;
2. policy needs to state clearly the goal of an inclusive society for all that tolerates and celebrates diversity and promotes equity and social justice, a society within which disabled persons have a key role to play;
3. Policy should reflect an understanding of the indivisibility of human rights, reflect the whole continuum of rights from survival and development to civil and political rights and reflect an understanding of disability as relationship between a person and the society, which discriminates, excludes and marginalizes them. It should focus on the barriers to participation and inclusion that disabled persons face, and state clearly the need for these to be prevented and removed;
4. Policy should clearly state the inter-relationship between poverty and disability, and the importance of including a disability dimension in poverty alleviation strategies;
5. Policy should emphasize accessibility in terms of information; communication, (e.g. sign language, Braille); environment and mainstream services and the persons within key sectors need to be allocated responsibility for mainstreaming

disability. Budgets need to take specific account of mainstreaming disability; 'trickle-down' should NOT be assumed.<sup>182</sup>

In the following sub-sections, a consideration of the Developmental Social Welfare Policy and the National Program of Action for the Vocational Training and Employment of Persons with Disabilities of Ethiopia will follow.



#### 4.1.1 Developmental Social Welfare Policy 1997

The Developmental Social Welfare Policy, built up in 1997, specifically targets people with disabilities and sets out to safeguard their rights and to promote opportunities for vocational rehabilitation. It provides 'for creating conditions where rules, regulations, programs and services could be strengthened and expanded whilst enhance vocational training and placement opportunities for persons with disabilities. Some of the recommendations set out by the policy are the following.

First and foremost, the policy strives towards the facilitation of the "conditions enabling persons with disabilities and the promotion of their full participation in political, economic and social activities." It also provides for the increment of "education, skill training, employment opportunities and other services and the introduction of appropriate legislative measures to ensure the welfare of persons with disabilities."

On top of these, the policy requires the creation of "mechanisms providing persons with disabilities with appropriate support services in the context of their family and community", the erection of "special centers where disabled persons without any family support will be cared for" and the launch of "Appropriate and sustainable educational programs and awareness-raising campaigns."

Above all, it aspires for the removal of "physical barriers, the accessibility of residential areas, work and other public places to persons with disabilities and the provision of

<sup>182</sup> General Survey on the reports on the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), Cited at note 105.

“support to non-governmental organizations and voluntary organizations providing services to persons with disabilities.”

#### **4.1.2 National Program of Action for the Rehabilitation of Persons with Disabilities 1999**

The National Program of Action for Vocational Rehabilitation and Employment, as adopted by the Ministry of Labor and Social Affairs, was the reflection of Ethiopia's readiness to accommodate persons with disabilities in to the work force. The national program espoused the reduction of the number of unemployed persons with disabilities by enabling them to have equal opportunities in all fields of job. Moreover, the program has proposed the necessity of strengthening vocational training, which would help them improve their prospective life for it, will promote capabilities and self-confidence of persons with disabilities.

The establishment of operational procedures, which encourage vocational training and reforming vocational training centers with the aim of increasing the coverage of vocational rehabilitation service for persons with disabilities, were the first category of strategies propounded for the implementation of the equality of opportunities for persons with disabilities.

Secondly, the National Program of Action anticipated the establishments of sheltered workshops where persons with disabilities could be employed and the provision of support and incentives (such as exemption from income tax and duty free etc) for employers as per the number of persons with disabilities employed.

The third strategy was the facilitation of situations in which persons with disabilities could create self-employment. In this respect, the organization of persons with disabilities in self-help work groups and associations” were taken as the major machinery for the proper implementation of the National Program of Action.

The completion of the strategies that are proposed for the realization of the objectives are dependent upon the strengthening of the existing vocational training centers by labor and appropriate production equipments and the establishment of new vocational training centers whose buildings and roads are accessible to persons with disabilities.

Various organs of the State are responsible for the implementation of the strategy proposed above. Inter alia, Ministry of Labor and Social Affairs, Ministry of Education, Ministry of Economic Development and Cooperation, Federal Civil Service Commission, Federal Board of Revenue, and Regional Administrations were charged with the responsibility for the implementation of the program of action. The following sub-topic will deal with the role to be played by various organs of the state in the promotion, enforcement and adjudication of the employment rights of persons with disabilities.

To the surprise of the readers, the National Program of Action is not yet implemented, and, therefore, it deserves an attention from the stakeholders.

#### **4.2 Institutional Framework**

Many countries have created "specialist equality bodies under general equality laws, or even under their constitutions, with not only research and advocacy functions, but also investigative powers and conciliation/adjudication roles."<sup>184</sup> The creation of the Office of the Ombudsman is a common special body to deal with discriminatory actions. For example, "Finland, Hungary, Norway, Slovenia and Spain, all have ombuds who are empowered to deal with questions of discrimination."<sup>183</sup> Varying reasons are given to justify the establishment of this institution. For instance, in New Zealand, Sir John explains, saying that: "Any person concerned in an administrative decision may have the decision reviewed. The procedure should be simple and ..."<sup>184</sup> In the case of Denmark, it could broadly be said that the "idea of an Ombudsman institution met much sympathy because the country, at the time in question, was experiencing an ever-increasing

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<sup>183</sup> Ibid.

