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Addis Ababa University
School of Graduate Studies
College of Law and Governance

**The Right to Be Employed: The Case of Visually Impaired Persons
in Ethiopia**

By

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Approval sheet

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Declaration

I, Wesen Alemu Tekletsadik, declare that this work is original and all sources are duly acknowledged. The thesis has never been submitted to any institution before.

Acknowledgement

You were with me even during my failure. Hence, I have no favor except thanking my God for giving me life with his death and eternal presence behind all of my successes. I have crossed all obstacles with the love and immeasurable help of Saint Mary. Therefore, my heartfelt thanking is extended to Saint Mary for not separating in all of my ups and downs and leading me to success

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Abstract

PWDs are more exposed in the violation of their human rights. The laws of Ethiopia dealing with disability are very few and fragmented issued before the ratification of CRPD. Such laws and policies inclined to stick towards formal equality. The theoretical foundation they are based is not tailored with the context of Ethiopia.

Even such laws do not have sufficient implementation mechanisms. Very few directly implementable provisions are not also executed effectively. We are just on the rhetorics without determination to implement the right of disabled.

Though the right to employment of blinds is provided better coverage compared to other rights of the same, it is far from realizing the enjoyment of the right. Series of legislative, institutional, budgetary and policy measures in line with the status quo of Ethiopia and the needs of its blind citizens should be taken to transform willingness in to commitment.

Acronyms

AAU: Addis Ababa University

ACHPR: African Charter on Human and People's Right

ANRS: Amhara National Regional State

CRC: Children Rights Convention

CRPD: Convention on the Rights of Persons with Disability

CSO: charities and societies Organization

ENAB: Ethiopian National Association of the Blind

ECDD: Ethiopian Center for Disability Development

FDRE: Federal Democratic Republic of Ethiopia

FGD: Focus Group Discussion

HPR: House of Peoples' Representatives

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

ILO: International Labor Organization

MOH: Ministry of Health

MOLSA: Ministry of Labor and Social Affairs

PWD: Person with Disability

UDHR: Universal Declaration of Human Rights

UNCRPD: United Nations Convention on the Rights of Persons with Disabilities

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Chapter One

Introduction

1.1. Background

Currently, employment is becoming one of the basic needs of the society because, it is difficult to have the work of one's own as resources are much more scarce than before and it is impossible for all to create job opportunity. The employment of a person is not the anxiety of a single person rather the necessity of dependants under that person. The industrial revolution was a marking point to see that employment related problems have paramount implication on the society.¹ Though employment is one form of contract most states are leaving or at least diminishing the applicability of freedom of contract to the relation of employment thereby promulgating a distinct law that governs employment and confers core minimum rights to employees whose power is presumed to be lower than the employer.

Just as there is discrimination of persons with disabilities (hereinafter PWDs) on other social relations, there is also discrimination on PWDs with regard to employment. International and national laws attempt to extinguish the problem by designing various mechanisms. However, both international and national laws are not still much developed empirically. Their compatibility with the pragmatic situations of countries is not also well identified. Because of this basis PWDs are becoming the laboratory of employment discrimination. That is why this research was envisioned in the inception.

1.2 Statement of the Research Problem

Ethiopia is developing with double digit every year since the budget year of 2003/2004 which makes it among the five fastest growing countries of the world.² Development without respect for human right is nothing. One of the human rights stipulated under the African human right

1

<https://www.lcps.org/cms/lib/VA01000195/Centricity/Domain/10599/Social%20Effects%20of%20the%20Industrial%20Revolution.pdf> (last visited on Jan. 3, 2019)

² African Development Bank, Ethiopia Economic Outlook (2015), (<http://www.afdb.org/en/countries/east-africa/ethiopia/ethiopia-economic-outlook/>) last visited on Dec. 7, 2017

system³ and the FDRE constitution⁴ is the right of persons to development. Persons can develop themselves by becoming self sufficient and living sustainable life both physically and psychologically.

On the other hand, development of a country is the sum total of the wealth of individuals. Losing the income that should be derived from 10 percent of the population⁵ is hugely affecting the wealth of the nation at large. In order to secure such huge amount of wealth the state is expected to devise effective legal and pragmatic mechanism so that it can realize the enjoyment of right to employment by PWDs.

Ethiopia adopted successive laws which are directly related with employment of PWDs.⁶ However, their effectiveness is not still deeply scrutinized though there are encouraging researches which help to understand the contents of the laws. These researches are however in essence limited to the conceptual and normative content significantly. Though the normative portion of the area is a foundation for experiment it should be supplemented with pragmatic research. This research covers both legal and practical aspects of the right to be employed. More focus is conferred for implementation of legislations.

1.3. Scope of the Research

This research is designed in such a way that it covers both legal and practical aspects of employability of visually impaired persons. The legal aspect mainly includes the binding

³ African [Banjul] Charter on Human and Peoples' Rights, Art. 22, Adopted June 27, 1981 and Entered in to Force Oct. 21, 1986 CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (hereafter ACHPR)

⁴ Constitution of the Federal Democratic Republic of Ethiopia, 1995, Art. 43, Proclamation No.1, Federal Neg. Gaz. year 1 no.1 (hereafter FDRE constitution)

⁵ Secretariat of the African Decade of Persons with Disabilities, Baseline Study on the Status of Persons with Disabilities and the Influence of the African Decade Pronouncement in Ethiopia (Policies & Program Implementation), (2010) p. 12, (www.molsa.gov.et/.../Baseline%20Study%20Final%20report_ADDP.pdf), last visited on Dec. 7, 2017

⁶ Right to Employment of Persons With Disability Proclamation, 2008, Proc. No. 568, Federal Neg. Gaz. year 14, no. 20 (hereafter proc. 568/2008); and

Convention on the Rights of Persons with Disability Ratification Proclamation, 2010, proclamation No . 676, Federal Neg.Gaz. year 16, no. 32 (hereafter CRPD ratification proclamation)

international and national laws. The national law further includes the legislations of the federal and regional governments selected based on the protection they provide in relation to employment right of PWDs and/or blinds. Though the research encompasses any law, it is more concerned with pragmatic situations of the area. Emphasis will be bestowed to magnify legal issues which were not conferred adequate coverage in the previous researches.

Studying the respect of right to employment of every kind of disabled persons becomes too vast. Therefore, this research limited itself in examining the right of blinds and visually impaired persons in particular though there are quite common things shared by all disabled persons. The first stage of employment which is finding job is the main theme of this research. In fact, issues such as: the employment of assistant and probation period are dealt with by the research as they have strict relationship for finding, preserving and changing employment.

The term employment is not strictly followed by the research. The research is designed to incorporate every kind of work relationship including, employment, appointment, and assignment.

1.4. Research Questions

The main questions which the research revolves around are stated as follows:

Does Ethiopia have a law which is sufficient to satisfy the current needs of PWDs with regard to their right to employment?

How is affirmative action in the employment regime of PWDs dealt in Ethiopia?

What are the basic challenges of visually impaired persons for employment?

Do the regional laws provide more protection than the federal counterparts?

1.5. Objectives of the Study

1.5.1. General Objectives

The basic objective of this research is contributing for the protection of the rights of PWDs in general and visually impaired persons in particular. Generally, its aim is sticking itself in examining the right of blinds from the perspective of the government, the employers and the employees. It has however multitude of specific objectives.

1.5.2. Specific Objectives

Some of the objectives of this research are listed below.

Contributing for the realization of disability specific protection of the right to employment of blinds;

To create general overview of the need to alteration and revision of Ethiopian secondary and higher education policy which may positively foster the quantity and quality of employment of visually impaired persons.

Indicating the way how to make the laws practicable and showing the law that best suits Ethiopia;

Touching upon the pragmatic situations of blinds with regard to their employment;

Serving as a guideline how to understand reasonable accommodation for visually impaired persons up to the level of getting employment;

Scrutinizing the laws of the federal government and regions and ensuring their adequacy to make the rights of blinds pragmatic;

Showing the remedies available for PWDs in the legal scheme and how to exercise such rights if their right of employment is at stake;

Trying to give response to questions which remained unanswered by the previous few writings and those questions which were left for further researches;

Inspiring other researchers and writers to conduct deep researches and write books with in the area.

1.6. Literature Review

Internationally, numerous researches have been conducted regarding right to employment of PWDs. One of such literatures was the book of “disability and equity at Work” which consisted of writings of several contributors.⁷ This book is specifically concerned with right to

⁷ Jody Heymann, Michael Ashley Stein, and Gonzalo Moreno, (ed.s), Disability and Equity at Work (Oxford University Press 2014)

employment of PWDs. Anna Lawson wrote a book related with reasonable accommodation⁸ and an article which analyzes the United Nations Convention on the Rights of People with disabilities.⁹ Articles concerned with sheltered employment which are written by Laurent Visier,¹⁰ and Laura C. Hoffman¹¹ have been examined by the researcher. Sabrina Ferraina dealt with analysis of the article of the UNCRPD related with the right to employment.¹² Michael Ashley Stein also touched upon different issues of employment in his article.¹³

Domestic literatures on the right to employment of PWDs are quite meager compared to the alacrity of the area in the international forum. These meager researches are conducted both by PWDs themselves and other non-disabled persons. Nevertheless, right to employment has gained better attention both by domestic researchers and the government of Ethiopia when compared with other rights of disabled persons. Yohannese Teresa is one of the persons who deeply explored issue of employment of PWDs in his Thesis.¹⁴ Shimels Ashagre wrote an article which focuses on the rights of disabled persons in general and visually impaired persons in particular.¹⁵

⁸ Anna Lawson, Disability and Equality Law in Britain: The Role of Reasonable Adjustment (Hart Publishing 2008)

⁹ Anna Lawson, “United Nations Convention on the Rights of People with Disabilities: New Era or False Dawn?” Syracuse Journal of International Law and Commerce vol. 34 (2007) pp. 563-598 (hereafter Anna Lawson)

¹⁰ Laurent Visier, “Sheltered Employment for Persons with Disabilities”, International Labour Review, Vol. 137 No. 3 (1998)

¹¹ Laura C. Hoffman “An Employment Opportunity or a Discrimination Dilemma?: Sheltered Workshops and the Employment of the Disabled” University of Pennsylvania Journal of Law and Social Change vol. 16 (2013)

¹² Sabrina Ferraina, “Analysis of the Legal Meaning of Article 27 of the UN CRPD: Key Challenges for Adapted Work Settings” European Association of Service Providers for persons with Disabilities (2012) (<https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1559&context=gladnetcollect>) last visited Dec. 30, 2018

¹³ Michael Ashley Stein and Penelope J. S. Stein, “Beyond Disability Civil Rights”, hastings law journal vol. 58 (2007)

¹⁴ Yohannes Teressa Geleta, Ensuring the Right to Equal Employment Opportunities of Persons with Disabilities: Critical Examination of the Ethiopian Legal Framework, (A Partial Fulfillment, Addis Ababa University 2012) (hereafter Yohannes Teressa)

¹⁵ Shimeles Ashagre, “Appraising Employment Accommodation Rights for Visually Impaired Teachers in Ethiopia: Overview of Selected Cities” Mizan Law review, vol. 8, no. 2 2014, pp. 406-423 (hereafter Shimeles Ashagre)

Amare Sisay touched upon few issues of employment incidentally when he focused in the accessibility of environment.¹⁶ Seyoum Yohannese wrote an article which serves as a spring point for next researches on employment of PWDs.¹⁷ Dagnachew Bogale, in his thesis conducted in 2006 accomplished a research on disability based employment discriminations though written before the promulgation of proclamation no. 568/2008.¹⁸ Dagnachew also wrote a thesis in connection with disability right movement,¹⁹ which is key factor for the betterment of disability rights including right to employment. Tolera embarked in finding the practice of organizations of Addis Ababa in recruiting PWDs limiting himself to one aspect of the right to employment of PWDs.²⁰ There are also fragmented reports, presentations, publications and reports made by different stake holders. Even though, these works are not in any way researches and does not give full blown picture of the area they are indispensable in showing governing laws and situations of employment of PWDs. One of such works which provides sufficient clue as to the existing legal and policy situations of Ethiopia in relation to PWDs is presented by Kasahun Yibeltal.²¹

There are different reasons for conducting this research. First, most of the research conducted regarding the employment of PWDs did not deeply look at the directives and practices in

¹⁶ Amare Sisay Tasew, Towards Ensuring Accessibility Right to the Built Environment for Persons with Disabilities in Ethiopia: the Case of Addis Ababa (A Partial Fulfillment, Ethiopian Civil Service University 2012) (hereafter Amare Sisay)

¹⁷ Seyoum Yohannes Tesfaye, "Towards Inclusive Employment: The Conceptual Basis and Features of Proclamation 568/2008 on the Employment of Persons with Disabilities", Journal of Ethiopian Law Vol. 24, No. 1 2010 PP. 89-123 (hereafter Seyoum Yohanese)

¹⁸ Dagnachew Bogale, Employment Discrimination on the Basis of Disability: the Current Legal Regime in Ethiopia and its Implementation, (A Partial Fulfillment, Addis Ababa University 2006)

¹⁹ Dagnachew Bogale Wakenè The Role of Disability Rights Movements in the Ethiopian Development Agenda (A Partial Fulfillment, University of Stellenbosch 2011)

²⁰ Tolera Asfaw Deressa, Organizations' Recruitment Practice and Persons with Disability (Study Conducted in Addis Ababa), (2012),

²¹ Kassahun Yibeltal, Law and Policy Situation of Persons with Disabilities in Ethiopia, presented at disability and risk management conference October 2013 Addis Ababa, Ethiopia (hereafter Kasahun Yibeltal)

Ethiopia. The researcher also found that reevaluating the laws of Ethiopia in light of the country's current situations and right protections is useful. Furthermore, the previous researches were not disability specific. This research aimed at becoming specific to blinds and visually impaired persons though it deals with so many issues common to all kinds of disabilities. This research also tried to show regional laws of the country although they are meager. Minutes of the disability related proclamations are also looked upon. Therefore, it is believed that this research adds something new to the existing literature. Additionally, more and more researches are needed in order to magnify the need to better protection of PWDs in Ethiopia as the country is still far behind sufficient protection of human rights of PWDs. Different researches may come up with the same conclusion. This however does not suffice to conclude that the researches are not important because the more researches come up with the same finding, the higher protection may be provided by the government.

1.7. Methodology

Primary and secondary sources of data are used in this research. International instruments, laws of the federal and regional governments including, proclamations, regulations, directives, circulars, minutes of laws, policies, and action plans which have relationship with employment of visually impaired/PWDs are inspected. Those writings about the issue at hand are also consulted.

Different mechanisms are devised to understand practical implications of the right to employment in Ethiopia. One of such basic mechanisms is observation. The researcher participated in the employment competition of more than ten institutions in the past three years.²² More than half of them were done for the purpose of understanding the practice. Therefore observation is key source of this research as the researcher himself is blind and suffered both from the challenges and discriminations of different institutions.

²² Such organizations and institutions are: Enat bank, Development bank, Addis Ababa Land Management, Addis Ababa House Construction Project Office, Ethiopian Petroleum Enterprise, Addis Ababa City Administration, Private Social Security Agency, Ombudsman, Federal Attorney General, Federal Income Tax and Customs Authority, Addis Credit and Saving Institution and Debrebirhan University.

Five court decisions which show various spectrum of the rights of blinds are selected based on their uniqueness and and issues they cover.

The other source is the experience of different blind persons. Focus group discussion is preferred to solicit important information of the practices from the blind community. Though it is not representative of all of the blind community, the discussion provides an invaluable information about the practice. The participants of the FGD are selected based on purposive and convenience sampling.²³

The other source is interview with stakeholders. For this purpose, persons working in the institutions that have direct relationship with implementing employment laws and rights of PWDs of the country are subjects of this research. Institutions located in Addis Ababa are selected for convenience.²⁴

²³ The FGD was held on May 28, 2018 in the office of the director of ENAB. Members of the FGD were totally blind graduates of law, language and sociology. Their experience range from 5 years up to 16 years work experience. Their level of education is BA, MA, and Ilm candidate.

Members of the FGD were: Abebe Chane (Senior Training Expert of Human Right Commission), Adbaru Yigermal (Public Relation Officer of Addis Ababa Technique and Vocational Bureau), Alenew Wiletaw (Self-Employed Project Designer), Arage Kibret (Senior Public Relations Officer of Federal Urban Land Property Registration Agency), Dawit Oticho (Public Prosecutor of Federal Attorney General), and Fantahun Mengiste (Public Prosecutor of Addis Ababa City Justice Bureau. This is without including those persons who are informally consulted with laws and practices on the area.

²⁴ Interview with Mulugeta Wubshet, Director of Human Resource Laws' Research, Implementation and Support Directorate Under the Ministry of Public Service and Human Development (May 24, 2018);

Interview with Abebe Seifu, Head of Job's Leadership Supervision and Evaluation Or Inspection Office of Ministry of Public Service and Human Resource Development (May 24, 2018);

Interview with Wasihun Bimrew, Advocacy Officer of the Ministry of Labor and Social Affairs (May 25, 2018);

Interview with Damte Alemu, Director of Social Protection Expansion Capacity Building, Information and Statistics Directorate under the Ministry of Labor and Social Affairs (June 14, 2018);

Interview with Tesfaye Tiraz, Acting Director of Human Resource Development Administration Under the Ministry of Education and Zewde Belay, Human Resource Officer of Ministry of Education (May 16, 2018);

Interview with Amlaku Tebeje, Director of Teachers' and Education Leadership Development Director of Addis Ababa Education Bureau (May 22, 2018);

1.8. Significance of the Research

This research plays pivotal role in increasing the legal knowledge relating to the right to employment protection of blinds in Ethiopia. Showing the practice gives insight as to what the effect of the current laws is. It also can be a guide for legislators and executives while dealing with the employment right of PWDs. It is significant to serve as a guide of teachers of higher education by providing analysis of the laws of international and domestic laws. It also helps to influence the judiciary and executive to begin interpreting them.

Violation of rights of blinds related with employment may likely reduce by the reading of this research. This is true because rights are infringed if the awareness of the right is lower. If there is adequate knowledge about the right those persons who were violating it with ignorance may begin respecting it either as discharging responsibility or not to be accountable for it. Similarly, the right holders expedite for the advancement of their right if they have adequate knowledge the effect of which may be reduction of the violation.

It will contribute for the development of the country as it has the effect of accelerating the engagement of significant number of PWDs to employment the income of which finally bulges the national treasury. It has role to indicate how to narrow the income discrepancy of the society in turn making the development of the country balanced.

Interview with Yacob Tadese, Director of Human Resource's Job Leadership of Oromia National Regional State Public Service and Human Resource Development Bureau (May 18, 2018);

Interview with Melaku Temesgen, Director of Human Resource's Job Leadership, Implementation and Evaluation Directorate of Addis Ababa Public Service and Human Resource Development (May 18, 2018);

Interview with Solomon Belay, Secretary of Federal Judicial Administration Council Secretariat and Zerihun Getahun, Head of Federal Judges' Job Implementation Evaluation and Discipline Issues (May 17, 2018); and

Interview with Gebre Teshome, Public Relation Officer of Ethiopian National Association of the Blind (March 16, 2018)

Officials of Addis Ababa Small Enterprise Development Bureau and Addis Ababa University were also informally interviewed due to lack of appropriate person who is well acquainted with the issue worth discussing in this research.

It inspires other researchers to conduct further research relating with employment of PWDs. It can serve those researches as an input by being source of data for them. Such researches may come up with additional findings based on the outcome of this research. They may also criticize this research and improve this work.

1.9. Limitation of the Study

As limitation is inevitable in any research, this research too has various limitations. The first constraint is the limit of budget and resource. Good research as any other excellent work needs higher budget. The lower emphasis given to disability exacerbated the problem of losing fund or the research. Therefore, the researcher tried to reduce the problem by using his budget wisely and devising techniques to reduce his cost though it had negative impact on the research. Likewise, resource problems like inaccessibility of books, limited access of internet and other resources which were fundamental for the effective accomplishment of the study were also constraints of the research. Thus, I used alternative methods to replace the resources.

Lack of complete research domestically was great challenge for this research. For this reason, the researcher tried to look at different fragmented works in order that he can build his complete research on the subject.

Disorganized and inadequate filing system of private and governmental organizations has been an obstacle for the effectiveness of this research. Similarly, the researcher had been confronted with refusal of organizations and other persons from whom data is collected to provide information either by way of interview, questionnaire or document provision. It has been tried to diminish the impact of such problems by using multifarious mechanisms according to the scenario.

1.10. Organization of the Research

This research is divided in two four chapters. In chapter one, the researcher highlighted introductory remarks and showed the skeleton of the research. Chapter two covers international and national laws relevant for employment of PWDs in general and blinds in particular. Emphasis is provided for directives.

Chapter three inspects about challenges and practices. In this chapter, practical barriers are discussed and the existing practice is identified by focusing on the federal government and Addis

Ababa. It is also devoted in showing available legal and practical remedies for blinds for violation of their rights pertaining to employment caused by such barriers and practices. Chapter four deals with conclusion and recommendations.

Chapter Two

The Legal Framework, Policy Considerations and Action Plans

Section One

Overview of the International Norms

Disability is ignored in the precursor international human right instruments.²⁵ CRC and ILO convention were among the very few binding global instruments of 20th century to deal with disability.²⁶ CRC expressly embraced disability as one form of prohibited ground of discrimination.²⁷ It included basic rights including: participation, special care, medical treatment, education and preparation for employment imposing duty to promote international cooperation.²⁸

There are also meager provisions within the regional human right framework. Protocol of San Salvador provides that particular measures will be taken for disabled to make their right to work fully effective, especially with regard to the achievement of full employment, vocational

²⁵ Clear reference of disability is absent in the UDHR, ICCPR, ICESCR, and many other instruments. This does not mean however, there is no protection for the rights of people with disabilities. Rather, it only means the protection is not specific to PWDs. Most of the human right provisions of the international instruments are applicable for all and PWDs are covered within this general protection.

²⁶ Children Rights Convention, Adopted and Opened for Signature, Ratification and Accession by the UN General Assembly Resolution 44/25 on November 20 1989 and Entered into Force 2 September 1990, United Nations, Treaty Series, vol. 1577, p. 3, (<https://www.refworld.org/docid/3ae6b38f0.html>) last visited December 16, 2018; and

The Vocational Rehabilitation and Employment (Disabled Persons) Convention no. 159, Adopted by The General Conference of the International Labour Organisation, on June 20, 1983 at Geneva and Entered into Force on June 20, 1985.)

²⁷ Id, Art. 2 (1)

²⁸ Id, art. 23

guidance, and the development of technical and vocational training projects.²⁹ The same convention³⁰ and another declaration³¹ recognize that disability prevents from securing the means for a dignified and decent existence and entitles the disabled to have the right to social security.

The only regional convention exclusively dealing with PWDs is the inter-American convention on the elimination of all forms of discrimination against PWDs.³² Employment is recognized as a right by this convention. The convention bears in mind the ILO CONVENTION 159.³³ Fighting discrimination and full integration are objectives of the convention.³⁴ States are required to take legislative, labor related and any measure to achieve the above objectives in relation to employment.³⁵

The European Union Directive Establishing a General Framework for Equal Treatment in Employment and Occupation aims to combat discrimination on a number of grounds, including disability.³⁶ European Union also ratified CRPD.³⁷

²⁹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol Of San Salvador" Art. 6 (2)

³⁰ Id, art. 9

³¹ American Declaration of the Rights and Duties of Man art. 16, (Approved By The Ninth International Conference Of American States, Bogotá, Colombia, 1948)

³² Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities (Adopted at Guatemala City, Guatemala at the Twenty-Ninth Regular Session of the General Assembly of the OAS, Held on June 7, 1999)

³³ Id, Preamble

³⁴ Id, art. 2

³⁵ Id, art. 3 (1) (a)

³⁶ The European Union Directive Establishing a General Framework for Equal Treatment in Employment and Occupation No. 2000/78/EC of 27/11/2000

³⁷ Oyaro Louis O. "Africa At Crossroads: The United Nations Convention on the Rights of Persons with Disabilities." American University International Law Review vol. 30 no. 2 (2015) p. 374

The Banjul charter provides that the disabled shall have the right to special measures of protection in keeping with their physical or moral needs.³⁸ Effective access to training and preparation for employment are among range of rights provided for disabled children by the African charter on the rights and welfare of the child.³⁹ Access to employment, professional and vocational training of women with disabilities are accorded protection by the Maputo protocol.⁴⁰ According to the African constitutive act, coordination and decision making on policies related with the disabled is one of the functions of the executive council.⁴¹

The comprehensive international legal document with regard to PWDs is the CRPD.⁴² The convention was articulated carefully and came in to being by the pressure of the disability people's organizations.⁴³ CRPD included large number of rights which have irreplaceable utility for right to employment.⁴⁴ Article 27 specifically deals with employment.⁴⁵ The convention did not expressly embrace any model of employment. However, it laid down principles which should be met by all forms of employment, whether sheltered or supported employment.⁴⁶

³⁸ ACHPR, Art. 18 (4)

³⁹ African Charter on the Rights and Welfare of the Child, OAU DOC. CAB/LEG/24.9/49 (1990), entered into Force Nov. 29, 1999.

⁴⁰ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Art. 23 (A), Adopted By The 2nd Ordinary Session Of The Assembly Of The Union, Maputo, July 11 - August 13, 2003 and Entered in to Force November 25, 2005.

Ethiopia has ratified the Maputo protocol on March 30th 2018. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Ratification Proclamation, 2018, Proclamation No. 1082, Federal Neg. Gaz. Year 24 No. 33

⁴¹ Constitutive Act of the African Union art. 13, Adopted in 2000 at the Lome Summit (Togo) and Entered in to Force in 2001

⁴² Convention on the Rights of Persons with Disabilities, Adopted by the UN General Assembly Resolution at New York in 2006 (A/RES/61/106) and Entered in to Force in 2008 (hereafter CRPD)

⁴³ Anna Lawson, pp. 574-577

⁴⁴ Right to accessibility, right to independent living, right to participation, and right to education are among these rights which have great implication for the realization of right to employment.

⁴⁵ CRPD, ART. 27

⁴⁶ Anna Lawson, p. 583

Some of the principles adopted by the provision are: free choice of work; equality to work; non-discrimination; reasonable accommodation; freedom from slavery, servitude and forced labor; and opportunity to gain open inclusive and accessible work environment for PWDs.⁴⁷ The provision also contained rights having individual and collective nature that are designed in a similar fashion with other conventions dealing with right to work customizing them with PWDs.⁴⁸

Assistance to have employment, promotion of opportunity for self-employment, employing in the public sector and framing appropriate policies and measures which promote the employment of PWDs⁴⁹ are states' duties which show that the convention provided different provisions which are directed towards attaining equality of result. It recognizes that affirmative action and incentives may be the appropriate measures applicable in the private sector.⁵⁰ It is not clearly identified how the state employs PWDs in the public sector. However, seeing it from the provision applicable to the private sector and the way the provision is framed, affirmative action should be necessary in the public sector.⁵¹

Ethiopia ratified this convention⁵² though failed to ratify the protocol which allows filing individual complaint before the committee of CRPD. The human right commission translated the convention into languages widely spoken in Ethiopia⁵³ though the quality of the translation needs scholars' scrutiny.⁵⁴

MOLSA is empowered to undertake all acts necessary for the implementation of the Convention.⁵⁵ To discharge this responsibility, MOLSA established a national committee.⁵⁶

⁴⁷ CRPD, art. 27 (1), 27 (1) (i), 27 (2)

⁴⁸ Provisions of Article 27 (1) (a-d) contain similar elements of article 6-8 of ICESCR

⁴⁹ CRPD, art. 27 (1) (e-h)

⁵⁰ Id, art. 27 (1) (h)

⁵¹ Id, art. 27 (1) (g-h)

⁵² CRPD Ratification Proclamation

⁵³ The commission is vested with this power pursuant to its establishment proclamation. Ethiopian Human Rights Commission Establishment Proclamation, 2000, art. 5, Proclamation No. 210, Federal Neg. Gaz. year 6 no. 40

⁵⁴ For instance, the meaning given for reasonable accommodation is very long and inconvenient to understand and communicate.

⁵⁵ CRPD ratification proclamation, art. 3

However, it is not still functional.⁵⁷ The problems of the operational directive are multi-faceted. Recently, there was effort to amend the directive. However, the draft directive was poorly drafted.⁵⁸

Another indispensable convention especially with regard to blinds is the Marakesh agreement.⁵⁹ The objective of this convention is facilitating access to and use of literary and artistic works whether published or otherwise made publicly available in any media by persons with visual impairments or with other print disabilities maintaining this interest with rights of authors.⁶⁰ This convention has great benefit to employment because one of the barriers of blinds to find employment is inaccessibility of works having negative effect on competence and passing exams.

Section Two

National Laws

2.1. FDRE Constitution

The rights of PWDs are not properly considered by the constitution while the rights of nations, nationalities and peoples, women and children attained due coverage.⁶¹ Disability is not clearly specified under the prohibited grounds of equality and this has been source of contention by

⁵⁶ Guideline for National Coordinating Committee for the Convention of the Rights of Persons with Disabilities

⁵⁷ Interview with Wasihun Bimrew, Advocacy Officer of the Ministry of Labor and Social Affairs (May 25, 2018)

⁵⁸ I was able to find the document to give comments representing ENAB and the draft do not even fulfill basic requirements of directive.

⁵⁹ Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind Visually Impaired, or Otherwise Print Disabled, Adopted June 27, 2013 and Entered in to Force September 30, 2016 (HEREAFTER Marrakesh Treaty) This convention is signed but not ratified by Ethiopia. However, the convention is sent to the federal attorney general and is expected to be ratified in the near future.

⁶⁰ Marrakesh Treaty, preamble para 12, 9 and Art. 2 (1). It can be said that the beneficiaries are all those who face difficulty in reading printed materials. (Marrakesh Treaty, art. 3)

⁶¹ FDRE constitution, art.s 35, 36, 39, 40, 89 and much more

writers as to the inclusion of disability by virtue of the phrase, “other status”.⁶² The controversy culminated by the decision of house of federation at least until it reverses its position.⁶³

The provision of article 41/5 of the constitution is interpreted by Shimels to consider PWDs as non-productive and recipients only.⁶⁴ Article 42 of the constitution does not also mention disability from the list of discrimination. This is not intentional rather ignorance of the subject. The minute of the constitution proves this assertion. The discrimination of PWDs was raised by participants though no conclusion was suggested as to the inclusion of disability within the provision.⁶⁵

To conclude, despite distance of the constitution from the current thinking of rights of PWDs, literal interpretation of the provisions is not beneficial. Simply adhering to anti-discrimination laws by totally ignoring the assistance envisaged by article 41/5 of the constitution cannot also advance the rights of PWDs. Therefore, painstaking amendment of the constitution to address all major rights of PWDs sufficiently is of urgent need.

2.2 The Right to Employment Proclamations

There are states which prefer to prepare single document which deals with rights of PWDs.⁶⁶ This does not mean that these states do not issue other laws relating with PWDs rather, they have single document which deals with various rights of PWDs and may be supplemented by other laws. Other states prefer to issue different laws which deal with specific aspect of rights of disabled persons. Others prefer to disperse rights of PWDs within laws which are applicable for the general society.

⁶² Shimeles Ashagre, pp. 410-411;

Seyoum Yohanese, pp. 106-107;

Belayneh Admasu “Legal Protections Accorded to Persons with Disabilities under Ethiopian Law” Bahir Dar University Journal of Law Vol. 3 No. 2 (July 2013) p. 322 (hereafter Belayneh Admasu)

⁶³ See chapter three at 3.6. case 3

⁶⁴ Shimeles Ashagre, pp. 411-412

⁶⁵ Minute of FDRE constitution, discussion on Article 42. Even those persons who raised the problem of lower payment of PWDs failed to suggest to consider discrimination based on disability as one form of prohibited ground.

⁶⁶ UK, USA, and Australia are examples of such states.

Having a disability specific law which consists of comprehensive rights of PWDs has plenty of advantages. The rights of PWDs will be visible and the tendency of disregarding their right diminishes with the existence of disability specific law.⁶⁷ General rights will be tailored with the specific situations of PWDs and clarity and focus of the rights will increase by the promulgation of a comprehensive disability specific legislation.⁶⁸ The issuance of a disability specific law triggers and causes for the accumulation of information through evaluation and implementation process.⁶⁹

Finding access to various laws needs higher diligence. This problem is much worse in Ethiopia where finding legislations even known by number and title is cumbersome. If most of the rights of PWDs are found in a single document, they can be accessed easily.

Single document is likely to have similar remedies, procedures, use of terms and ETC. This enables activists, practitioners, victims and the executive to comprehend the laws and to implement them at the grassroots level. Confusion as to the meaning of terms, jurisdiction of courts and entrusted institution to implement the law may likely reduce. Rights are complementary to each other and therefore, single document helps to reduce concerns of splitting rights.

It is easy to discuss with stakeholders and concerned groups and individuals during the promulgation of a single document. This however, becomes challenging when the draft of every law is on table. Therefore, a comprehensive disability specific legislation may likely be more participatory of stakeholders and the disabled community.

Conversely, there are also disadvantages by having a comprehensive disability specific legislation. Single document may need several amendments to update the law with current situations. Negotiating with the government and other duty bearers at once is also difficult which compromises recognition of some rights to attain adoption of a comprehensive legislation. Higher knowledge and expertise is required on various aspects of rights and disabilities to

⁶⁷ Anna Lawson, p. 573

⁶⁸ Ibid

⁶⁹ Id, p. 574

legislate effective law. Elaboration of rights may face limitation not to make the document very big.

In any case, the advantages are preferable and can elevate the level of human right protection of PWDs. Ethiopia does not have comprehensive legislation dealing with various rights of PWDs. Rights which are recognized by domestic legislations are very few in number. Other rights are sometimes found in fragmented legislations and framed narrowly.