<sup>184</sup> Jens, Olsen, Søren, Knudsen, Ermir, Dobjani and Christian, Møller: "Some Experiences in the Field of Assistance and Cooperation between Ombudsmen," <http://www.ombudsmanden.dk/publikationer/cooperation/>.

executive power, regulating still more issues important to the individuals, and because influential circles in law and politics had placed a strong focus on the issue of legal protection of the individual."<sup>185</sup> In other countries, the Ombudsman concept has come about as "an extension of abrupt transitions to democratic rule, and especially from the acute need to protect fundamental human rights and/or change scourges of previous administrative cultures such as corruption and bribery or the result of conditions imposed or international pressure for democratic institutions in the wake of financial support."<sup>186</sup> Whatever the justifications are, the following table gives examples of national machineries to enforce equality provisions in couples of countries.

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<sup>185</sup> Steven, E. Aufrecht and Marc, Hertogh, "Evaluating Ombudsman Systems," International Institute of Administrative Sciences Monographs, volume 13, 2000.

<sup>186</sup> HaileSelassie, GebreSelassie and Edmond, Völker, "Contextualizing the Establishment of the Institution of Human Rights Protection in Ethiopia", (Kluwer Law International, The Hague, 2000).

Table with 3 columns and 22 rows

Country	Institution
Australia	Human Rights and Equal Opportunities Commission, Affirmative Action Agency
Austria	Federal Public Service Commission for Equal Treatment
Cameroon	National Commission on Human Rights and Freedoms
Canada	Federal (and provincial) Human Rights Commission, Provincial Employment Equity Boards
Czech Republic	Council for Human Rights Inter-ministerial Commission for Romany Affairs
Denmark	Equal Status Board
Finland	Equality Ombudsman
Iceland	Equal Status Council, Office of the Equal Opportunities Ombudsman
India	National Human Rights Commission
Italy	Office of the Minister for Equal Opportunity
Lithuania	Office of the Equal Opportunities Ombudsman
Netherlands	Equal Treatment Commission
New Zealand	Equal Employment Opportunities Trust, Human Rights Commission
Norway	Equal Rights Board, Equality Ombudsman
Pakistan	Human Rights Commission
Portugal	Committee for Equality in Work and Employment (CITE), High Commission for Equality and the Family
South Africa	Human Rights Commission, Employment Equity Commission
Sweden	Equal Opportunities Commission, Equal Opportunities Ombudsman (Jämo)
United Kingdom	Industrial tribunals/employment appeal tribunals/House of Lords
United States	Equal Employment Opportunity Commission, Federal district courts, Supreme Court. <sup>189</sup>

The proclamation establishing the Institution of the Ombudsman of Ethiopia, Proclamation No. 211/2000, in addition to cherishing “the immense sacrifice paid by the people of Ethiopia, in the protracted struggle they waged with a view to securing political

power and to realizing the rule of law, calls for taking the due measure of laying the foundation for good governance, by way of setting up an easily accessible means for the prevention or rectification of administrative abuses arbitrarily committed against citizens” provides the need of the due rectification or prevention of the unjust decisions and orders of executive organs and officials thereof and to fulfill the want of citizens, having suffered from maladministration, are not left without redress.

In accordance with Art. 5, the objective of the Institution “shall be to see to bringing about good governance that is of high quality, efficient and transparent, as based on the rule of law, by way of ensuring that citizens' rights and benefits, provided for by law are respected by organs of the executive.”

Moreover, as per Art. 6, the institution is vested with the power of “receiv(ing), and investigat(ing), complaints in respect of acts committed, or decisions given, by executive government organs, in contravention of administrative laws, the labor law or other laws relating to administration and seek remedies in case where it believes maladministration has occurred ”

The vestiture of these powers in the institution of Ombudsman clearly indicates the entitlement of persons with disabilities to quest for remedies if it happens that the perfect enforcement of their right to employment is under question.<sup>187</sup>

In addition to the institution of Ombudsman, the main governmental organ responsible for the provision of social and vocational rehabilitation of persons with disabilities is “the Ministry of Labor and Social Affairs under the ambit of which is found the Department for Rehabilitation Affairs.”<sup>188</sup> This Department is forged to provide rehabilitation services for those who need them, and fostering and facilitating effective participation of private welfare organizations engaged in rehabilitation work. It also coordinates the rehabilitation activities undertaken by the public, private bodies and organizations of the disabled through regular contacts and follow-ups.

<sup>187</sup> General Survey on the reports on the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), Cited at note 105.

<sup>188</sup> Proclamation to define the Powers and Duties of the Executive Branches of the Federal Democratic Republic Government of Ethiopia, 1995, Proc. No. 4, Fed. Neg. Gaz., Year 1, No. Art. 20 (10).

The National Program of Action for Rehabilitation of Persons with Disabilities establishes rehabilitation committees of persons with disabilities, which monitor and follow up the rehabilitation measures. These committees are established at different levels (national, regional, zonal, woreda and kebele). They are composed of members representing the Social and Administration Affairs Section in the office of the Prime Minister, Ministry of Labor and Social Affairs, Ministry of Education, Ministry of Health, Ministry of Information & Culture, Ministry of Transport & Communication, Ministry of Agriculture, Ministry of Works and Urban Development, The Ethiopian Federation of Persons with Disabilities, A non-governmental organization engaged in rehabilitation of persons with disabilities and designated by Ministry of Labor and Social Affairs, Ministry of Justice, Ministry of Economic Development and cooperation, Federal Sports Commission, Federal Civil Service Commission and Religious institutions. The composition of the members of the Rehabilitation committee of the persons with disabilities is more-or-less similar to the national in the regional, zonal, woreda and the kebele levels with some changes.