In this respect, employment is provided better coverage compared with other rights of PWDs. Specific legislations which are deemed to ensure right to employment was issued two times at the federal level. Civil servants proclamations of the federal and the regional governments added with directives issued to implement employment legislations have a role to promote right to employment of the disabled. These instruments will be discussed in detail. Rehabilitation order of 1971 is the first instrument of Ethiopia dealing with the rights of PWDs.⁷⁰ This thesis does not discuss this law.

2.2.1 Proclamation no.101/1994

The first proclamation which is destined to deal with rights of PWDs was issued in 1994.⁷¹ The draft was prepared by the civil servants administration commission and supported by the social administration affair sector.⁷² The proclamation was first prepared as a directive. It is then submitted to the council of ministers believed to be issued in the form of regulation. The council of ministers finally decided that it should be promulgated in the form of proclamation.⁷³ This is evident that the first plan of the government was to provide small protection for PWDs which can be realized by the decision of the civil servants' administration commission. One can also realize that the original idea was to apply the directive on the civil servants only. In contrast, the final version of the law was applicable on both government and private employers.⁷⁴

⁷⁰ Kassahun Yibeltal

⁷¹ The Rights of Disabled Persons to Employment Proclamation, 1994, art. 2 (2), Proclamation no. 101, Federal Neg. Gaz. Year 4 (hereafter Proc. 101/1994)

⁷² Letter of the prime minister to the transitional government council of representatives ref. 00450-1062/2

⁷³ The power to enact law was vested for the transitional government council of representatives by the transitional government establishment proclamation.

⁷⁴ Proc. 101/1994

Though the appeal of the PWDs for the end of discrimination on employment was stronger, the draft and letters exchanged show that the disabled community was not given the opportunity to participate in the drafting process of the proclamation. Therefore, the proclamation was promulgated with the paternalistic view in mind.

Furthermore, the draft proclamation was approved without any amendment. The comment of the economic committee was not incorporated either as a preamble or within the provision. The committee itself first suggested automatic approval and provided comment consequently. Therefore, it should have first commented and suggest approval with rectification of the comments of the committee. For instance, the committee provided that reading is important for blinds and the government should allocate budget to facilitate special supports. Nevertheless, the council simply approved the draft without incorporating the recommendations of the committee.⁷⁵

The proclamation and the minute is filled with paradoxes regarding the way they viewed PWDs. Helping, providing treatment, and similar phrases which indicate charitable approach are included within the proclamation while phrases which indicate capability of PWDs if given the opportunity and that some PWDs are able to be employed shows us the trust on PWDs. The need for respect of human rights of PWDs and that the government has obligation reflects that a right based approach is found within the proclamation.

Major features of the proclamation are its anti-discrimination provision,⁷⁶ imposition of duty on employers or trainers to supply equipments and materials necessary to accomplish the purpose,⁷⁷ and its acceptance of the reserved employment approach.⁷⁸ The defense of disproportionate burden was not available for employers/trainers for failure to supply equipments and materials.⁷⁹

⁷⁵ This can be understood from the reading of the report of the Economic Committee, the draft of proclamation no. 101/1994 and the final version of proclamation no. 101/1994.

⁷⁶ Proc. 101/1994, art. 3 (1-3)

⁷⁷ Proc. 101/1994, art. 3 (4)

⁷⁸ Proc. 101/1994, art. 4

⁷⁹ The duty under article 3 (4) of the proclamation is crafted using the word “shall” and the only defense of the employer put by the provision implicitly is that the equipment or material is not necessary to discharge the duty of the employee or to pursue the training. (Proc. 101/1994, art. 3 (4))

This avoids reluctance of employers to fulfill working materials as they cannot raise lack of capacity as escaping reason. However, obliging employers to fulfill a material which is too costly is not acceptable in the current disability discourse and can have negative effect on the employment of PWDs by pushing employers to refuse to admit PWDs.

Some claim ineffectiveness of this proclamation.⁸⁰ Lack of commitment to implement legislation is problem of the government. Neither a regulation nor directive was issued following the proclamation. Reserved employment is not bad by itself; however, it is nothing without implementing legislation and commitment of the state. Indeed, the association of reserved works in to lower level works, and other challenges may discredit reserved employment. Nevertheless, if well implemented, it is one beneficial treatment for a group which is discriminated for finding employment. Without the determined effort of the government, even the clearest provision will not be implemented as witnessed in the new proclamation.⁸¹

2.2.2. Proclamation no.568/2008

(A) Power to Issue the Proclamation

The constitution does not specifically give the federal government the power to issue disability related proclamation. Labor codes are however reserved to the federal government. Therefore, in so far as the private sector is concerned, the federal government can issue proclamation 568/2008 using its power to issue labor code. One may argue that the federal government is not allowed to issue several laws rather a single code which deals with labor relation.⁸² However, fragmented laws can be considered as amendments of the code just as the federal government issued two proclamations with the purpose of amending proclamation no.377/2003.⁸³

⁸⁰ For example, see: proc. 568/2008, preamble and Shimeles Ashagre, p. 413

⁸¹ for example, the duty to employ assistant is not discharged for blind teachers in many schools.

⁸² The provision says, “labor code” which may be interpreted to mean only a single document prohibiting fragmented legislation.

⁸³ Labour (Amendment) Proclamation, 2005, Proclamation No. 466, Federal Neg. Gaz. year 11 no. 56 and Labour (Amendment) Proclamation, 2006, Proclamation No.494, Federal Neg. Gaz. year 12 no. 30

Seyoum argues that the federal government does not have the power of issuing the proclamation with regard to the civil service sector. He argues that the constitution did not provide the federal government such power and the proclamation is not also issued by the decision of the House of Federation if it was deemed to be promulgated with the view to create one economic community.⁸⁴

The HPR claimed that it issued proclamation 568/2008 pursuant to article 55 (3) of the FDRE constitution.⁸⁵

Here, the issue that should be raised is what it means by labor code and whether it excludes government and its employees. Article 42, 52/2/f and article 55 of the FDRE constitution should be considered. The word “labor” encompasses both government and private employers. We can understand this from article 42 of the constitution. This article is entitled as labor right. Its content include both private and government employees. A legislator, whether it is the people or its representatives, is believed to use one term to mean the same thing within the whole document. Therefore, the word “labor” as stipulated in the constitution includes employees of the government and private sector because the word “labor” under article 55 (3) of the FDRE constitution shall be deemed to have the same meaning with the usage of the term under article 42 of the constitution.

The constitution gives regional governments the power to issue civil service laws.⁸⁶ This does not lead us to the conclusion that regions are the only competent body to issue laws on employees of the regional government. The FDRE constitution⁸⁷ itself and the new federal civil servants proclamation⁸⁸ have indication that federal government has the power to set standard at the national level because the provision imposes duty to ensure that job requirements are approximate to national standards. This can be true if federal government has the power to set

⁸⁴ Seyoum Yohannes, PP. 107-108

⁸⁵ Proc. 568/2008, preamble para 4

⁸⁶ FDRE constitution, art. 52 (2) (f)

⁸⁷ Ibid

⁸⁸ Federal Civil Servants Proclamation, 2017, art. 12, Proclamation No. 1064, Federal Neg. Gaz. Year 24 no. 12 (hereafter Proc. 1064/2017)

standards and one way to set standard is through legislation. Moreover, the federal government is empowered to enact labor law laying down minimum working conditions applicable on employees of regional government pursuant to article 55 (3) and regions have the power to issue detailed law other than provided by the federal government.

This concurrent power is observed in rural land administration.⁸⁹ The constitution also reserves for regions the power to enact penal laws in matters not specifically covered by the federal penal legislation⁹⁰ though it is not practically seen. The federal government may prefer not to issue its power and delegate all of its power to regions⁹¹ as it did in relation with regional civil servants law before the promulgation of proclamation no. 568/2008. In short, the cumulative reading of the three provisions⁹² indicate that the federal government has the power to lay down basic working conditions and rules on all types of labor relations and regions are empowered to issue a law which govern their employees in matters not specifically covered by the federal proclamation, proclamation no. 568/2008 in the issue at hand.

On the other hand, imputed power justifies the HPR to issue proclamation no. 568/2008 currently. By imputed power, I mean a power of the federal government emanating from the other power the federal government is entrusted by the constitution or as a power which cannot be detached from the power defined for the federal government by the constitution. The constitution gives the power to ratify international instruments to the federal government.⁹³ However, it does not specifically provide as to which layer of the government has the power to enact implementing legislations of conventions. The options are either to give such power to the HPR or to state councils of every region. The former option is preferable because the power of HPR can be derived from its power to ratify conventions. Otherwise, there is no way to ensure implementation of the conventions as there is no organ which control regions and compel them to take action in accordance with international conventions. Therefore, this position helps to prevent failure of the state to comply with the convention. Applying the residual power of

⁸⁹ Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation, 2005, Proclamation No. 456, Federal Neg. Gaz. Year 11 No. 44 and respective regional proclamations

⁹⁰ FDRE constitution art. 55 (5)

⁹¹ FDRE constitution art. 50 (9)

⁹² FDRE constitution art.s 55 (3), 42, and 52 (2) (f)

⁹³ FDRE constitution art. 55 (12)

regions⁹⁴ in such cases is not true because the constitution cannot perfectly elaborate all powers of both layers of government and interpretation is necessary to certain powers which are not indicated but cannot be seen in isolation with other power of the federal government.

One of the duties entered by Ethiopia in ratifying the CRPD is the obligation to take legislative measures.⁹⁵ Proclamation no. 568/2008 is an extension of implementing the CRPD. Indeed, the proclamation is promulgated two years before ratifying the convention. Therefore, this justification was not available during its promulgation. However, it works after the convention is ratified. That means, if the convention is ratified by the federal government within the ambit of its power, then, it is the competent body to take legislative measures necessary to effectively domesticate the convention it ratified. Allowing regional governments to issue their own proclamations without having any standard law leads the disabled community unprotected by the law. The state ratified the convention and needs to comply with its obligations, among which is issuing and/or amending its laws. Giving this power to the regions leaves the country without having to comply with the minimum obligation it is ready to enter.

The view that the argument on the constitutional validity of proclamation no. 568/2008 with regard to its applicability on regional state offices remained an academic debate due to the ratification of CRPD because the convention embodies core principles of the proclamation⁹⁶ is not convincing. Shift of burden of proof,⁹⁷ consideration of employing assistant as indefensible type of reasonable accommodation,⁹⁸ representation by association,⁹⁹ closer mark preference,¹⁰⁰ are among the provisions which cannot be automatically derived by the ratification of the convention. Practically speaking, though the protections of the proclamation are limited to anti-discrimination approach only, those protections are afforded by the proclamation give higher

⁹⁴ FDRE constitution art. 52 (1)

⁹⁵ For instance CRPD art. 27 (1) provides that legislative measure is one of the appropriate steps to be taken by states.

⁹⁶ Seyoum Yohanese, p. 109

⁹⁷ Proc. 568/2008, Art. 7

⁹⁸ Proc. 568/2008, Art. 6 (1) (c)

⁹⁹ Proc. 568/2008, Art. 10

¹⁰⁰ Proc. 568/2008, Art. 4

guarantee than the convention because courts are more inclined to stick to clear domestic laws than general provisions of international conventions.¹⁰¹

(B) Common Features with the Repealed Proclamation

Though proclamation no.568/2008 repealed proclamation no.101/1994,¹⁰² there are significant common features shared by both proclamations. Both proclamations are similar in terms of covered employers,¹⁰³ the scope of employment relation,¹⁰⁴ prohibition of discrimination,¹⁰⁵ the nature of work as a defense for not employing PWDs,¹⁰⁶ equal payment for equal work,¹⁰⁷ provision of materials and equipments with phraseology difference,¹⁰⁸ and responsibilities of disabled workers.¹⁰⁹

(C) Covered Employers and the Scope of Employment Relation

Proclamation no.568/2008 applies on any employer other than those excluded by the labor proclamation.¹¹⁰ Hence, offices employing/appointing government officials above certain rank, members of HPR and HOF, federal judges and prosecutors, members of armed forces and police

¹⁰¹ Decisions of the federal supreme court cassation bench is evidence for the lenient position of courts to apply international human right conventions ratified by Ethiopia.

¹⁰² Proc. 568/2008 art. 12

¹⁰³ Proc. 568/2008 art. 2 (3);

Proc. 101/1994 art. 2 (2)

¹⁰⁴ Proc. 568/2008 art. 2 (2);

Proc. 101/1994 art.s 3 (1) and 3 (2)

¹⁰⁵ Proc. 568/2008 art.s 4 (1), 4 (3) and 5;

Proc. 101/1994 art.s 3 (1) and 3 (2)

¹⁰⁶ Proc. 568/2008 art. 4 (1);

Proc. 101/1994 art. 3 (1)

¹⁰⁷ Proc. 568/2008 art. 4 (4);

Proc. 101/1994 art. 3 (3)

¹⁰⁸ Proc. 568/2008 art. 6 (1) (a);

Proc. 101/1994 art. 3 (4)

¹⁰⁹ Proc. 568/2008 art. 8;

Proc. 101/1994 art. 5

¹¹⁰ Proc. 568/2008 art.s 2 (2) and 2 (3)

and other employees excluded from the civil service sector¹¹¹ are covered with proclamation no.568/2008 according PWDs the constitutionally guaranteed right to the protection of the law.¹¹²

The relationship which exists after the position is occupied by the disabled might not pose controversies. For instance, even an elected blind can request reasonable accommodation by virtue of the CRPD ratification proclamation. However, with regard to recruitment, the law covers every institution with no procedural safeguard. In other words, the law did not facilitate which makes it applicable during appointment. Positions of Judges, public prosecutors, managers and some other posts are filled through the process of appointment. Appointment is nowhere defined in the laws of the federal government.¹¹³ It is not however difficult to understand that its peculiarity has connection with the discretion of the appointer for selecting individuals to the post.¹¹⁴

If we look the appointment of judges it is possible to disregard a competitor with no need for reasoning. Posts of judges and prosecution need special loyalty which cannot easily be exposed with examination. So, other factors like, private life of the applicant behaviors of the applicant, ethics of the applicant and other factors are expected to satisfy the appointer. These factors are to be collected through different means rather than interviewing the applicant which is the case in most other posts. The appointment of judges is ratified by the representative of peoples which may be HPR or state council while that of public prosecutors is ratified by Attorney General. Such appointers are not required to stick to any of the criteria to appoint or disregard

¹¹¹ Federal Civil Servants Proclamation, 2007, art. 2 (1), Proclamation No. 515, Federal Neg. Gaz. Year 13 no. 15 (hereafter Proc. 515/2007)

¹¹² Seyoum Yohanese, p. 106

In this regard, the decision of the federal supreme court cassation bench will be discussed in detail in the next chapter.

¹¹³ Employment and appointment are interchangeably used by the English version of federal civil servants proclamations and most regional civil servants proclamations as all of the regional civil servants proclamations accessed by the researcher are almost copy and paste of the federal one. For instance, see: federal civil servants proclamation no. 515/2007 and federal civil servants proclamation no. 1064/2017

¹¹⁴ Posts of judges and public prosecutors have special relevance for blinds because law is one of the fields which is joined by many blinds.

appointment. They can reject an applicant without reason. There is no remedy for the applicant too to seek remedy for rejection from appointment. The discrimination may come here. If appointers are not required to be guided with any guideline they may be tempted in rejecting blinds from appointment with their preexisting backward belief of nonn-competence of blinds for the post. Federal and regional courts or judicial administration councils marginalized blinds for trivial reasons.¹¹⁵

To conclude, any appointer should be required to be honest to the people he/she represents. He is not expected to betray such representation by being irrational. However, accounting its responsibility to his/her honest only is not adequate. Rather, there should be effective mechanism which makes appointers be free from bias and unfounded beliefs. If a blind is rejected to the post of judge due to his blindness the council should be required to ratify the appointment by the court of law. This does not mean representatives should be restricted from rejecting a person with other reason. But it should not be in the guise of other reasons that prohibit blinds from the post. So, if the council rejects all blinds without clear reason then, the rejection is irrational. Hence, councils should be obliged to appoint in cases which are explicit to show that the rejections are irrational. This works for any office involved in recruitment of judges. The office of public prosecution should be seen in the same way.

Other managerial positions are quite difficult to make them susceptible of further scrutiny by courts. Because, they lack character of competition as we experience from the past experiences of our state. In Ethiopia, either the federal government or the regions appoint persons in the managerial position without competition. But, there are experiences of other states to make appointments of managerial positions through competition and ratification. Our state has also few experiences in this regard. Presidents of University are currently chosen through competition. One of the vice president of universities needs to be women. Therefore, such kind of mechanisms should be available for disabled to realize the rhetorics for PWDs.

The meaning of employment under proclamation no.568/2008 applies to any stage of employment. This is not the case in the civil servants and labor proclamations.

¹¹⁵ The researcher was screened out in the recruitment of judges conducted by the federal supreme court two times. Training centers of regions also deprived blinds even from participating in lots.

In the labor proclamation, employment relation starts after employment.¹¹⁶ The labor proclamation does not oblige employers to follow specified procedure for employing. Despite the protection of PWDs during recruitment by proc. 568/2008, failure of the labor proclamation to facilitate competition for recruitment makes the protection incomplete. For instance, the company may prefer to employ through recommendation rather than the open labor market. The newly issued civil servants proclamation provides that vacancies should be filled through advertisement¹¹⁷ and discrimination based on disability is prohibited.¹¹⁸ It also provided the applicability of proclamation no.568/2008.¹¹⁹

(D) Prohibition of Discrimination and Acceptance of Affirmative Action

Proclamation no.568/2008 followed anti-discrimination policy and the draft is influenced by the laws of USA, Canada and Australia.¹²⁰ Discrimination is defined as, “to accord different treatment in employment opportunity as a result of disability”... The meaning of discrimination is further elaborated in other provisions. Absence of reasonable accommodation,¹²¹ existence of discriminatory situation,¹²² or any selection criteria¹²³ will be considered as discrimination if it can impair equal opportunity of the disabled person in employment relation. The proclamation illegalizes laws, practices, customs and attitudes that impair equal opportunity of the disabled.¹²⁴ Law includes proclamations and regulations. But, it is doubtful whether courts utilize this provision and declare illegality of a provision in a proclamation by virtue of proc. No.568/2008.

Affirmative action or PWDs is considered as exception of discrimination¹²⁵ and the proclamation followed a non-prohibition approach with regard to affirmative action rather than obliging

¹¹⁶ Labour Proclamation, 2003, art. 4 (1), Proclamation No. 377, Federal Neg. Gaz. year 10 no. 12 (hereafter proc. 377/2003)

¹¹⁷ Proc. 1064/ 2017, art. 16

¹¹⁸ Proc. 1064/2017, art. 13 (2)

¹¹⁹ Proc. 1064/2017 art. 49 (4)

¹²⁰ Minute of proc. 568/2008

¹²¹ Proc. 568/2008, art. 5 (3)

¹²² Proc. 568/2008, art. 5 (1)

¹²³ Proc. 568/2008, art. 5 (2)

¹²⁴ Proc. 568/2008, art. 5 (1)

¹²⁵ Proc. 568/2008, art. 2 (4)

employers to provide affirmative action for the disabled.¹²⁶ However, taking affirmative action measures becomes responsibility of employers with regard to women with disability although no indication is made as to what measures are to be considered as affirmative action.¹²⁷

The other measure of the HPR in this proclamation which can be considered as affirmative action is the provision which deals with closer score preference.¹²⁸ The provision however puts unnecessary requirement which opens a way for abuse of the right of PWDs by the employers. This requirement is the precondition of acquiring the necessary qualification by the disabled. This requirement is redundant because scoring equal or close score with the candidate who scored the highest point by itself is a guarantee for assuring the qualification that the disabled has.

(E) Reasonable Accommodation before Work Resumption and Accessibility

Reasonable accommodation is defined by proc. No.568/2008. However, the definition is not designed to clearly incorporate accommodations before the commencement of working. To some extent, adjustments and accommodations of workplaces and work environment have bearing to accommodate PWDs in their endeavor to find employment.¹²⁹ There are situations in which reasonable accommodation should be provided before employment. At that moment, reasonable accommodation is to be provided to blind job seeker, applicant, examinee or competitor.

The definition of reasonable accommodation shouldn't be interpreted as if it doesn't recognize accommodations before resumption of work because it should be interpreted as the context requires.¹³⁰ The scope of employment relation signifies that reasonable accommodation should be provided even during recruitment.¹³¹ However, this cannot be realized in practice for all types of accommodations. The accommodation which is provided on the spot cannot also be full. For instance, the physical inaccessibility cannot be rectified as soon as a disabled person applies. Therefore, there should be a detailed law which clearly obliges any employer to make its work

¹²⁶ Proc. 568/2008, art. 5 (4)

¹²⁷ Proc. 568/2008, art. 6 (1) (b)

¹²⁸ Proc. 568/2008, art. 4 (2)

¹²⁹ Proc. 568/2008, art. 2 (5)

¹³⁰ Proc. 568/2008, art. 2 para 1

¹³¹ Proc. 568/2008, art. 2 (2)

environment accessible without waiting disabled applicant to come to compete.¹³² This should not be limited to built-in environment only but also work instruments including accessibility of technology used by the employer. In general, reasonable accommodation is an immediate obligation related to individual with impairment taking in to account specific situations and particular contexts whereas, accessibility is related with needs of a group and need to be realized without request of individuals.¹³³ Ethiopia needs to develop accessibility standard without which reasonable accommodation alone cannot adequately respond to the rights of PWDs to access work and employment. As temporary alternative, it is possible to imagine various types of reasonable accommodations even for environment which is not accessible. For instance, application by telephone, change of exam place and etc. The type of accommodation should also be as much as possible the most effective one.

(F) Defenses

(1) Undue Burden

Undue burden is defined as, an action that entails considerable difficulty or expense on the employer in accommodating PWDs when considered in light of the cost of accommodation and capacity of the employer.¹³⁴ The definition is detailed and helps adjudicators to evaluate undue burden. However, the requirement of undue burden should have been totally eradicated to give the proper protection the disabled community deserves. According to this defense, reasonable accommodations which enable PWDs carry out their responsibility will not be fulfilled if they are believed by the employer or adjudicators as creating undue burden. Apart from dependence of the term on the evaluation of judges, the concept of undue burden has nullifying effect on the right to be employed of the disabled. The solution should have been to impose this burden on the government when it is beyond the capacity of the employer rather than preferring the disabled totally unprotected.¹³⁵

¹³² Of course, the building proclamation and its subsidiary laws impose such kind of obligation. But, their weaknesses will be highlighted in the other section.

¹³³ Committee on CRPD general comment 9, paras 20-24

¹³⁴ Proc. 568/2008, art. 2 (6)

¹³⁵ Ani B. Satz "Disability, Vulnerability, and the Limits of Antidiscrimination" Washington Law Review Vol. 83 (2008) pp. 513-570

The proclamation also provides that assignment of assistant for PWDs under no circumstance constitutes undue burden.¹³⁶ This gives important protection for disabled. The minute of the proclamation depicts that blinds always need assistant and the provision was amended to include employees with other type of disability.¹³⁷ Conversely, the amended phrase may likely expose to improper controversy because it has the implication that there are PWDs who don't need assistant and this may be interpreted to include blinds.¹³⁸ This defense may arise for blinds too if the minute is not consulted. To its surprise, the English version is mandatory and is proclaimed without amending the draft in respect of assistant.¹³⁹

Other than employment of assistant, further guideline is needed by the proclamation as to which accommodations do not constitute undue burden to reduce reluctance of employers to discharge their responsibility. Most of reasonable accommodations needed by blinds require low budget though employers refuse to accommodate based on capacity.¹⁴⁰

The proclamation made undue burden defense not to fulfill employer's obligation to meet reasonable accommodation but not to employ PWDs.¹⁴¹ Therefore, one may interpret that employers cannot raise this as a defense to reject disabled applicant on the pretext of undue burden rather not to fulfill the obligation of reasonable accommodation. This interpretation works unless the work cannot be undertaken by the disabled person without the fulfillment of reasonable accommodation and such accommodation cannot be made by the employer by virtue of the defense of undue burden.

(2) Inherent Job Requirement and Nature of Work vs. Qualification

One of the defenses available for employers while discriminating the disabled is inherent job requirement¹⁴² or dictation of nature of work.¹⁴³ The phrase, "inherent requirement of the job" is

¹³⁶ Proc. 568/2008, Art. 6 (2)

¹³⁷ Official public discussion of draft of proclamation 568/2008, January 17, 2018

¹³⁸ See, proc. 568/2008, art. 6 (1) (c) Amharic version

¹³⁹ Id, English version

¹⁴⁰ Even government offices lack willingness as the researcher saw from his own series of experiences.

¹⁴¹ Proc. 568/2008, art. 2 (6)

¹⁴² Proc. 568/2008, art. 2 (4)

¹⁴³ Proc. 568/2008, art.s 4 (1), 4 (3) and 5 (4)

only used in the definitional part and its definition is not provided.¹⁴⁴ It is unnecessary phrase because it is not possible to limit inherent requirement of the job as technological advancements may modify the requirements of the job and may make the impossible possible.¹⁴⁵ It can also easily be abused by employers as witnessed quite often.¹⁴⁶

The phrase, “unless the nature of the work dictates” is defined as, a job that could not be performed by a qualified person with disabilities even if reasonable accommodation is provided.¹⁴⁷ This defense is followed by the anti-discrimination provision¹⁴⁸ the connotation of which is proving that the nature of the work cannot be undertaken by those who have certain type of disability should precede prohibition. So, the burden of proof is on the institution prohibiting employment. Here, it should be underlined that the employer should first ensure that the work cannot be undertaken by the PWD before prohibiting and the provision does not allow refusal on the precondition of studying that the work can be undertaken by the persons having certain type of disability.¹⁴⁹

The incorporation of this defense faced stiff opposition from the representatives of the disabled who were present in the public discussion of the drafting process though with no acceptance. The reason for opposition was fright that the phrase opens way for abuse of the provision.¹⁵⁰ The proclamation did not define nor makes clear the meaning of qualification.¹⁵¹ The meaning of qualification varies from job to job. In order for a person to be qualified, he/she should be able to

¹⁴⁴ Proc. 568/2008, art. 2 (4)

¹⁴⁵ For instance, driving is considered impossible for blinds. However, google company has produced and is experimenting self-driven cars. This is best example to show that the impossible may become possible. See: <https://www.bbc.com/news/technology-38309834> (last visited on Dec. 31, 2018)

¹⁴⁶ Nthuse Norman Lebepe, Inherent Requirements of the Job as a Defence to a Claim of Unfair Discrimination: Comparison Between South Africa and United States of America (2010) (<http://ulspace.ul.ac.za/bitstream/handle/10386/487/dissertation%20lebepe%20n%20n.pdf?sequence=1&isAllowed=y>) last visited on may 9, 2018

¹⁴⁷ Proc. 568/2008, art. 2 (8)

¹⁴⁸ Proc. 568/2008, art. 4 (1)

¹⁴⁹ This precondition is heard many times. Case three under the next chapter is one of such examples.

¹⁵⁰ Official Public Discussion about Draft of Rights of Persons with Disabilities Proclamation prepared by Social Affairs Standing Committee held on January 17, 2008 in House of Parliament Hall no. 52

¹⁵¹ Shimeles Ashagre, p. 412

carry out the work effectively. Therefore, a person is not qualified if the nature of the work dictates as such.¹⁵² So, beyond redundancy of using the two synonymous phrases, the proclamation leads employers to commit discrimination by unnecessarily using the phrase “unless the work dictates”. The issue of disqualification and discrimination was discussed in a very similar way during the draft of Ugandan constitution.¹⁵³ Moreover, the nature of work cannot be a defense because of the reason raised for inherent requirement of the job.

(3) Disability as a Defense

The proclamation provides that the disabled has full responsibility.¹⁵⁴ Consequently, it puts that disability cannot serve as defense for failure to perform responsibility.¹⁵⁵ This is presuming that PWDs make their disability defense for their failure. Second, responsibility by itself presupposes failure. No one becomes responsible unless he/she committed fault or fails on his/her duties. Therefore, this is redundancy. Reiterating the responsibility of the disabled may serve as undue defense against the disabled even while the cause for not discharging responsibility of the worker is failure of the employer to meet reasonable accommodation. Finally and more importantly, the word “disability” is not followed by “alone”. Disability should be a defense if for instance reasonable accommodation is not provided by the employer. Without assignment of assistants, blinds are required to perform their activities entailing risk and error.¹⁵⁶ Therefore, in such cases, disability added with lack of reasonable accommodation should serve as a defense.

(G) Burden of Proof

The proclamation allowed workers with disability to sue based on solely the issue of discrimination.¹⁵⁷ This provision relieves PWDs from burden of proof and the employer

¹⁵² For instance, a blind cannot be qualified in driving in the current technology because seeing is one requirement of driving in today’s world.

¹⁵³ Jamil Ddamulira Mujuzi “The drafting history of the provision on the right to freedom from discrimination in the Ugandan Constitution with a focus on the grounds of sex, disability and sexual orientation” International Journal of Discrimination and the Law vol. 12 no. 1 (2012) p. 62

¹⁵⁴ Proc. 568/2008, art. 8 (1)

¹⁵⁵ Proc. 568/2008, art. 8 (2)

¹⁵⁶ The researcher is tempted with this challenge in all of his employment.

¹⁵⁷ Proc. 568/2008, art. 7

shoulders this responsibility.¹⁵⁸ Interpretation as if this provision is meant to burden of persuasion rather than burden of production¹⁵⁹ is not convincing when one view the Amharic version of the provision, the real conditions and the minute of the draft proclamation. The draft explanation and public discussion makes it clear that burden of proof includes burden of production and the rationale for this is evidences are found with the employer and PWDs face difficulty to produce evidences.¹⁶⁰ This is further stressed by the directive issued by the civil service ministry.¹⁶¹

One of the problems is that the proclamation did not clearly extend the procedure of evidence production. As to the proclamation, the disabled is required to only allege issue of discrimination. Then, the employer will be required to prove inexistence of discrimination. Finally, the disabled should produce evidence if the employer proves his case. Otherwise, there is no need for the production of evidence by the disabled if the employer fails to prove his case from the outset. However, courts are not practicing this due to failure of the legislature to clearly extend the procedure.

The other problem of the provision is its usage of the term “sue”. It should be framed to any proceeding in which discrimination is claimed because its applicability becomes in to doubt when the PWD is defendant and the burden of proof shifts from employer to the disabled by way of the regular evidence law.¹⁶²

¹⁵⁸ *ibid*

¹⁵⁹ Seyoum Yohanese, pp. 120-121

¹⁶⁰ Explanation of the draft of proclamation no. 568/2008 and Public discussion on the draft of proclamation no. 568/2008

¹⁶¹ Right to employment of civil servants with disability of federal civil service ministry implementation directive 2014, art. 12 (3), (may 2014) (hereafter federal civil service directive)

¹⁶² Assume the blind left his job due to discrimination. The employer sought the continuation of the work by the blind suffering from the discrimination or without the fulfillment of reasonable accommodation. This is just what happened on the researcher. The researcher terminated his job because of many factors among which were lack of reasonable accommodation in work place and failure of the employer to assign assistant. ANRS justice professionals’ training and legal research institute v. Wesen Alemu et-al North shewa high court file No. 0113051 (pending)

(H) Exemption from Court Fee

Waiver of court fee is not expressly provided by proc. No 568/2008 as done in other proclamations.¹⁶³ Cases of discrimination of PWDs after employment can easily and uncontroversially be entertained free of court fee because the case is entertained before the labor divisions, labor relations board, conciliator or civil service tribunal which are free from court fee.¹⁶⁴ Cases of grievances before employment however are controversial whether they can be entertained free of payment.

The labor division of courts, the labor relation board and the civil service tribunals do not have the power to entertain cases arisen before employment or contract of employment is entered. In such cases, civil benches of courts may entertain cases. The inexistence of clear law may lead courts to require plaintiffs to pay court fee.¹⁶⁵ This needs special focus as court fee can be one of the barriers to initiate cases of employment grievances by the disabled.

Disability is highly linked with poverty. Court proceeding is also more costly for PWDs.¹⁶⁶ Therefore, claims of discrimination based on disability should be free from court fee. This is true even though the person may have the means to pay court fee because the impairment and the social structure is source of cost and persons are not sure that they get remedy from courts fearing lack of awareness on part of the judiciary itself. Course which has direct relation with disability is not offered in Ethiopian law school universities.¹⁶⁷ Therefore, expecting lack of

¹⁶³ Cooperative Societies Proclamation, 1998, art. 31 (3), Proclamation No. 147, Federal Neg. Gaz. Year 5 No. 27, as Amended, Cooperative Societies (Amendment) Proclamation, 2004, art. 2 (3), Proclamation No. 402, Federal Neg. Gaz. Year 10 No. 43;

Proc. 377/2003

¹⁶⁴ Proc. 377/2003

The basis of the public service tribunal not to require payment of court fee is not found in the civil servants proclamations. Nevertheless, the researcher ascertained that court fee is not paid before the tribunals by personally filing charge before the Addis Ababa public service and human resource administrative court.

¹⁶⁵ For instance, Getu was required to pay court fee as we see it in the next chapter. (see case two in Chapter three).

¹⁶⁶ Likando Kalaluka “Towards an effective litigation strategy of disability rights: The Zambia experience” 1 African Disability Rights Year book (2013) pp. 165-191

¹⁶⁷ Abdi Jibril, Disability Issues in the National LLB Curriculum: An Assessment Report (2015) unpublished

awareness from judges who were offered no course related with disability as if they lack awareness on the subject is free from error.

(I) Remedies

(1) Administrative Remedies

Remedies for discrimination on employment of PWDs can be: Administrative, Criminal, or Civil relief. Administrative remedies can be inflicted on the employer and/or the official responsible for discrimination. The type of administrative measure can be warning, fine, suspension or closure of the undertaking. Punishment on the official can be warning, fine up to specified amount of salary, demotion/down grading or dismissal.¹⁶⁸

Disciplinary measures are available within civil servants laws. Melaku explains that discrimination on employment entails disciplinary measures on those persons who are responsible and even on committee members and the measure may go to the extent of dismissal. He further described that the recruitment will be suspended until the disappointment is investigated if there is reasonable doubt as to the existence of discrimination. The unlawful employment can be cancelled even after 6 months as the explanation of Melaku.¹⁶⁹

Proclamation no.568/2008 recognized administrative measures to protect sexual violence on women with disabilities only.¹⁷⁰ Administrative punishment is only imposed on sexually harassing employees relieving employers from any administrative measure. Employers who create a system of sexual violence or who does not create system which protects sexual violence and those who do not take administrative measure on transgressors should be administratively liable to the extent of closure.