The National Executive Committee is duty-bound, first and foremost, to design strategies so that activities of governmental and nongovernmental organizations engaged in rehabilitation of persons with disabilities are organized and coordinated.

Furthermore, it designs and follows up the implementation of nation wide community based rehabilitation program which allow persons with disabilities to resettle by obtaining the necessary rehabilitation service without being displaced from their respective localities and follows-up the inclusion of issues contained in the national program of action and other related subjects in the preparation of plans and programs and designs of developmental policies and strategies.

On top of these, it facilitates conditions for the community to have adequate knowledge of the causes of disabilities and so to participate in preventing, controlling and rehabilitating that section of the society affected by disabilities in addition to designing

national awareness raising program regarding rehabilitation of persons with disabilities and facilitates situations for its implementation.

Above all, it ensures the implementation and realization of standard rules, conventions and recommendations adopted by the United Nations globally concerning full participation and equal opportunity of persons with disabilities systematically and ensures the implementation of policies, laws, regulations and directives regarding persons with disabilities issued by the government.

Finally, it devises ways of soliciting financial, technical and material support for expanding rehabilitation services in Regional Administrations where such services are meager; it also ensures fair distribution of the services through out the country.

What is important to remind here is that the National Program of Action, as the researcher has disclosed in the previous paragraphs, is not implemented, and, therefore, it is went impossible for the researcher to evaluate its impact on the enforcement of the employment rights of persons with disabilities.

#### 4.3 The Realities of the Employment of Persons with Disability in Ethiopia

The author has opted for questionnaires, interviews and informal discussions to gather data for the purpose of unfolding the realities in relation to employment, i.e., the barriers for employment, the solutions for overcoming the barriers, and whether the employees with disability are provided with training for the purposes of gaining, retaining and advancing in his career.

### 4.3.1 Barriers for Enforcement of the Employment Rights.

Seven major reasons were described as barriers to gaining employment, retaining employment or advancement as can be understood from the perusal of table two below. The reasons were extracted from the responses to the questionnaires to three hundred respondents.

Table 2. Barriers to Employment, Retention of Employment or Advancement in Career Identified by Persons with Disability

Barrier	No
Factors arising from impairment	78
Access issues	65
Discrimination	57
Ignorance on the part of the employer	45
Personal attribute	20
Lack of training or funding for training and retraining	15
Lack of specialized equipment	10

The majority of the respondents in this study (n equals 81%) said that they had experienced barriers to gaining employment, retaining employment and/or gaining advancement in their careers. The majority of these responses were centered on two themes: the direct and indirect consequences of having a severe impairment, i.e. factors arising from the impairment itself and access issues, and attitudes and behaviors of potential employers, i.e. discrimination and ignorance on the part of the employer. The barriers categorized under these two themes made up a little more than 80% (n = 245) of the total responses given to this question, with those characterized as arising from the consequences of having a severe impairment (n = 78) being raised more than those resulting from the attitudes and behaviors of potential employers (n = 45). The latter, however, was mentioned equally to all of the remaining categories combined (n = 45). Of these, personal attributes (n = 20) was mentioned most often, followed by lack of training

or funding for training and retraining (n = 15) and lack of specialized equipment (n = 10). No other barrier was mentioned by more than two respondents.

Of the seven major barriers, i.e. the lack of specialized equipments and the lack of training and fund for training may also be related to the consequence of impairment. The lack of specialized equipment most certainly is given that those equipments are required to successfully adapt to the limitations imposed on functioning by impairment. The other lack of training or funding for training or retraining, most likely refers to training required for the use of specialized equipment (e.g. Braille reading and writing systems, adaptive computer systems, screen-reading systems for Windows, etc.). However, it is also possible that this refers to the need for training or retraining in general and is not, in fact, related to the consequences of the impairment in any way.

The attitude of the employer was the fourth most common type of barrier raised. Discrimination against people with disability was mentioned more often than any other single barrier. This category also included statements about the attitudes toward them of the employer and fellow workers, and ignorance on the part of the employer, believing that they were not nearly as capable as they actually are.

#### **4.3.2 Suggestions for Overcoming the Barriers of Employment**

As can be understood from the reading of table three below, the respondents have propounded seven most common suggestions to overcome the above barriers.

Table 3: Possible Ways and Means of Overcoming Barriers to Employment Suggested by respondents

Suggestions	N
Education for employers	75
Provision of better vocational services	63
Provision of more and better training	46
Increase accessibility through technology	44
Provide opportunities to prove self on job	40
Improve transport	20
Re-enact proactive legislation to promote employment for disabled people	12

The suggestions made for overcoming the barriers reinforced the salience of the two main types of barriers. All but one of the suggestions clustered around three themes: the provision of disability-specific training and adaptive or assistive technology (comprising the response categories “provide more and better training”, “increase accessibility through technology”, “provide for ongoing needs assessment for equipment and training” and “improve transport”), altering potential employer attitudes toward hiring people with disabilities (comprising the response categories “education for employers” and “opportunities to prove self to employers on the job”) and the provision of better vocational services in general (which could also include promoting empowerment and self-advocacy, and improving services of various government agencies or programs).