Participant of the public discussion of the draft proc. No.568/2008 recommended the inclusion of the word “strict” before the phrase “administrative measure” despite its ignorance with the

¹⁶⁸ These punishments are imposed for disciplinary offenses committed by employees of government offices though cases of discrimination based on disability are not specifically dealt with. Proc. 515/2007, art. 67 (1)

¹⁶⁹ Interview with Melaku Temesgen, Director of Human Resource’s Job Leadership, Implementation and Evaluation Directorate of Addis Ababa Public Service and Human Resource Development (May 18, 2018)

¹⁷⁰ Proc. 568/2008, art. 6 (1) (d)

reason of existence of such protection with the civil servants proclamations.¹⁷¹ This argument is not convincing because, from the very beginning, rights of disabled are necessitated to realize human right protection in line with their specific situation and vulnerability. Moreover, civil servants laws are not applicable on non-governmental undertakings.

The provision is also flawed because it only protects women with disabilities from sexual harassment and failed to give such protection during discrimination and harassment based on disability. The provision does not also confer any administrative remedy for the violation of the employment right of Males with disability and harassments related with their employment.

Even with regard to sexual violence, the provision does not provide better protection to women with disability than they benefit as a result of being women.¹⁷² The protection is also limited for sexual violence that occurs in work places only. Sexual violence occurs outside workplaces and may be expressed within employment relation.¹⁷³ Since the salient focus of this research is finding employment, it is concerned with discriminations, harassments and violence committed before the conclusion of contract of employment. During this stage, women are obliged by employers to have sexual relationship to secure employment other than other forms of disability based discrimination. Women with disability are more prone to this violence because employers understand that they have no choice than agreeing to the offer. The researcher found a woman who is provided such offer by employee of human resource in one of the sub-cities of Addis Ababa.¹⁷⁴ In general, PWDs are not accorded administrative remedy from abuse of their right based on disability because of lack of such remedy as a result of disability based discrimination and harassment and even the right in which women disability are accorded can be obtained by the mere fact of their gender without alleging disability.

¹⁷¹ Official public discussion of draft proc. 568/2008, January 17, 2008

¹⁷² The repealed federal civil servants proclamation is better than article 6 (1) (d) of proclamation no.568/2008 in protecting women from sexual violence. It states that sexual violence entails rigorous disciplinary measure. (proc. 515/2007, art. 68 (13))

¹⁷³ Therefore, this specific provision should better be framed as, “from sexual harassments and violence caused in connection with employment relation”.

¹⁷⁴ This information is found through snowball sampling technique and the victim is not voluntary to divulge her name and the name of the officer.

(2) Criminal Remedies

In Ethiopia, basic types of Criminal punishments entailed on natural persons are: principal punishments like, rigorous or simple Imprisonment, death, compulsory labor, fine, confiscation, sequestration, forfeiture, or secondary punishments such as, caution, reprimand, admonishment, apology, deprivation of rights, and other MEASURES APPLICABLE IN SPECIAL CASES.¹⁷⁵ Criminal punishments on legal persons are: fee, deprivation of civil rights, suspension and Withdrawal of a License and Prohibition and closing of an Undertaking.¹⁷⁶

Proclamation no.568/2008 has taken the alternative of fee as a penalty.¹⁷⁷ This is applicable for any contravention of the employer including right violation at the recruitment stage. The wordings of the provision show that the penalty is that of criminal nature.¹⁷⁸ Therefore, the money will be paid to the government and the accuser is public prosecutor.¹⁷⁹ This has both positive and negative consequences.¹⁸⁰

¹⁷⁵ The Criminal Code of the Federal Democratic Republic of Ethiopia, 2004, art.s 90-178, Proclamation no. 414, Federal Neg. Gaz. (Extraordinary Issue) year 10 no. 59 (hereafter Criminal Code)

¹⁷⁶ *ibid*

¹⁷⁷ Proc. 568/2008, art. 11

¹⁷⁸ The title of the article says, penalty which is mostly used for criminal punishments though the concept of penalty is not new for non-performance of contract. Sub-article 1 also uses the phrase, “Unless the provisions of the Criminal Code provide more severe penalties,” which presupposes that this provision of proc. No.568/2008 is criminal sanction. The word “fine” also signifies the same.

¹⁷⁹ Criminal Code

The Criminal Procedure Code Proclamation, 1961, Proclamation No. 185, (Extraordinary Issue no. 1) Neg. Gaz. year 21 no.1 (hereafter Criminal Procedure Code)

¹⁸⁰ The positive side is the higher capacity of public prosecutor and police to penalize the criminal in terms of economy, legal knowledge and power; exoneration of the victim from prosecuting; promotion of the issue as public interest and similar advantages. Though the above is presumed, the practice suggests otherwise. Lack of awareness of police and public prosecutors that discrimination of PWDs entails criminal liability and their reluctance to prosecute has been seen a number of times as will be discussed in the next chapter. Higher energy and time of the victim is required for convincing police and prosecutors, for collecting evidence and for repeated telephone and personal testimonies. Furthermore, the fact that the disabled gets no payment from the penalty causes the victim to lose interest on criminal prosecution.

The punishment is on the employer.¹⁸¹ Employees who committed the discrimination can be liable. However, their liability is not criminal as we understand from the way the provision is crafted. It is employer who has the right to make them liable.¹⁸² Criminal sanctions in their nature entail liability when reported by any person and it is up to the public prosecutor to deal with the case. Thus, the employer has no right to seek or not to seek the penalization of its employees had they been criminally liable unless the crime is punishable upon complaint.

Whether the provision is applicable on government institutions is doubtful. Article 34 of the criminal code relieves them of liability. Article 3 shows that the general part of the criminal code is applicable on other criminal laws unless the later has special provisions on that regard. Proclamation no.568/2008 provides that the word “employer” includes government offices.¹⁸³ This leads us that article 11 of the proclamation is special provision and needs to be applicable on government offices too.¹⁸⁴ Arguing that such provision is not applicable on government offices erodes the protection of PWDs by removing the little punishment recognized by the proclamation. One may argue that punishing government offices is of no purpose since the payment derived from the punishment will be deposited to the government itself. However, a specific government office has its own budget and depletion of such budget has discouraging effect on its misdeed. Nonetheless, punishment other than the fine specified under proc. No.568/2008 such as closure is unthinkable on government institutions. Employees of government and public institutions who committed discrimination may be accounted by corruption offenses.¹⁸⁵

The amount and kind of the penalty needs special attention. The fine imposed by the proclamation is too low for employers. Maximum of 5,000 birr¹⁸⁶ is not more than two months

¹⁸¹ Proc. 568/2008, art. 11 (1)

¹⁸² Proc. 568/2008, art. 11 (3)

¹⁸³ Proc. 568/2008, art. 2 (3)

¹⁸⁴ Here, the debatable issue is whether the cumulative reading of art. 2 (3) and art. 11 (1) of proc. 568/2008 is adequate to meet the requirement of the phrase, “expressly provided therein” as stipulated under art. 3 of the criminal code.

¹⁸⁵ Corruption Crimes Proclamation, 2015, Proc. No. 881, **Federal Neg. Gaz.** year 21, no. 36 (hereafter proc. 881/2015)

¹⁸⁶ Proc. 568/2008, art. 11 (1)

salary of the assistant employed for the blind. This can be even achieved after long debate of the existence of discrimination. Therefore, it is not sufficient to discourage employers because they enter in to calculation of benefit which may accrue by discrimination and the money to be lost by possible prosecution.¹⁸⁷

Non-rectification of the contravention entails double penalty.¹⁸⁸ This provision presumes that the court orders rectification measures to be taken. However, it is not clear whether the criminal bench of the court can order such measure or the provision becomes applicable after the decision of civil bench of the court. Nor is it clear whether the procedure of double penalty starts afresh.¹⁸⁹

Deprivation of right¹⁹⁰ can be imposed together with principal punishments such as fine.¹⁹¹ Repeated violation of the right may also entail suspension and withdrawal of license and closure of the establishment.¹⁹² However, using such provisions needs active prosecutor and active judiciary. In general, the criminal punishments provided by proclamation no.568/2008 are not adequate, lack clarity and are meaningless without being supplemented by the criminal code.

(3) Civil Remedies

According to the Ethiopian civil code, major types of remedies are: forced performance, cancellation of contract, reinstatement, damage, nominal damage, injunction, and restitution.¹⁹³

¹⁸⁷ If the employer succeeds in discriminating a blind without being prosecuted, the costs of reasonable accommodation which include cost of employing assistant remains. Moreover, given backward attitude of incapability of blinds, they assume that incompetent employee will be replaced by the competent one. If the converse becomes true and their discrimination is reached upon, the only penalty becomes maximum of 5000 birr which is too low due to financial capacity of employers and low purchasing power of birr.

¹⁸⁸ Proc. 568/2008, art. 11 (2)

¹⁸⁹ Despite lack of clarity, it is better if courts give order of penalty and decide together that the employer pays double if it does not comply with the measure within a month. Finally, the prosecutor can initiate execution following up the compliance of the employer.

¹⁹⁰ Criminal code, art.s 123 (c) and 3

¹⁹¹ Criminal Code, art.s 121 and 3

¹⁹² Criminal Code, art.s 142, 143, and 3

¹⁹³ Civil Code Proclamation, 1960, art.s 1771-1818 and 2090-2123, Proclamation no. 165, Neg. Gaz. (Gazette Extraordinary), year 20 no. 2 (hereafter Ethiopian Civil code)

Civil remedies recognized by the labor code are: severance payment, compensation, reinstatement and right to resign.¹⁹⁴

The biggest weakness of proclamation no.568/2008 is its failure to clearly specify list of possible civil remedies. This left PWDs under the mercy of the discretion of judges. Indeed, it is possible to utilize most of the civil reliefs cited at the outset. Article 11 (2) has clear indication as it presumes that courts order rectification of misdeed.¹⁹⁵

Hence, if the misdeed is rejection of blind improperly, the obvious rectification will be admission of the discriminated. This is also justified by the principle of forced performance since provisions of the general contract apply to special contracts and other obligations.¹⁹⁶ However, the remedy of order to employ only applies for PWDs who are discriminated after they scored no less than closer point compared with non-disabled competitor. If the discrimination is during application, screening, exam delivery, selection for interview or other stage of recruitment, order for employing the victim cannot happen. The proclamation should have clearly stated that failure to discharge the duty of reasonable accommodation or commission of discrimination will be sanctioned by annulment of the process as done in other jurisdictions.¹⁹⁷

The other remedy is damage and other modes of compensation. In particular, relation of rejected PWDs and the employer will be governed by tort law since they did not enter in to contract¹⁹⁸ and violation of proc. 568/2008 is fault pursuant to the tort law.¹⁹⁹ One of assessment of the compensation will be the amount of salary which would have been paid had he been employed and any other material damage sustained due to discrimination.²⁰⁰ As described above, judgment

¹⁹⁴ Proc. 377/2003, art.s 32-43

¹⁹⁵ Proc. 568/2008, art. 11 (2)

¹⁹⁶ Ethiopian Civil Code, art.s 1776, 1676 and 1677

¹⁹⁷ Peru Law No. 29973, General Law On Persons With Disabilities, Art. 48.1

¹⁹⁸ Here, the other controversy may arise as a result of the definition of employment relation. Argument may arise that the inclusion of recruitment in the definition of employment relation leads to the conclusion that law of contract applies. In any way, there is no much problem since law of contract which deals with damage refers to the extra-contractual liability and the bench of courts which entertains cases of contract and tort is civil bench.

¹⁹⁹ Ethiopian Civil Code, art. 2035

²⁰⁰ Ethiopian Civil Code, art. 2090

as to the payment of salary may be provided if the PWD is discriminated while he/she should have been selected to be employed. Injunction order not to repeat committing discrimination on PWDs may be sought by associations representing the interest of their whole members. This remedy does not serve much to the discriminated blind applicant during the competition for employment. Nominal damage is possible if no other remedy is available for discrimination which is less likely in cases of discrimination to be employed.²⁰¹

The labor code and civil servants proclamations are only applicable for discriminations faced after the conclusion of employment contract.²⁰² The labor code has special advantage since it provides compensation up to 6 months reducing the burden of victims to prove the exact material damage.²⁰³ Lack of this kind of provision in proc. No.568/2008 makes PWDs suffer from discrimination.

Proclamation no.568/2008 also lacks special moral compensation. Moral injury is one of the highest and inevitable injuries which sustains as a result of discrimination. Most of right violations of disabled persons are not material damages measurable in terms of money. Failure to provide work, discrimination in competition for job, harassment due to disability, failure to provide assistant, failure to meet the obligations of reasonable accommodation and ETC can better be expressed in terms of moral injury. Therefore, the law should have devised effective remedy for moral injury.

With the existing law, 1000 birr is the highest compensation to be paid for moral injury,²⁰⁴ a compensation which cannot be even used as a remedy. The copyright proclamation²⁰⁵ and the mass media proclamation²⁰⁶ amended such limit in specific cases. The international instruments

²⁰¹ Ethiopian Civil Code, art. 2104

²⁰² See: proc. 377/2003, art. 4 (1) and the federal civil servants proclamation 1064/2017 as an example.

²⁰³ Proc. 377/2003, art. 43

²⁰⁴ Ethiopian Civil Code, art. 2116 (3)

²⁰⁵ Copyright and Neighboring Rights Protection Proclamation, 2004, art. 34 (4), Proclamation No. 410, Federal Neg. Gaz. year 10 no. 55

²⁰⁶ Freedom of the Mass Media and Access to Information Proclamation, 2008, art. 41 (2), Proclamation No. 590, Federal Neg. Gaz. Year 14 no. 64 (hereafter Proc. 590/2008)

provide effective remedy as obligation of states.²⁰⁷ One may convincingly argue that these provisions of ICCPR and UDHR amended the civil code with regard to the remedy available for moral injury since Ethiopia ratified the convention and the constitution made ICCPR and UDHR part and parcel of the law of the land.²⁰⁸ This is also supported by the right to access to justice enshrined under the constitution.²⁰⁹ The compensation with 1000 birr limit may be adequate during the promulgation of the civil code. It is unarguably inadequate at this moment. This is due to the difference in purchasing power of the current birr with the previous Ethiopian dollar. The inflation Ethiopia sustained in the past decade alone shows such difference. The cassation bench of the federal Supreme Court however stuck to the maximum of 1000 birr.²¹⁰

Moreover, procedural safeguards such as: suspension of exam or employment until case is finally disposed and authorization of bodies to inspect documents for recruitment even before adjudication would have given better protection.

In general, the sanctions and remedies must be effective, proportionate and dissuasive.²¹¹ The basic principles of reparation includes compensation for physical or mental harm; Loss opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or experts assistance, medicine and medical services, and psychological and social services.²¹²

²⁰⁷ For instance, see: ICCPR, art. 2 (3) (a) and Universal declaration of human rights, (1948) art. 8

²⁰⁸ FDRE constitution, art. 9 (4)

²⁰⁹ Access to justice cannot be realized without the existence of effective remedy. Therefore, the constitution should be interpreted to allow adequate moral compensation repealing the Civil Code to the extent it is inconsistent with the right to access to justice. FDRE constitution, art. 37.

²¹⁰ Ministry of agriculture and rural development v. Mrs ilsha siraj, federal supreme court cassation file no. 32144 (megabit 23, 2000 e.c.) Cassation publication Vol. 5 p. 156;

Awash insurance SC v. Mehamed Aba Ali et-al, federal supreme court cassation file no. 69428 (yekatit 26, 2004 e.c.) cassation publication Vol. 13 p. 486

²¹¹ Susan L. Belgrave Barrister, “Remedies and Sanctions for Discrimination” (2011) (http://www.era-comm.eu/oldoku/Adiskri/04_Remedies/2011_09_Belgrave_EN.pdf) last visited on may 9, 2018

²¹² Ibid

(J) Advocacy

Other than the victim, 3 bodies are authorized to institute action before court. These are: association or trade union in which the victim is a member and the concerned organ to implement the proclamation.²¹³ Individuals can also be represented by public prosecutor or an advocate representative if the disabled proves that he cannot afford to pay for legal representative.²¹⁴ Public prosecutors are not independent and it is not clear whether they can sue government institutions since there is possibility that the institution can be represented by the attorney general. Therefore, it is better to establish independent body which provides advocacy service for the violation of any right of PWDs having its budget from the government.²¹⁵

The word “association” under the proc. No.568/2008 should be interpreted based on the meaning provided for it under the civil code. The only requirements for forming association are: group of not less than two persons and purpose of securing no profit.²¹⁶ Based on this requirement, charities, societies, and any groupings can be included within the purview of the definition of association if they meet the requirement of formation.