The third theme may relate as much to employer attitude as to disabled workers using specialized skills and equipment to perform the job. Many respondents expressed the opinion that vocational services were lacking. Some (like placement services) were available, but not tailored to their unique needs. Others were simply not available, including opportunities to work from home, role models and mentors, information phone

lines for employers, ongoing support to employers and a central point of contact for employment issues.

Thus, the three themes identified for the suggestions for overcoming barriers to employment (i.e. the provision of disability-specific training and adaptive or assistive technology, altering potential employer attitudes toward hiring people with disabilities, and the provision of better vocational services) directly reflected the two themes of the barriers to employment (i.e. direct and indirect consequences of having a severe impairment, and attitudes and behaviors of potential employers).

### 4.3.3 Trainings for Getting, Retaining and advancing in Employment

In their response to the question whether there existed education, qualification or specific training they have received over time, and if there exists, what was the most useful to them in terms of gaining and keeping employment, or advancing their career, most people identified courses or opportunities that could be best classified as on-the-job training. This was followed by job-specific courses, general skills development and tertiary degrees/qualifications as can be perused under table four below.

Table 4: Education, Qualifications and Training Identified as Most important, too, seem to reflect the two themes under which the barriers clustered and the suggestions offered for overcoming them.

Response	No
On the job training &/or apprenticeship	27
Job or career specific courses	25
General skills development for disability specific adaptations	14
Tertiary qualifications	13

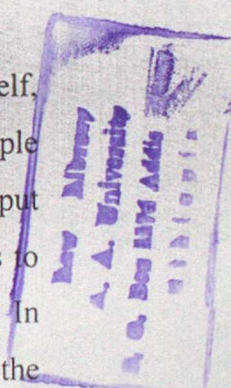
Two key issues emerged from this study. Firstly, participants identified the consequences of having severe impairment as posing real barriers to employment. These consequences

included a number of accessibility issues. Participants suggested good-quality rehabilitation and basic skills training, along with appropriate adaptive technology, as ways of overcoming the majority of these barriers. However, the built environment, shortcomings in infrastructure and lack of flexibility in transit systems exacerbate the barriers and these cannot be overcome by individual ability or effort. Therefore, governments at the local, regional or national level must address these problems.

Secondly, respondents recounted that **persons** with disabilities, either directly or indirectly (through ignorance) face discrimination in the workplace. They identified good quality, proactive vocational training and placement services as ways to overcome the barriers put up by reluctant or ignorant employers, as well as educational programs designed to change these attitudes.

The finding that attitudes held by others are seen to constitute a major barrier to participation in society in general, and work in particular, for **disabled** people mirrors one of the main premises underlying Ethiopia's Proclamation for the Employment of Persons with Disability.

Next to the direct and indirect effects imposed by the presence of the impairment itself, beliefs and attitudes of prospective employers were identified as the major barrier people said they faced in gaining and retaining employment. Education for employers was put forward as a way of overcoming barriers to employment as often as the suggestions to provide for better vocational services and better training in general put together. In addition to the suggestion to educate employers, the respondents in this study wanted the opportunity to prove themselves on the job through the provision of more and better training, and to increase accessibility through the provision of technology (adaptive or assistive). For instance, respondents were generally referring to adaptive or assistive computer technology, which allows people with no or very little vision to access computer screens and other digitized outputs, while low-vision equipment serves the same purpose for those who have more usable vision but still significant vision impairment. This relates to the need for overcoming barriers to the accessibility of information that is normally only available in a visual format.



The respondents suggested that the provision of better vocational services, and the provision of placement services by those with specific knowledge of the barriers to employment for those with disability, would be helpful. This suggestion seems to be in keeping with the Government's overall strategy for vocational services as discussed under sections 4.1.1 and 4.1.2 above.

Finally, the respondents in this study clearly identified both the environment, in the form of employer attitudes and inflexible transit systems, and the consequence of having a severe impairment as contributing to these barriers. Their suggestions for overcoming these barriers included both those designed to change attitudes and those provided to overcome the direct and indirect consequence of the impairment itself, such as the use of and training in adaptive and assistive technology. Thus, they encompass the findings from this study and suggest that more than one approach to and view of the problem may be needed to overcome the barriers that persons with disability face in finding and maintaining employment. Therefore, policies with regard to persons with disability should target the removal or at least reduction of those barriers, so that they can enjoy the same opportunities as their non-disabled counterparts.

## Chapter Five:

### Conclusions and Recommendations

#### *5.1 Conclusions*

In the reading of the chapters concerned with the introduction of the research work, the author tried to deal with the major theories on disability. The points that have transpired from the work are that persons with disabilities have struggled for centuries to get recognition as a person. Moreover, the struggles have focused on the situations to be created for the respect of their rights in addition to the quest for the change of the understanding of disability in legislation and the common parlance.

The understanding of disability by the first theoreticians was in the context of the medical model, which makes persons with disabilities problems that need medication. More importantly, disability was surmised as a personal tragedy that needs a cure. In other words, Persons with disabilities were, by definition, considered as objects unfit for any service and, at times, reckoned as degenerated creatures that need to be wiped out from the purview of the world. It is this understanding that was being quested to be changed.

With the efforts of the latter disability scholars, the understanding of disability is changed from the medical model to the social constructionist model, which deems disability as a social, cultural or political construction. Meaning, disability is a result of the social, cultural or political barriers that obstruct the exercise of the rights of persons with disabilities. The above theoreticians have got a staunch support from the appreciative definition of disability by the newly enforced UN Convention of the Rights of Persons with Disabilities. The UNCRPD has taken the conception of disability one-step ahead claiming that persons with disabilities should be taken as a distinct group that needs a protection guaranteed to minority groups.

The Enforcement of the Employment rights of persons with disabilities in Ethiopia, the crux of the research work, was launched with the consideration of the establishment of ILO that has started issuing conventions, recommendations and policy guidelines for the states parties. Specially, this institution has come up with the first document in 1925 and that effort has continued to the present. In particular, Recommendation No. 99 of 1955 and the Convention No. 159 of 1983 and its recommendation have played a greater role in the bringing in to light and realization of the employment rights of persons with disabilities.

The United Nations Organization, from its inception, has made an incontrovertible venture in the progress of the norms considerate to the rights of persons with disabilities. Although the international bills of rights—Universal Declaration of Human Rights, the International Covenant on the Civil and Political Rights and the International Covenant on the Economic, Social and Cultural Rights—have not incorporated an explicit provision dealing with the rights of persons with disabilities, the catch-all phrases—other status—in all of them, have played their part in the normative development of the rights of persons with disabilities.

The first major instrument of the UN that has incorporated the rights of the persons with disabilities is the 1971 declaration that has dwelt on the right of persons with mental disability. In furtherance, in 1975, the UN has come up with a declaration for persons with disabilities that make use of the medical model of disability. However, it has played a greater role in the fight for the respect of the right of persons with disabilities. The second major instrument is the Standard Rules of the Equalization of Opportunities that is prepared in 1993. This instrument has made possible for states to consider the equal opportunities of persons with disabilities in all aspects, in particular in relation with employment. Above all, in the history of the United Nations and its role in the normative development of the employment rights of persons with disabilities is the issuance of the UN Convention on the Rights of Persons with Disabilities in 2006 with an Optional Protocol. A tremendous action was seen in the signature of the Convention and the

Protocol. This Convention has regulated significantly the rights of persons with disabilities in all-walks-of-life inclusive of employment.

Regional human rights organizations have contributed their part to the normative development of the employment rights of persons with disabilities. For instance, the European Union, the Organization of the American States and Organization of the African Unity have come up with instruments regulating the rights of persons with disabilities.

In addition to the efforts made by the United Nations, the International Labor Organization and Regional Human rights Organizations, individual Countries such as the United States, Canada, United Kingdom, Malawi, Ghana and Australia have issued instruments opting for the rights of persons with disabilities. These instruments have either created the opportunity for the employment of persons with disabilities in or adopted an equality of opportunity in the private as well as the public employment sectors.

✓ Ethiopia has joined the above countries through the issuance of a disability specific proclamation in 1994, Proclamation No. 101/1994 that dealt with the employment rights of persons with disabilities. This proclamation has introduced the quota system even though it could not realize because of the failure of the government to issue a regulation and directive to implement the provisions of the proclamation. The FDRE Constitution, which was proclaimed in 1995, failing to give an explicit equality clause for persons with disabilities, provided for the necessity of rehabilitation of the persons with disabilities, which, however, is subject to the available resource of the country.

The revision of Proclamation No. 101/1994 was undertaken and Proclamation No. 568/2008 repealed it. This Proclamation is, as discussed above, issued to cure the ailments of the previous proclamation that were not supported by Regulations and directives, the principal instruments for the implementation of the proclamation.

## 5.2 Recommendations

One of the achievements of Ethiopia is the signing of the Convention on the Rights of Persons with Disabilities. The Convention is not yet ratified even though it is expected to be taken care of this year. The immediacy of the ratification should not be questioned. In addition, the signing and ratification of the Protocol on the CRPD should also be thought of.

Workplace discrimination cannot be overcome by law alone without being accompanied by changes in behavior and a genuine commitment to decent work. Therefore, Ethiopia should create mechanisms to disseminate the entitlement of persons with disabilities to human rights in particular their right to equality of opportunities for employment. In this context, it should be thought that the need of reasonable accommodation is not a charity that is denied by some employers and given by others. Therefore, the government should teach the employers about the right to reasonable accommodation for employees with disability.

One of the glamorous introductions of the newly enacted anti-discrimination proclamation of employment is the change of the philosophical basis of disability: the change from the medical model to the rights based approach, i.e., human rights/social model. This being true, the approach it followed in the recruitment process, i.e. open/competitive option of employment should be in addition to the quota system, which was introduced by the previous proclamation.

It is clear that Art. 41 (5) of the FDRE Constitution adopted the medical model of disability; that is, it has included persons with disabilities in to the category of children and old-aged persons who are clearly unproductive. Therefore, it is recommendable that this provision should be amended.

One of the weaknesses of Proclamation No. 568/2008 is the narrowness of the scope of its application. Meaning, the private sector whose employment capacity is increasing

from time to time is not under its ambit. This will be one of the issues that would warrant the revision of the proclamation.

The other weakness of the proclamation is its silence on the benefits that accrue for employers where they are found employing a significant number of persons with disabilities. Various countries have adopted benefits to the employers in this regard such as tax exemptions and the like. This makes the Proclamation and the National Program of Action irreconcilably conflict. This is because, the National Program provides for the creation of incentives for employers while the recently proclaimed legislation skipped it.