However, the requirement of membership is problematic. First, charities do not have members rather beneficiaries. This is also provided under the charities and societies proclamation.²¹⁷ Making charities out of the list has negative effect on the rights of PWDs.

Second, if membership is a requirement, proof of membership will also be required which becomes bureaucracy for the victim either to prove or becoming member fulfilling all of the

²¹³ Proc. 568/2008, art. 10 (1)

²¹⁴ Federal Attorney General Establishment Proclamation, 2016, Art.s 6 (4) (e) and 11 (3) (g), Proclamation No. 943, Federal Neg. Gaz. Year 22 no. 62

Federal Court Advocates’ Code of Conduct Council of Ministers Regulations, 1999, art. 49 (1), Regulation No. 57, Federal Neg. Gaz. Year 6 No. 1

²¹⁵ Eilionoir Flynn, “Making human rights meaningful for people with disabilities: advocacy, access to justice and equality before the law” The International Journal of Human Rights

²¹⁶ Ethiopian Civil Code, art. 404

²¹⁷ Charities and Societies Proclamation, 2009, art. 14, Proclamation No. 621, Federal Neg. Gaz. Year 15 no. 25 (hereafter Proc. 621/2009)

requirements needed for membership. Here, note should be taken that even a need for single action erodes interest of PWDs to institute court action because infrastructures, goods and services are not accessible and challenge patience and persistence. There is no need for membership if the association is willing to represent.

The provision failed to allow any individual to represent the disabled victim. This makes it similar with the constitution with no better protection. So, it should have allowed public interest litigation providing that no vested interest is required to institute action during violation of proc. No.568/2008. There are proclamations which recognized this protection in specific issues.²¹⁸

It is not clear from the proclamation whether the association sues the employer in its own name or in the name of the victim. Whether the association can represent the disabled defendant sued by the employer is not clear. Whether the willingness of the disabled should be secured for associations to take court action has not been made express. In general, the representation has not been supported by effective procedure.

The capacity of associations to advocate for the rights of PWDs is fundamentally reduced after the issuance of proclamation no.621/2009. The proclamation prohibited promotion of the rights of disabled unless the charity or society is structured in the form of Ethiopian charity or society²¹⁹ the effect of which is restriction of foreign fund above 10% of total income.²²⁰ Whether the meaning of the word “promotion” includes advocacy or not is the crucial issue. If the meaning is prohibition of advocacy, the proclamation has the effect of partially repealing art. 10 of proc. No.568/2008 because of the principles of “the latter prevails over the former” and the repealing provision of the charities and societies proclamation.²²¹ Applying the principle of

²¹⁸ Federal Courts Advocates’ Licensing and Registration Proclamation, 2000, art.s 7 (c) and 10, Proclamation No. 199, Federal neg. Gaz. year 6 no. 27;

Ethiopian Human Rights Commission Establishment Proclamation, 2000, art. 22 (1), Proclamation No. 210, Federal Neg. Gaz. year 6 no. 40;

Institution of the Ombudsman Establishment Proclamation, 2000, art. 22 (1), Proclamation No. 211, Federal Neg. Gaz. Year 6 No. 41;

Environmental Pollution Control Proclamation, 2002, art. 11 (1), Proclamation No.300, Federal Neg. Gaz. Year 9 No. 12

²¹⁹ Proc. 621/2009, art.s 14 (2) (l) and (5)

²²⁰ Proc. 621/2009, art. 2 (2)

²²¹ Proc. 621/2009, art. 110

“special law prevails over the general” and the repealing provision of the charities and societies proclamation has not the intention of repealing proc. No.568/2008 is not convincing when viewed from the purposes of the lately issued proclamation. Similar argument is used by the cassation bench in deciding proc. No.568/2008 has no the intention of repealing Addis Ababa city administration regulation no.24/2007.²²²

Charities and societies proclamation has great problem on the activity of charities and societies working on blinds too. Added to the proclamations and regulations, the directives and the orders of the agency are also restrictive. The definition of administrative expense is wider and includes most of truly purposive expenses.²²³

Contrary to the proclamation,²²⁴ the agency also issued a directive which provides that income generating activities should be related with the activity of the association.²²⁵

The agency also intervenes even in the structure of associations which it has approved.²²⁶

The decision of the agency that mass-based associations should be converted in to Ethiopian association has positive implication for the advocacy of the right to employment of disabled

²²² See: case one in chapter 3, Mekonen v. Addis Ababa justice bureau

²²³ Charities and societies agency’s directive issued to determine costs for the implementation of objectives and administration of charities and societies no. 02/2011

The applicability of 70-30 budget allocation on associations is raising debate even within the employees of the agency because they are engaged in advocacy, the work of whose administration is also benefit for the members. Example, a blind association sued an employer for the violation its blind member’s right using its lawyers. The payment of the lawyers is not only administration but also purposive. Interview with Gebre Teshome, Public Relation Officer of Ethiopian National Association of the Blind (March 16, 2018))

²²⁴ Proc. 621/2009, art. 103

²²⁵ Charities and societies agency’s directive issued to determine the engagement of charities and societies in income generating activities no. 07/2011, art. 5

To show with example, a blind association need to sell braille display, Braille paper, slate and stylus, cane and similar instruments which are used for blinds only. Engaging in shopping business to support the expense of its lawyers is prohibited by the directive.

²²⁶ For example, ENAB is ordered to change the name of its board to executive council. Since the name of its structure is decided by the General Assembly, the association cannot undertake its activities until it conducts its meeting after a year.

though the intervention is unlawful and may have dissolution effect.²²⁷ As a positive contribution, the agency has issued a directive which has direct benefit for the employment of the disabled and the capacity of associations for advocacy. According to this directive, salary and other expenses of Charities and societies incurred by employing disabled persons is considered as purposive cost which reduces the burden of 30-70 budget outline duty of associations which employ PWDs.²²⁸ This reduces administrative costs of charities and societies which employ PWDs which may have encouraging effect to employ a disabled applicant. In general, associations established/governed by proc. No.621/2009 suffer from the restrictive rules of the proclamation, regulation and directive and the orders of the agency.²²⁹

With the change of ruling persons in 2018, the restrictions of civil societies has been and is being alleviated. The proclamation is on the verge of being replaced by unrestrictive proclamation.²³⁰

(K) Implementing Legislations and Follow up

(1) Implementation Power

One of the implementation mechanisms is through legislating delegated legislation. Though the council of ministers is delegated to issue regulation,²³¹ it didn't still prefer to issue regulation. This is very essential since there are a number of issues which are not elaborated by the proclamation and need regulation for their uniform implementation. The ratification of CRPD needs more explanatory laws. One of such mechanisms can be issuing regulation until drafts of comprehensive and detailed proclamations are on the table.

²²⁷ ENAB is converted in to Ethiopian association obliged by the charity and society agency. The benefit of this decision is obligation of associations to engage in advocacy by obliging associations to be converted in to Ethiopian association. However, it is less likely that obliged associations engage in advocacy full-heartedly.

²²⁸ Amendment of the Charities and societies agency's directive issued to determine costs for the implementation of objectives and administration of charities and societies no. 02/2011

²²⁹ Mizanie Abate, "The Implications of 2009 Ethiopian CSOs Law on the Right to Freedom of Association" Journal of Ethiopian Law vol. 27 no. 1 (2015)

²³⁰ The draft of the proclamation has been submitted to the House of Peoples' Representatives.

²³¹ Proc. 568/2008, art. 9 (1)

MOLSA, the federal and regional civil service agencies/bodies²³² are empowered to issue directive for the implementation of the proclamation and to follow up and ensure the proper implementation of the proclamation and implementing/delegated legislations.²³³ The provision does not provide power for institutions other than prescribed above. The word “appropriate regional organ” depicts that such organs are counterparts of the federal civil service agency.²³⁴ The implication of a cassation decision in this regard will be touched in the next chapter.

The concerned organ entrusted to implement proc. No.568/2008 is empowered to institute suit before court.²³⁵ The labor inspector is delegated such right with regard to employers governed under the labor proclamation²³⁶ while the federal civil service directive implicitly preferred to make the ministry out of court action.²³⁷

Except the empowerment of such organs to implement and follow up the implementation of proc. No.568/2008, their specific power is not provided.²³⁸ This is not also explained by directives.

All regions didn't issue directive to implement proc. No.568/2008. Addis Ababa civil service agency prepared a document to implement the proclamation though the status of the document is not known.²³⁹ There is no organ that issued guideline which helps for effective implementation and follow up of the proclamation.

²³² Their name is different from time to time. At this time, the federal civil service agency is called ministry of public service and human development and the regional bodies are named as public service and human development bureau.

²³³ Proc. 568/2008, art. 9 (2) and (3)

²³⁴ *ibid*

²³⁵ Proc. 568/2008, art. 10 (1)

²³⁶ Federal Democratic Republic of Ethiopia Ministry of Labor and Social Affairs, Directive of the Right to Employment of Persons with Disabilities 2011, art. 13 (April 18, 2011) (hereafter MOLSA directive)

²³⁷ Federal Civil Service Directive, art. 12

²³⁸ Proc. 568/2008, art. 9

²³⁹ The document is called by the name of both circular and directive. Its contents are also the mixture of the characters of both circular and directive.

Whether the alternative is choosing to wait the promulgation or to apply similar directives of others organs by way of analogy for the regions in which the responsible body did not issue directive becomes debatable. The latter option has an immediate relief for victims. Moreover, a regional government should not be allowed to discriminate by its failure to issue directive. Without well-prepared directive, the rights enshrined in the proclamation become floating. Suing the organs to issue directive may be another option though it is not known whether the courts make it justiciable.

Lack of specific ministry/organ in the government structure is one of the decisive factors for the lowest protection afforded for PWDs. Most problems created on disabled are unique from the problems faced by other segment of the society. Unique problems need unique responses. This can be done by legally establishing an organ which is fully entrusted with protections of the rights of disabled only. This should be supplemented with specific departments of each ministry through the mainstreaming approach. The proclamation which defines powers and duties of the executive organ provides that each ministry has power and duty to create conditions whereby PWDs benefit from equal opportunities and full participation.²⁴⁰ The practicability of this provision is doubtful if the ministries do not establish department.²⁴¹

By entrusting MOLSA to implement CRPD and proc. No.568/2008, the issue of disability is suppressed with in large number of issues. MOLSA, which is entrusted to ensure the protection of the rights of disabled,²⁴² has plenty of tasks other than disability issues.²⁴³ It lacks competence to undertake all of its activities.

²⁴⁰ Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation, 2015, art. 10 (4), Proclamation No. 916, Federal Neg. Gaz. Year 12 no. 22

²⁴¹ For example, ministry of health has focal person on persons with disabilities. Representatives of associations of the disabled requested so that it becomes structured as department though it was not accepted by the current minister. Discussion of ministry of health and persons with disabilities' organizations and associations at Hilten hotel, may 02, 2018

²⁴² Proc. 676/2010, art. 3 and proc. 568/2008, art.s 9 and 10

²⁴³ Proc. 916/2016, art. 9 (22)

(2) Major Contents of Implementing Legislations

(I) Definition of Disability

According to the proclamation, the person qualifies as having disability if he/she meets three basic requirements. 1. Equal employment opportunity of the person is reduced; 2. Equal opportunity is reduced as a result of economic, social, or cultural discrimination; and 3. Such discrimination happened following either of physical, sensory or mental impairment.²⁴⁴ This shows that the proclamation followed social model in defining having disability.²⁴⁵

The proclamation did not want to clearly specify which groups are to be considered as disabled. The reason can be its approach of anti-discrimination approach. Since every person is entitled to non-discrimination, one may think that even defining is not important. Nevertheless, clearly knowing those persons who fall and doesn't fall within the definition becomes useful to determine reasonable accommodation and apply affirmative action to the extent it exists however lower it may be.

There are states which prefer to provide two definitions of PWDs the one applicable for affirmative action measures and the other applicable for the rules of anti-discrimination. The later becomes broader and the former narrower.²⁴⁶ This cannot be surprising for Ethiopia because even proc. 568/2008 applies for employment only while the practice shows us that the directive which allows importation of car free from tax is applied to visually impaired persons discriminately.²⁴⁷

MOLSA directive gave detailed and varied definition from the proclamation. First, it defined disability rather than defining a person with disability. The requirements are: 1. The existence of physical, sensory or mental impairment; 2. The impairment stays or have stayed for more than 12

²⁴⁴ Proc. 568/2008, art. 2 (1)

The English version of the proclamation is a little bit different in that it somehow varies the cause and effect relationship.

²⁴⁵ Seyoum Yohanese, p. 102

²⁴⁶ See for example, Kent Sezer, Jacinta Epting, Neal and Leroy, Rights, Remedies, and Procedures under Illinois Law (2012) p. 17 (<https://www.nealanderoy.com/wp-content/uploads/sites/105/2014/06/IICLE-Employment-Discrimination-2012.pdf>) last visited on may 9, 2018

²⁴⁷ Partially blind persons told the researcher that they are not provided with such incentive.

months; and 3. The impairment creates substantial limitation on the day to day activities of the person.²⁴⁸ To make the definition fuller, the directive also defined the phrases, disability that occurred frequently; substantial limitation; day to day activity; and listed cases of inapplicability of the definition.²⁴⁹

Proclamation 101/1994 and MOLSA directive have similarity in that both listed different types of disability and regulate causes of disability.²⁵⁰ The civil service directive and the Addis abeba circular reiterated the definition stipulated in the proclamation.²⁵¹

Yohanese criticizes the MOLSA directive that its definition is incompatible with the proclamation it is meant to implement.²⁵² Agreeing with part of the definition which deals with causes of disability, the researcher suggest otherwise. Since directives are tools to see rights enshrined in proclamations on the ground, they have to be specific and easy to implement rather than crafted theoretically. To this end, the directive should be more precise even with regard to the types of disabilities it acknowledged. With regard to exclusion of possible types of disabilities, it is possible to craft the directive in such a way that persons who believe that their disability should be included for the implementation of the proclamation can discuss with a specific organ to amend the definitional part through guidelines.²⁵³ Otherwise, we end in arguing on the existence of disability.²⁵⁴

(II) Avoidance of Further Screening

One of the provisions of MOLSA and civil service directives which provide greater protection to realize the right of PWDs to be employed is the one which deals with avoidance of further screening for PWDs. According to the directives, disabled applicants should be called for exam

²⁴⁸ MOLSA directive, art.s 3 (1)and (2)

²⁴⁹ MOLSA directive, art.s 3 (3), (5), (6), and 4 (3)

²⁵⁰ Proc. 101/1994, art. 2 (1);

MOLSA directive, art.s 3 (6), 4 (3), and 6

²⁵¹ Federal Civil service directive, art. 2 (2);

Addis Ababa circular, art. 1

²⁵² Yohanese Teressa, pp. 98-99

²⁵³ It should be remembered that disability is an evolving concept. CRPD, preamble (e)

²⁵⁴ The researcher was requested his advice from employee of South Wello zone whether one eyed competitor should be benefited with the “close score” benefit recognized in the proclamation.

if they meet the minimum requirement set during the advertisement.²⁵⁵ This gives chance to show the capacity of disabled which may be lost by grade report and work experience. It also minimizes discriminations that may happen during recruitment. Employers may be tempted to follow screening requirement which disabled applicants don't fulfill since they know any information of the applicant once job application is made. Avoidance of further screening is not recognized by Addis Ababa civil service circular. Other organs did not issue directive at all and such protection is not available unless we use analogy or judicial activism.

(III) Closer Point Preference

Proc. No.568/2008 provided that the disabled will be selected for employment or training if he/she has equal or closer score with the non-disabled candidate.²⁵⁶ The proclamation left the meaning of closer point to regulations or directives. The change of "close score" to "low score" was suggested during discussion of the drafting process. The need to determine the number of point was also raised at the same meeting.²⁵⁷ This was not accepted by one of the explainers of the draft proclamation with the reason that this should be dealt with by subsidiary legislations. The final version does not contain specified number of point difference.

3 percent is used for long as a reference point even before proc. No.568/2008 was promulgated.²⁵⁸ MOLSA directive provides that if the difference between the disabled and non-disabled is not more than 3 percent, preference will be given to the disabled. It further provides that preference will be accorded for women with disability if she scores equal point with male disabled. The provision is then followed by awkward sentence by providing that the interest of the employer will be decisive if both disabled persons with the same gender score equal point.²⁵⁹ This opens way for corruption, legalizes discrimination among disabled persons and may be abused by employers leading them to select with lower impairment. Therefore, it would have been legal if preference was to be done based on level of impairment or by lot.

²⁵⁵ MOLSA directive, art. 10 (5);

Federal Civil service directive, art. 10 (4)

²⁵⁶ Proc. 568/2008, art. 4 (2)

²⁵⁷ Official Public Discussion of Draft of Rights of Persons with Disabilities Proclamation January 09, 2008

²⁵⁸ Before the issuance of the proclamation, it was only used in the civil service sector of the federal government. This was informed by participants of the official public discussion of the draft of the proclamation.