It is also recommendable that the government should issue directives/regulations for the implementation of the Proclamation. This will create a significant impact on the perfection of the employment rights of persons with disabilities.

**It is indubitable that policy** guidance, training, and technical assistance activities to employers can accelerate the identification and replication of promising policies and practices to advance equal opportunity, reasonable accommodation strategies, and collaborative service delivery in the most integrated setting appropriate to the needs of qualified individuals with **disabilities**. Therefore, the government should adopt policy guidelines to this end.

## Bibliography

### Books

- HaileSelassie, GebreSelassie and Völker, Edmond, (2000) *Contextualizing the Establishment of the Institution of Human Rights Protection in Ethiopia*, (Kluwer Law International: the Hague.
- Nowak, Manfred, (1993) *U.N. Covenant on Civil and Political Rights. CCCP Commentary*, (NP Engel, Strasbourg.
- Oliver M., (1990) *The politics of disablement: A sociological approach*, (New York: St. Martin's Press.
- , (1996) *Understanding disability: From theory to practice*, (New York: St. Martin's Press.
- Sepúlveda, Magdalena, (2003) *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights*, Antwerp: Intersentia p.
- Thornberry, Patrick (1991) *International Law and the Rights of Minorities*, Oxford: Oxford University Press.
- Truyol, Hernández, (1999) *Human Rights through a Gendered Lens: Emergence, Evolution, Revolution*, in Askin & Koenig, *Women and International Human Rights*, Transnational Publishers: New York.
- Young, I. M., (1990) *Justice and the Politics of Difference*, Princeton: Princeton University Press.
- Chapters from Books
- Asch, A. & Fine, M., 'Shared dreams: A left perspective on disability rights and reproductive rights' In M. Fine & A. Asch, (1988) *Women with disabilities: Essays in psychology, culture and politics* (Philadelphia: Temple University Press.
- Asscher-Vonk, Irene, P., *Towards One Concept of Objective Justification*, in Loenen & Rodrigues (1990) *Non-Discrimination Law: Comparative Perspectives*, Kluwer Law Int'l: The Hague.
- <sup>1</sup>Bickenbach, Jerome E., *The ADA v. the Canadian Charter of Rights, in Americans with Disabilities*, (2000) Francis & Silvers: USA.

Eide, Asbjörn & Rosas, Allan, Economic, Social and Cultural Rights: A Universal Challenge in Eide et al. (1995) Economic, Social and Cultural Rights: a Textbook, (Kluwer Law International: The Hague.

Guy, Goodwin Gill, Obligation of conduct and obligation of result in p. Alston and k. Tomasevsky (1984) The Right to Food, Netherlands Inst. of human rights (SIM), Martinus Nijhoff publishers: Netherlands.

Ingstad, B., & Reynolds-Whyte, S., Disability and culture: An overview, In B. Ingstad, & S. Reynolds-Whyte, (1995) Disability and culture (Berkeley, University of California Press.

Krause, Catarina & Scheinin, Martin, The Right not to be Discriminated Against: The Case of Social Security, in Orlin & Scheinin, (2000) Turku: Åbo Akademi University Institute for Human Rights.

Martin Scheinin. "Women's Economic and **Social** Rights as Human Rights: Conceptual Problems and Issues of Practical Implementation". in Lauri Hannikainen & Eeva Nykänen. (1999) *New Trends in Discrimination Law - International Perspectives*. Turku.

Rebecca J. Cook, State accountability under the CEDAW, in Rebecca J. Cook, 1994( Human rights of women : National and International perspective, university of Pennsylvania press: Philadelphia.

Sen, Amartya, Equality of What?, in Sterling M. McMurrin, (1980) 1 Tanner Lectures on Human Values: Utah.

Truyol, Hernández, Human Rights through a Gendered Lens: Emergence, Evolution, Revolution, in Askin & Koenig, (1999) Women and International Human Rights, Transnational Publishers: New York.

#### *Articles*

Aufrecht Steven E. and Hertogh Marc, "Evaluating Ombudsman Systems" (2000) Int'l Inst. of Administrative Sciences Monographs, vol. 13.

Brzuzny, S., "Deconstructing disability: The impact of definition" (1994) J. Poverty, vol. 1 No. 1.

Collins, Hugh, "Discrimination, Equality and Social Inclusion" (2003) Modern L. Rev., vol. 66 no. 1.

DePoy, E. & Gilson, S. F., "Theoretical approaches to disability content in social work education" (2002) *J. Social Work Education*, vol. 38 No. 1.

Englehardt, B., Hartman, C. & Macintosh, B., "The Neglected and Forgotten Sexual Partner of the Physically Disabled" (1983) *J. Social Work*, vol. 28.

Frankenberg, Günter, "Comparing constitutions: Ideas, ideals, and ideology—toward a layered narrative" (2006) *Int. Jnl. of Constitutional Law*, Vol. 4, No. 3.

French, Phillip and Kayess, Rosemary, "Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities" (2008) *Human Rights L. Rev.*, vol. 8, No. 1.

Grant Evadné, "Dignity and Equality" (2007) *Human Rights L. Rev.*, Volume 7, No. 2.

Heye, rKatharina, "A Disability Lens on Sociolegal Research: Reading Rights of Inclusion from a Disability Studies Perspective" (2007) *J. Law & Social Inquiry*, vol. 32 No. 1.