²⁵⁹ MOLSA directive, art. 10 (8) (b)

Now 3 percent is becoming norm because it is being followed even by those which did not issue the directive.²⁶⁰ The MOLSA directive lacks clarity with regard to the calculation of point difference.²⁶¹ The Addis Ababa circular is clear with this regard and is expressed with examples though not free from criticism.²⁶² The federal civil service directive defined the “close score” as 4 percentages making it clear that it is applicable to education opportunities.²⁶³

One thing to be noted is that both rules of avoidance of further screening and close score preference can be applied if exam is mandatory. Unfortunately, exam is not mandatory for selection especially in the private sector unless active judges interpret it to be required by the directive and the law.²⁶⁴

Furthermore, what is recognized under the proclamation is not point addition/bonus rather the point will be considered only during comparison and when PWDs score lower than and closer to the non-disabled candidate. Point addition has better advantages in terms of clarity and protection it gives. Further issues of directives and inadequacy of the protection will be discussed with their implementation in the next chapter.²⁶⁵

2.2.3. The Federal Civil Servants Proclamation

The influence of federal laws, especially in areas which regions are supposed to issue their comparable laws, is immense. Whether it is due to inability of regions to allocate resources to

²⁶⁰ The researcher observed this in the civil service sector and judicial training and legal research institute of Amhara region. However, there are a number of times in which institutions fail to consider the close point difference though the percentage is almost uniform if the institution is convinced to consider point preference.

²⁶¹ Whether the percentage will be calculated from 100 or the highest grade scored was debated in Amhara region during the draft of a directive. Due to misunderstanding of the MOLSA directive they decided 2 marks whether the exam is out of 100 or less. (Discussion with Amare Sisay, participant of the drafting process of the directive, April 26, 2018).

²⁶² Addis Ababa circular, art.s 4 and 5.2

²⁶³ Federal civil service directive, art. 9 (10) and (11)

²⁶⁴ Here, we should note that corruption offenses are applicable to public organizations and employing with other mode of employment than advertisement may entail accountability if not properly managed. This incidentally helps the disabled by indirectly obliging employers to employ through open advertisement.

²⁶⁵ In this regard, the position of the Peru law is very useful. It allows 15 marks bonus and the mark will be added with the result of the disabled. See, Peru Law No. 29973, General Law On Persons With Disabilities, Art. 48.1

make laws or through pressure or other cause, most of the regions simply copy the federal civil servant proclamation with no content modification.²⁶⁶ Therefore, the federal civil servants proclamation has more influence than proc. No.568/2008. The new federal civil servants proclamation listed disability as one prohibited ground of discrimination.²⁶⁷ Specific article is also reserved for the protection of the rights of PWDs.²⁶⁸ It recognized affirmative action,²⁶⁹ reasonable accommodation,²⁷⁰ assignment of assistant²⁷¹ and applicability of other laws that protect the rights of PWDs.²⁷² Therefore, proc. No.568/2008 is not repealed inadvertently by the repealing provision. These rights are provided by the latter proclamation except the obligation of providing affirmative action for PWDs. Nevertheless, it increases the awareness of many people since the civil servants proclamation is looked by many.²⁷³

The provision which deals with affirmative action need to be supplemented by regulation or directive for its clarification and effective remedy should be devised added with the true commitment of the government for its practical realization.²⁷⁴ It would have been better to specify the type of affirmative action because it is difficult to delegate such power to a ministry. Nonetheless, giving the proper meaning to this general provision is expected from the federal public service and regional public service bureaus. The duty of employing assistant is more qualified by the new proclamation. The assistant assigned by the government should be the one

²⁶⁶ For example, the federal civil servants proclamation no. 515/2007 and the Addis Ababa civil servant proclamation no. 6/2000 has only difference of one article. the problems becomes worse in some regions. Therefore, for practical purposes, it is possible to consider as if the federal government issues civil servants law to all regions.

²⁶⁷ Proc. 1064/2017, art. 13 (2)

²⁶⁸ Proc. 1064/2017, art. 49

²⁶⁹ Proc. 1064/2017, art. 49 (1)

²⁷⁰ Proc. 1064/2017, art. 49 (2)

²⁷¹ Proc. 1064/2017, art. 49 (3)

²⁷² Proc. 1064/2017, art. 49 (4)

²⁷³ From informal discussions the researcher made in search of laws related with PWDs, he observed that regions are becoming aware of the rights of PWDs while the regions issue the new civil servant law.

²⁷⁴ Proc. 1064/2017, art. 49 (1)

which can provide proper assistance. This additional protection is added on the draft of the proclamation to provide meaningful protection.²⁷⁵

2.2.4. Regional Laws

Unlike the laws of the federal government, civil servants proclamations or implementing directives of most of the regions used to recognize the need to employ PWDs in priority with others if they score the minimum passing score of the competition. Amhara, Gambela, Harari, Benshangul Gumuz, Oromia, and Tigray are among such regions.²⁷⁶ The only exceptional law of the federal government in adopting this privilege for PWDs is the federal judges' administration directive.²⁷⁷

The meaning of minimum passing score is clarified by some regional directives to mean 50 marks²⁷⁸ while it is not clear in other regions as to who decides the passing score. Avoidance of further screening known in the federal directives is also adopted by some regions.²⁷⁹

²⁷⁵ Interview with Mulugeta Wubshet, Director of Human Resource Laws' Research, Implementation and Support Directorate Under the Ministry of Public Service and Human Development (May 24, 2018)

²⁷⁶ The Amhara National Regional State Civil Servants Revised Proclamation, 2010, art. 15 (4), Proclamation No. 171, Zikre Hig Gaz. year 15 no. 7;

The Gambela Peoples National Regional State Civil Servants Proclamation, 2003, art. 13 (4), Proclamation No. 35, Gambela Neg. Gaz. year 8 no. 3;

Harari National Regional State Civil Servants Proclamation, 2004, art. 13 (5), Proclamation No. 34, Harari Neg. Gaz. year 8 no. 3;

Benshangul Gumuz National Regional State Civil Servants Proclamation, 2003, art. 13 (4), Proclamation no. 29, Lisane Hig;

Tigray National Regional State Temporary Implementation Directive Issued to Govern the Employment Conditions of Persons with Disabilities Having Severe Impairment No. 14/2015 (November, 2015) (hereafter Tigray directive)

²⁷⁷ Federal courts' judges recruitment scheme implementation directive 2003, art. 16 (2)

²⁷⁸ For instance, see: Benshangul Gumuz National Regional State Capacity Building and Civil Service Bureau Civil Servants' Recruitment and Selection Directive no. 1/2007, art. 2 (7)

²⁷⁹ The Revised Amhara National Regional State Civil Servants Recruitment and Selection Directive no. 1/2007, art. 2.7.7;

Benshangul Gumuz National Regional State Capacity Building and Civil Service Bureau Civil Servants' Recruitment and Selection Directive no. 1/2007, art. 2 (7)

Tigray issued directive which is aimed at temporarily solving the problems of persons having severe impairment until independent directive is issued through research. Special protection is provided for total blinds by imposing duty on the government to employ them without competition. Illustration of reasonable accommodation, consideration of employment of PWDs as right, recognition of minimum score affirmative action, avoidance of further screening, exemption of work experience up to five years, and duty of introducing with work and colleagues are among the major features of the directive applicable for all persons having severe impairment. The applicability is limited on government and for fresh graduates and unemployed. However, it is not clear whether the directive is applicable for PWDs whose previous employment is terminated and are unemployed on the time. The reason to limit some of the protections such as reasonable accommodation is not clear.²⁸⁰

The directive of Oromia issued on December 26, 2017 allows automatic employment of persons having especial needs if they attained the minimum requirement. The bureau also writes support letter to zones so that they will employ visually impaired automatically pursuant to this directive. The bureau claims that there is progress in obedience of zones for the letter of the bureau though there is no measure taken on personnel who refused to implement the directive and proc. No.568/2008.²⁸¹ In Oromia, placing in the first or second category zones and Weredas of the region is mandatory during placement of blind prosecutors.²⁸²

The two city councils used to preserve the rule of proclamation no. 515/2007 allowing closer point preference.²⁸³ Now, most of the regions are replacing their civil servants proclamations by

²⁸⁰ Tigray directive

²⁸¹ Interview with Yacob Tadese, Director of Human Resource's Job Leadership of Oromia National Regional State Public Service and Human Resource Development Bureau (May 18, 2018)

²⁸² Directive Issued by General Commission to Implement Oromia National Regional State Public Prosecutors' Administration Regulation, directive no. 8/2014. Art.s 34 (4-5)

²⁸³ Addis Ababa City Government Civil Servants Proclamation, 2008, Art. 13 (3) (b), Proclamation No. 6, Addis Neg. Gaz. Year 1, no. 6;

The Dire Dawa Administration civil Servants Proclamation, 2011, art. 13 (3) (b), Proclamation No.20, DIRE NEG. GAZ. Year 4 no. 20.

a new proclamation and copying the federal civil servants proc. No.1064/2017 in relation to the rights of PWDs. Therefore, the new regional proclamations seem to accept affirmative action and repealing the minimum passing score preference.²⁸⁴

In Amhara, Proc. No.171/2010 used to allow “the minimum passing score preference affirmative action”.²⁸⁵ The directive issued to implement the proclamation on its part, provided that blinds will be employed automatically if graduated with the required level of education.²⁸⁶ Now, proc. 171/2010 is repealed by the new civil servants proclamation. The new proclamation fully copied the federal civil servants proclamation in terms of rights of PWDs.²⁸⁷

Whether the directive issued to implement proc. No.171/2010 is automatically repealed by the new proclamation without the issuance of other directive is doubtful. Indeed, one may say the directive is repealed since the proclamation which it is meant to implement is repealed. However, the practice suggests otherwise. For instance, the federal civil servants disciplinary regulation²⁸⁸ had lasted applying for about 10 years though proc. No.262/2002, which the regulation was issued to implement, had been repealed by proc. No.515/2007.

The difference made by the directive between visually impaired and other PWDs has been source of contention in the meeting of the state council during the discussion on the new civil servants

The first draft of civil servants proclamation of Diredawa city administration allowed the minimum passing mark preference for PWDs and it was changed during the ratification of the proclamation.

²⁸⁴ The Dire Dawa Administration civil Servants Proclamation, 2018, art.s 50 and 52, Proclamation No. 58, Dire Negarit Gazette;

Benshangul Gumuz Civil Servants Proclamation, 2018, Art.s 50 and 51, Proclamation no. 150, Lisane Hig Gazette;

The Addis Ababa city government civil servants’ proclamation, 2018, art.s 49 and 51 Proclamation no. 56, Addis Negari Gazeta

²⁸⁵ The Amhara National Regional State Civil Servants Revised Proclamation, 2010, art. 15 (4), Proclamation No. 171, Zikre Hig Gaz. year 15 no. 7

²⁸⁶ The Revised Amhara National Regional State Civil Servants Recruitment and Selection Directive no. 1/2007, art.s 2.7.7-10

²⁸⁷ Amhara National Regional State civil servants proclamation, 2018, Art.s 49 and 50, Proclamation No. 253, Zikre Hig Gaz. year 22 no. 4

²⁸⁸ Federal Civil Servants Disciplinary and Grievance Procedure Council of Ministers Regulation, 2002, Regulation No. 77, federal neg. gaz. Year 8 No. 29

proclamation.²⁸⁹ Though further study is needed to make disparities of problems faced by having different types of disabilities, there are various justifications to make more preference for blinds as explained in chapter four.

One of the objectives of Addis Ababa and Dire Dawa charters is availing PWDs of special support.²⁹⁰ However, their successive employment laws do not contain special support for PWDs other than the provisions of proc. No.568/2008.

The directive issued by the Addis Ababa government allows priority in the provision of sheds and working places for self-employing PWDs and the disabled will be on the ground or first floor.²⁹¹

2.3. Access to Information

Public information should be accessible in any form as the proclamation requires.²⁹² The soft copies can be in different formats accessible for blinds such as: Microsoft office word. The hard copies can be Braille, audio format and ETC. This should have been further become specific by directives which is not unfortunately the case. Indeed, the proclamation can be supplemented by training. However, this is not viable option.²⁹³

²⁸⁹ Interview with Alelgn Yehuala, member of legal standing committee of Amhara National Regional State Council, (June 16, 2018)

²⁹⁰ Addis Ababa City Government Revised Charter Proclamation, 2003, Art. 9 (5), Proclamation No. 361, Federal Neg. Gaz. Year 9, no. 86;

The Diredawa Administration Charter Proclamation, 2004, art. 8 (4), Proclamation no. 416, Federal Neg. Gaz. Year 10 no. 60

²⁹¹ Directive issued by Addis Ababa city administration small enterprises' development bureau to amend The Production display and selling Centers administration, provision and usage directive no. 1/2014 and following amendment directives, 2016, Art.s 19, 24 (3) and 3 (2)

²⁹² Proc. 590/2008, art. 13 (6)

²⁹³ Prohibitions of blinds from accessing documents in a way which is accessible for them is difficult due to refusal. In particular, institutions are heard refusing to provide documents in microsoft office word or in a form which it was originally written. Their reason is possible modification of the contents of the document. This reason is not convincing for many reasons, among which are: possibility of modification any form of document, availability of the document in publication, use of accessible formats for personal use only because of lack of stamp and signature,

This law is applicable to government institutions only.²⁹⁴ The law does not at least encourage accessibility of information by private institutions. There is no clear indication as to whether the article can be interpreted to oblige public Medias to be accessible for blinds, such as: television and print media.

Another important provision of this proclamation sets out the obligation of the institutions to write applications for those unable to write by themselves.²⁹⁵ The applicability of this provision should have been framed broadly. Filling application form is common. So, obliging blinds to fill the application form by themselves has discouraging effect on blind applicants. Had we have active judiciary, the provision would have been used to be applied in other cases by using analogy. The other problem is the lack of clarity between information and evidence.²⁹⁶ Whether evidences are information needs recognition. It was quite better if information would be provided without application unless the information is accessible to restricted persons only because, application serves little purpose if the information is public and becomes bureaucratic for blinds.

The remedy available for deprivation of access to information is quite limited. The criminal sanction does not clearly include refusal.²⁹⁷

2.4. The Building Proclamation and its Implementing Legislations

Article 36 talks about accessibility of public buildings and toilets. But the English version uses the term “physically impaired”, the definition of which is not provided under the definitional part of the proclamation. The phrase is usually used to refer impairments not related to sensory organ and other than mental impairment. The Amharic version is however better which used the phrase normally considered as equivalent with “people with disability” though the term is used to refer

the existence of no damage or benefit by the modification of most of the documents and the like. The refusal may likely reduce if the provision was crafted in a detailed manner.

²⁹⁴ Proc. 590/2008, art. 11 and 12

²⁹⁵ Proc. 590/2008, art. 14 (1)

²⁹⁶ Proc. 590/2008, art. 2 (6)

²⁹⁷ Concealing, destructing and falsifying has been punishable while refusal based on mischief or evil minded are not clearly identified as punishable. Whether the word concealment is to be interpreted to include refusal may be considered to create crime by analogy. Therefore, the provision should have included refusal as punishable activity. (Proc. 590/2008, art. 39 (4))

particular groups of disability too.²⁹⁸ The lists are not also higher concern of blinds which shows that the provision was not envisaged to make blinds beneficiary. The part in which the provision is found may have the power to restrict applicability of the protection while accessing water supply and sanitation services.²⁹⁹

The provision is applicable on public buildings and on those buildings which are required to have the facilities.³⁰⁰ Unfortunately, lack of definition for public building may lead to misunderstanding as seen in few writings.³⁰¹ Private building is not also defined by the proclamation. Despite this, to encapsulate the correct meaning of public building understanding private dwelling is useful. According to the definitional part, private dwelling is to be used by a single family.³⁰² In short, understanding the word “public” from the preamble and purpose of the proclamation together with the scope and other provisions in which the word is used, it is convincing to interpret it to mean building providing service for the public irrespective of ownership.³⁰³ Despite failure of the proclamation to define public building, the definition provided by the regulation and directive includes private owned buildings as long as they are serving the public and similar with listed buildings.³⁰⁴ The applicability of the directive on all buildings above 12 meters also makes it clear that the accessibility rules provided by the directive are applicable for private institutions too.³⁰⁵ Even the Amharic version of the

²⁹⁸ Ethiopian Building Proclamation, 2009, art. 36, Proclamation No. 624, Federal Neg. Gaz. Year 15 No. 31 (hereafter Proc. 624/2009)

²⁹⁹ The title of part four of proc. 624/2009 says, “water supply and sanitation” which cannot represent various aspects of buildings.

³⁰⁰ Sub-article 1 of article 36 uses the phrase “any public building” while sub-article 2 of the same article uses the phrase “any building”.

³⁰¹ Belayneh Admasu, pp. 326 and 342;

Amare Sisay, p. 58

³⁰² Proc. 624/2009, art. 2 (13)

³⁰³ If we use public to mean government only, the provision which talks about fire protection is to be applied on government institutions and buildings which have more than 30 stories are to remain without such protection.