Herr, Stanley, "Reforming Disability Nondiscrimination Laws: A Comparative Perspective" (2002) *U. Mich.J.L.*, vol. 36.

Hiranandani, Vanmala, "Towards a Critical Theory of Disability in Social Work" (2005) *Critical Social Work*, Vol. 6, No. 1.

Kanter Arlene S., "The Globalization of Disability Rights Law" (2003) *Syracuse J. of Int'l L. and Comm.*, vol. 30.

Pfeiffer, D., "Disabling definitions: Is the World Health Organization normal?" (1992) *New England J. of Human Services*, vol. 11.

Stein, Michael Ashley, "Labor Markets, Rationality, and Workers with Disabilities" (2000) *Berkeley J Emp'l & Labor L* vol. 21.

-----, "The Law and Economics of Disability Accommodations" (2003) *Duke L J* vol. 79.

Waddington, Lisa, "Legislating to Employ People with Disabilities: The European and the American Way" (1994) *Maastricht J. of European and Comparative L.*, vol. 1 No. 4.

## Unpublished Materials

Workie, Taye, Comparative Study on the Legal Status of Disabled Persons with Particular Reference to Ethiopia (1997, Unpublished, Kennedy Library, Addis Ababa University,).

## Internet Sources

Barbara Murray, "From Disability Benefits to Gainful Employment" (Budapest, International Labor Office, 2006, [www.ilo.org/public/english/region/eurpro/budapest/.../foinica.pdf](http://www.ilo.org/public/english/region/eurpro/budapest/.../foinica.pdf))> (Accessed on 15 Oct. 2008)

Brown, Drusilla K., "*International Trade and Core Labor Standards: A Survey of the Recent Literature*" <http://www.ase.tufts.edu/econ/papers/200005.pdf>> (Accessed on 25 April 2008)

Degener, Theresia & Gerard, Quinn, *A Survey of International, Comparative and Regional Disability Law Reform*, Paper presented at From Principles to Practice Symposium, Washington D, C., 2000, [www.dredf.org/international/degener quinn.html](http://www.dredf.org/international/degener_quinn.html)> (Accessed on 1 Oct. 2008)

-----, Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability, (2002), <http://www.ohchr.HR/TUD/02/1.2002>> (Accessed on 20 May 2008)

Dobjani, Ermir, Knudsen, Søren, Møller, Christian and Olsen, Jens, "Some Experiences in the Field of Assistance and Cooperation between Ombudsmen" <http://www.ombudsmanden.dk/publikationer/cooperation/>> (Accessed on 20 December 2008)

General Survey on the reports on the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), 1983, Geneva, June 1998, [http://wallis.kezenfogva.iif.hu/eu\\_konyvtar/projektek/vocational\\_rehabilitation/publ/gen\\_31.htm](http://wallis.kezenfogva.iif.hu/eu_konyvtar/projektek/vocational_rehabilitation/publ/gen_31.htm)> (Accessed on 1 September 2008)

[http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static\\_jump?var\\_language EN&var\\_pagename=DECLARATIONTEXT](http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language EN&var_pagename=DECLARATIONTEXT)> (accessed 25 August 2008)

[http://www.ilo.org/public/english/region/asro/bangkok/ability/download/empl\\_is.doc](http://www.ilo.org/public/english/region/asro/bangkok/ability/download/empl_is.doc)> (Accessed on 14 July 2008)

<http://www.cirnetwork.org/idrm/reports/americas/htm>> (Accessed on 10 October 2008)

Hurst, Rachel, *Disability & Policy - Survival of the Fittest*, (Paper presented at the Dialogues in Disability Theory & Policy Seminars, City University, London, [www.leeds.ac.uk/disability.../Hurst/disability%20and%20Policy.pdf](http://www.leeds.ac.uk/disability.../Hurst/disability%20and%20Policy.pdf)>

(Accessed on 24 Dec. 2008)

ILO, *Employment of People with Disabilities: The Impact of Legislation (East Africa)*, ILO, Geneva, March 2004,

[www.ilo.org/public/english/region/asro/.../promoemploy.htm](http://www.ilo.org/public/english/region/asro/.../promoemploy.htm)> (Accessed on June 15, 2008)

Institute of Educational Research, *Baseline Survey on Disabilities in Ethiopia* (Addis Ababa University, 1995) as quoted in ILO, *Employment of People with Disabilities: The Impact of Legislation* (East Africa), ILO, Geneva, March 2004, [www.ilo.org/public/english/region/asro/.../promoemploy.htm](http://www.ilo.org/public/english/region/asro/.../promoemploy.htm)> (Accessed on June 15, 2008)

Kenya National Commission on Human Rights, *Objects of Pity or Individual with Rights: the Right to Education for Children with Disabilities*, (2007), retrieved from <http://www.crin.org/resources/infodetail.asp?id=14577-24k>> (Accessed on April 6 2008)

Makkonen, Timo, *The Principle of Non-discrimination in International Human Rights Law and EU Law*, (2005),

[http://iom.fi/elearning/files/european\\_law/essential\\_reading/Principle\\_of\\_Non\\_Discrimination.pdf](http://iom.fi/elearning/files/european_law/essential_reading/Principle_of_Non_Discrimination.pdf)> (Accessed on April 6 2008)

Mont, Daniel, *Disability Employment Policy*, (2004), retrieved from, [http://siteresources.worldbank.org/DISABILITY/Resources/280658-](http://siteresources.worldbank.org/DISABILITY/Resources/280658-1172606503948/DisabilityEmploymentMont.pdf)

[1172606503948/DisabilityEmploymentMont.pdf](http://siteresources.worldbank.org/DISABILITY/Resources/280658-1172606503948/DisabilityEmploymentMont.pdf)> (Accessed on April 6 2008)

O'Reilly, Arthur, *The Right to Decent Work of Persons with Disabilities*, (2003), [http://www.lex.unict.it/eurolabor/ricerca/altri\\_wp/paper14.pdf](http://www.lex.unict.it/eurolabor/ricerca/altri_wp/paper14.pdf)> (Accessed on the 1st of April 2008)

Peters, Yvonne, *Twenty Years of Litigating for Disability Equality Rights: Has it Made a Difference?* (2004), <http://www.ccdonline.ca/publications/20yrs/20yrs.htm> - 123k> (Accessed on May 5 2008)

Somavia, Juan, Decent jobs for all in a global economy; an ILO perspective, Document submitted to the Third WTO Ministerial Meeting, 30 Nov. 3 Dec. 1999, [www.ilo.org/public/english/region/ampro/.../dec.../ii.htm](http://www.ilo.org/public/english/region/ampro/.../dec.../ii.htm)> (Accessed on Nov. 29 2008)

### ***International Instruments and Documents***

Convention on the Rights of Persons with Disabilities, 2006.

Declaration on the Rights of Mentally Retarded Persons, 1971.

Discrimination (Employment and Occupation) Convention (No. 111), 1958.

Discrimination (Employment and Occupation) Recommendation (No. 111), 1958.

Employment Service Convention (No. 88), 1948.

Employment Service Recommendation (No. 83), 1948.

General Comment No. 5 Persons with disabilities, adopted at the Eleventh session of the UN Committee of Economic, Social and Cultural Rights, (1994).

General Comment No. 18 (Non-discrimination), adopted at the thirty-seventh session of the UN Committee of Human Rights, (1989).

Human Resources Development Recommendation (No. 150), 1975.

International Covenant on Economic, Social and Cultural Rights, 1966.

International Covenant on Civil and Political Rights, 1966.

Medical Examination of Young Persons (Industry) Convention (No. 77), 1946.

Medical Examination of Young Persons (Non-Industrial Occupations) Convention (No. 78), 1946.

Medical Examination of Young Persons Recommendation (No. 79), 1946.

Social Security (Minimum Standards) Convention (No. 102), 1952.

Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993.

The minimum scale of workmen's compensation Recommendation, No. 22, 1925.

Universal Declaration of Human Rights, , 1948.  
Vienna Convention on the Law of Treaties, 1969.  
Vocational Rehabilitation (Disabled) Recommendation No. 99, 1955.  
Vocational Rehabilitation and Employment (Disabled Persons) Convention No. 159,  
1983.  
Vocational Rehabilitation and Employment (Disabled Persons) Recommendation No.  
168, 1983.  
World Health Organization (WHO), International Classification of Impairments,  
Disability and Handicap (ICIDH), (Geneva, Switzerland, 1980.  
WORLD PROGRAMME OF ACTION CONCERNING DISABLED PERSONS, 1983.

#### Regional Instruments and Documents

African Charter on Human and Peoples' Rights, 1981.  
African Charter on the Rights and Welfare of the Child, 1994.  
American Convention on Human Rights, 1969.  
European Council Directive 2000/78, 2000.  
European Convention on Human Rights and Fundamental Freedoms, 1950.  
Towards Full Social Inclusion of Persons with Disabilities Recommendation, No. 1592,  
2003.

#### *Domestic Legislations and Policies*

Americans with Disabilities Act, 1990.  
Constitution of the Federal Democratic Republic of Ethiopia, 1995 Proc. No. 1, Fed. Neg.  
Gaz., Year 1, No. 1.  
Disability Services Act of Australia No. 129, 1986.  
Federal Civil Servants Recruitment Directive, (2000, E.C., unpublished, Federal Civil  
Service Agency, Amharic).  
Federal Civil Servants Proclamation, 2007, Proc. No. 515, Fed. Neg. Gaz., year 13, No.  
20.  
Proclamation to define the Powers and Duties of the Executive Branches of the Federal  
Democratic Republic Government of Ethiopia, 1995, Proc. No. 4, Fed. Neg. Gaz., Year 1.

### National Policies

The Federal Democratic Republic of Ethiopia, Ministry of Labor and Social Affairs, National Program of Action for the Rehabilitation of Persons with Disabilities (1999).

The Federal Democratic Republic of Ethiopia, Ministry of Labor and Social Affairs, Developmental Social Welfare Policy (1997).

The Right to employment of persons with disabilities Proclamation, 1994, Proc. No. 101,

The Right to Employment of persons with disabilities Proclamation, 2008, Proc. No. 568, *Fed. Neg. Gaz.*, Year 14, No. 20.

### Interviews

Ato Kassahun Yibeltal, President of the Ethiopian Federation of the Associations of Persons with Disability, 23 Tir 2001 E.C.

## DECLARATION

I, Shimeles Ashagre Asfaw, hereby declare that this dissertation is original and is never presented in any other institution. I also declare that any secondary information used are duly acknowledged in this dissertation.

Student:

Shimeles Ashagre Asfaw

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Date:

July 15, 2009

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