³⁰⁴ Council of Ministers Building Regulation, 2011, art. 2, Regulation No. 243, Federal Neg. Gaz. Year No. 77; Directive of the Ministry of Urban Industry and Development No. 5/2011, Art. 2 (hereafter Building directive)

³⁰⁵ Building directive, Art. 33 and 2 (2) (6-8)

proclamation makes it clear that private buildings are included within the protections afforded for PWDs.³⁰⁶

The proclamation also contained other provisions which have special benefit for visually impaired. It provides that design and construction of building should not impair the safety of people moving around.³⁰⁷ If the design or construction of the building has negative effect on the movement of blinds, this provision can be of help. For instance, buildings which have tunnels, sharp shapes, inconvenient stairs, no strong fences, or ETC. Jeopardize even the life of blinds.

It also obliges owners of buildings to take precautionary measures so that the excavations related with the building do not compromise the safety of services.³⁰⁸ One of the services is movement of people. The life, health, and movement of blinds are at risk when there are excavations. Therefore, this proclamation helps to reduce such risk if the proclamation is interpreted to impose duty on the owners, builders and excavators to take precautionary measures so that the building do not endanger movement of blinds. The proclamation also imposes duty on the owner or excavator to maintain the excavation in a safe condition while the excavation remains open or placing the foundation.³⁰⁹ Both of the above provisions do not clearly recognize that the buildings should be convenient for blinds. Even article 36 is so narrow that its protection becomes lower for blinds. Hence, it cannot be considered as adequate which ensure that buildings are accessible for blinds and other disabled persons.

It says nothing about accessibility of buildings constructed before the enforcement of the proclamation. It does not also deal with rectification of constructions built contravening accessibility provisions. Time bound measure to avoid inaccessible built environment is necessary.

³⁰⁶ The Amharic version of the proclamation used a phrase equivalent to “buildings serving the public” instead of “public building”.

³⁰⁷ Proc. 624/2009, art. 31 (1)

³⁰⁸ Proc. 624/2009, art. 31 (2)

³⁰⁹ Proc. 624/2009, art. 31 (3)

The regulation issued pursuant to the proclamation also contained few provisions concerned with right to accessibility of buildings for PWDs.³¹⁰ The directive issued to implement the proclamation contained detailed provision than the proclamation despite its single article about accessibility.³¹¹ However, its applicability is limited to Category C buildings. This has the effect of giving no protection for buildings below 12 meters.³¹² It also contained a single face of accessibility which is accessibility of buildings without addressing other aspects of accessibility.³¹³ Therefore, there should be other legislation which deals with all-encompassing nature of accessibility including: providing for access to the physical environment, transportation, information and communication, and services.³¹⁴

The proclamation is not backed by effective sanction with regard to accessibility. Provisions which incidentally have special benefit for blinds are not unambiguously criminalized by the penalizing provisions.³¹⁵ The criminal code also contained specific provision related with buildings.³¹⁶ The provision encompasses rules of directives and buildings. Unfortunately, the capacity of this provision to protect violations of rules of accessibility is highly limited. First, criminal sanction is imposed on supervisor or builder³¹⁷ relieving the owner and/or persons who

³¹⁰ Building regulation, art.s 28, 33 and 34

³¹¹ Belayneh Admasu, p. 327;

Building directive, art. 33

³¹² Building Directive, Art. 33 and 2 (2) (6-8)

³¹³ This can be due to the purpose of the proclamation to deal with buildings only. But, it should be well underlined that large aspect of accessibility which even include accessibility of the physical environment such as, accessibility of roads is still without coverage.

³¹⁴ Committee on CRPD general comment 9, para 33

³¹⁵ Art. 53 (1) (b), art. 53 (2) (d) or art. 53 (3) in conjunction with the above sub-art.s of proc. 624/2009 may be applicable though whether accessibility is infringement of public safety becomes controversial in criminal proceedings. Despite this, there are situations which undebatably falls within the provision.

³¹⁶ Criminal Code, art. 501

³¹⁷ The provision provides as follows:

Article 501. - Culpable Infringement of Building Rules.

(1) Whoever, in supervising or carrying out the erection of a building or a demolition of any kind, infringes the rules laid down by law or disregards normal safety measures based on building practice and thereby endangers public safety or the life, health or person of others, or the safety of the property of another is punishable with simple imprisonment for not less than three months, and fine.

are responsible for creating accessibility from criminal liability. Second, it applies during erection and demolition only failing to cover duties of creating accessibility after the building is completed. Third, this creates undue opportunity to argue that the accessibility rules set out in the directive do not endanger life, safety, person or property of another since these are essential requirements for completion of the crime. Though this concern may be true in some instances, there are non-controversial issues which jeopardize the above rights by the failure to take accessibility measures. For example, life of blind is at stake where there are no protectors beside stairs. Finally, the limited provisions of the proclamation and detailed provisions of the directive are good source, if not adequate, of extra-contractual liability though proving the damage is cumbersome as explained before.³¹⁸

2.5. Higher Education Proclamation and AAU Senate Legislation as Example

The higher education proclamation is basically related with employment in two respects: as employer and as a source of generating qualified employees.

As an employer, universities employ huge number of administrative and academic workers. The higher education proclamation vested higher autonomy for universities. Autonomy is taken as objective, value and mission of higher education institutions.³¹⁹ The higher education proclamation almost made the civil servants proclamation inapplicable on higher education institutions. They are vested with the power to select academic and other staff to be employed in the institutions.³²⁰

The policies governing employment of administrative and technical staff employees of public institutions of higher education is to be formulated by the board on the institutions. The proclamation also shows that the federal civil servants law does not apply on the institutions

(2) Where the crime is committed negligently, the punishment shall be simple imprisonment not exceeding one year, or fine.

³¹⁸ Ethiopian Civil Code, art. 2035

³¹⁹ Higher Education Proclamation, 2009, preamble para 3, Art.s 4 (5), 7 (4), 17 and plenty of provisions, Proclamation No. 650, Federal Neg. Gaz. Year 15 No. 64 (hereafter Proc. 650/2009)

³²⁰ Proc. 650/2009, art. 17 (2) (b)

except the duty of the board to base its policy on the principles of the federal civil servants law.³²¹

There is no institution which issued detailed law governing employment of universities. Both the administrative and academic staff of higher education institutions had been out of the federal civil servants law and were unregulated by any law. However, it has been begun to apply the federal civil servants law few years before. The academic staff is still governed by the higher education proclamation and Senate legislations without detailed law of employment.³²²

Pursuant to the proclamation, tenure is privilege rather than a right and academic employees are employed based on contract of definite period.³²³ Unregulated discretion may lead to arbitrariness. This may expose PWDs not to be protected from discrimination on employment. Since the higher education proclamation did not specifically provide that the right to employment of PWDs is repealed, higher education institutions should be obliged to abide by proc. No.568/2008. Moreover, there are Senate legislations which included provision bestowing special right in competing for employment. The AAU Senate legislation imposes duty on staff recruitment, appointment and promotions committee (SRAPC) to formulate policies and devise strategies to enhance diversities of academic staff through affirmative recruitment system for applicants from disadvantaged groups among which are PWDs. It also provides that applicants from such disadvantaged groups would be employed only if they fulfill the minimum requirements of the University.³²⁴ This provision indicates that preference should not be given for PWDs without meeting minimum requirements though setting affirmative action is mandatory. Further direction is expected by the SRAPC because the Committee needs to specify affirmative measures and should govern the competitions among disadvantaged groups.

³²¹ Proc. 650/2009, art. 44 (1) (j)

³²² Interview with Mulugeta Wubshet, Director of Human Resource Laws' Research, Implementation and Support Directorate Under the Ministry of Public Service and Human Development (May 24, 2018)

³²³ Proc. 650/2009, art. 33 (1)

³²⁴ Senate Legislation of Addis Ababa University of 2013, art.s 3 and 18.1.7 (hereafter AAU Senate Legislation)

The proclamation sets out different provisions to protect the rights of students with disabilities. Assisting students in need of special support is one responsibility of members of academic staff.³²⁵

In discharging their responsibility to make their facilities and programmes amenable to use with relative ease by physically challenged students, institutions shall relocate classes, develop alternative testing procedures, provide different educational auxiliary aids, provide academic assistance, including tutorial sessions, exam time extensions and deadline extensions, and building designs, campus physical landscape, computers and other infrastructures of institutions shall take into account the interests of physically challenged students.³²⁶ These obligations are qualified by phrases like, “to the extent resource permit”, making defences available for failure on all of the obligations.³²⁷ Therefore, the proclamation should have provided obligations applicable immediately and in progress.

The AAU Senate legislation almost reiterated article 40 of proc. No.650/2009 further accepting principles of equal treatment, leading active and independent life and reasonable accommodation.³²⁸ The AAU Senate legislation also recognizes the need for affirmative action for PWDs and other disadvantaged groups during choice of program of study.³²⁹ Prohibition of discrimination and harassment based on disability,³³⁰ preparation of student handbook in Braille and online accessible for all,³³¹ representation of students with disabilities in the governance of the University and recognition of organizing to promote interests of students with disabilities,³³² and provision of particular attention to the welfare and affairs of students with disabilities³³³ are among the major protections afforded for the disabled.

³²⁵ Proc. 650/2009, Art. 32 (1) (a)

³²⁶ Proc. 650/2009, art. 40

³²⁷ *ibid*

³²⁸ AAU Senate Legislation, 172.2

³²⁹ AAU Senate Legislation, Art. 64 (3)

³³⁰ AAU Senate Legislation, Art.s 22.2.4 and 53.7

³³¹ AAU Senate Legislation, Art. 170.10

³³² AAU Senate Legislation, Art.s 179.2, 179.5 and 184.3

³³³ AAU Senate Legislation, Art. 170.12

2.6. Other Laws

The VAT and TOT proclamations provide that goods and services of those who fill 60 percent of their employees with PWDs are exempted from VAT or TOT.³³⁴ This is impossible protection for the blind since it is more likely that the assistants of blinds make the percentage of the disabled less than 60 percent. Moreover, exemption from VAT or TOT does not in principle benefit employers rather consumers except encouraging consumers to choose tax free suppliers.

Tax exemption directive of vehicle also included blinds as its beneficiary.³³⁵ The practice shows that persons with mild visual impairment are not beneficiaries of the exemption.³³⁶ However, blinds cannot drive vehicle in the current technology that we have. Therefore, they need to employ driver. It becomes difficult for blind employees to employ driver from the income they derive from employment. Therefore, blinds should at least be exempted from employment income tax to compensate their disability cost and make them real beneficiary of the vehicles tax exemption. Unfortunately, the directive is suspended this month and doesn't seem to be operational afterwards.³³⁷

According to the proclamations defining the powers of the executive, one of the common powers and duties of every ministry is creating conditions whereby PWDs benefit from equal opportunities and full participation whereas, MOLSA is vested with specific power to work in collaboration with concerned organs to achieve the same.³³⁸ Recently, different laws are

³³⁴ Value Added Tax Proclamation, 2002, art. 8 (2) (o), Proclamation No. 285, Federal Neg. Gaz. year 8 no. 33;

Turnover Tax Proclamation, 2002, Art. 7 (1) (k), Proclamation No. 308, Federal Neg. Gaz. year 9 no. 21

³³⁵ Ministry of finance and economic development, a directive issued to determine duty and tax free importation of vehicles for personal use of persons with disabilities no. 41/2007

³³⁶ Discussion with Sultan Ismu (director of ENAB) on March 1, 2018

³³⁷ This kind of benefit was also applicable around a decade ago. at that time, the tax exemption was abolished because it was used abusively. Even during the promulgation of this directive, warning was given that the benefit will be interrupted if used abusively. However, mechanism other than prohibition should have been searched for and investigation as to persons with which type of disability is abusing the directive should have been proper. Interview with Gebre Teshome, Public Relation Officer of Ethiopian National Association of the Blind (January 5, 2019)

³³⁸ Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation, 2015, art.s 10 (4) and 34 (13) (a), Proclamation No. 916, Federal Neg. Gaz. Year 12 no. 22;

including PWDs as right holders.³³⁹ However, they do not have detailed and implementable provisions. Most of them are also simply prohibition of discrimination with no further provision that guarantee effective implementation of the right.

Section Three

Policies and Action Plans

Recently, policies and action plans of the government are including disability with their documents. Employment of derogatory terms,³⁴⁰ lack of systematic and meaningful consultation of representatives of PWDs during the development and implementation stage,³⁴¹ absence of fixed deadline and output,³⁴² exclusion of certain types of disabilities,³⁴³ generality of the documents and even specific plans intended towards PWDs, non-adaptation of western policies with existing situations of PWDs and similar problems are among the weaknesses of the policies and action plans.

The social protection policy included disability as one of its target groups. It covers wide range of vulnerable groups who have extremely different needs and interests. It provides that PWDs

Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation, 2010, art.s 10 (5) and 30 (7) (a), Proclamation No. 691, Federal Neg. Gaz. Year 17 no. 1

³³⁹ Cooperative Societies Proclamation, 2016, art. 5 (1) and 12 (8) Proclamation No. 985, Federal Neg. Gaz. Year 22 no. 3;

Federal Attorney General Establishment Proclamation, 2016, Art.s 6 (4) (e) and 11 (3) (g), Proclamation No. 943, Federal Neg. Gaz. Year 22 no. 62;

Electoral Law of Ethiopia Amendment Proclamation, 2007, art. 36 (6), Proclamation No. 532, Federal Neg. Gaz. year 13 no. 54

³⁴⁰ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Ethiopia, para 5 (4 November 2016) CRPD/C/ETH/CO/1 (hereafter CRPD Concluding Observation)

³⁴¹ CRPD Concluding Observation, para 7;

Gebre explains that drafts of policy documents are provided for participants at the date of the discussion and even the ideas provided by the representatives are not accepted however they are convincing. He described that most of the time, the draft is approved without modification. (Interview with Gebre Teshome, Public Relation Officer of Ethiopian National Association of the Blind (March 16, 2018))

³⁴² CRPD Concluding Observation, para 51

³⁴³ CRPD Concluding Observation, para 19

who are in difficulty are given special focus.³⁴⁴ It is of little use except emphasizing the issue since the policy includes every group who is under difficulty. PWDs should be provided protection whether their economic capacity is good or not because PWDs need special adjustment according to their type of disability.

The policy provides that different communication systems will be designed to improve the harmful traditional beliefs and actions transgressing the rights of PWDs.³⁴⁵ Amendment of such types of laws is forgotten by the policy.³⁴⁶

Accessibility of basic infrastructures for PWDs is envisioned by the social protection policy.³⁴⁷ However, it is not specific and has no implementation mechanism.

Generally, PWDs are addressed by the policy in the same parlance with other vulnerable group which couldn't respond to the different needs of PWDs. Besides, the paragraphs of the policy which deal with PWDs are formulated in very crude and general terms. Hence, specific policy which is designed to protect the rights of PWDs is of great need.

The social protection strategy dealt with disability in higher depth than the social protection policy. Service for PWDs is given special part. Availability of low cost walking aids and their local production, and support for the use of Braille are specific protections for visually impaired.³⁴⁸ It didn't envisage technological supports. Encouragement of public service providers to give priority for PWDs, training on the rights of PWDs, provision of special services for PWDs and introduction of disability allowance are among the positive sides of the

³⁴⁴ Federal Democratic Republic of Ethiopia, National Social Protection Policy, (2014) pp. 6 and 8 (hereafter Social Protection Policy)

³⁴⁵ Id, p. 14

³⁴⁶ For instance, article 339, 340 and 1728 of the Ethiopian Civil Code which use derogatory terms and consider PWDs as incapable of performing juridical acts are still maintained and should have been addressed by the policy.

³⁴⁷ Social Protection Policy, p. 13

³⁴⁸ Ministry of Labour and Social Affairs, The Federal Democratic Republic of Ethiopia National Social Protection Strategy of Ethiopia (January 2016) p. 33

strategy.³⁴⁹ One of its weaknesses is that the strategy associates disability with inability to work.³⁵⁰

Though the second GTP addressed PWDs, it suffers with similar problems of the social protection policy.³⁵¹ The plan focused mainly on social welfare issues of providing social security and including PWDs within safety net programs, which has the effect of considering PWDs as having the same problem with the poor. Despite high vulnerability of PWDs to poverty, the solution should have been mainly focused on alleviating their poverty. It should have also acknowledged the difference of PWDs rather than proposing the same solution for all vulnerable groups. Problems other than poverty are totally forgotten. Visually impaired are not given due consideration of rehabilitation because the GTP limited itself to physical rehabilitation.³⁵²

An employment specific policy of 2009 posited reliable plans of improving right to employment of PWDs among which were: building the capacity of the disabled, supporting to start business, supporting associations of PWDs, better access to credit facilities, and sensitizing the private sector.³⁵³

The recent national human right action plan has better coverage for the rights of PWDs. It took in to account the special needs of PWDs and also gave the required emphasis to the real problems of PWDs. Some of these are: accessibility of buildings, physical rehabilitation, educational facilities, accessible toilet, guiding principles for disability related policies and programs, inclusion of disability related laws within the curriculum of higher education institutions, organization of disability related information, capacity building of DPOs, training and translation of laws, and other similar measures are intended by the action plan. According to the plan, the

³⁴⁹ *ibid*

³⁵⁰ *Id*, p. 7

³⁵¹ National Planning Commission, Federal Democratic Republic of Ethiopia Growth and Transformation Plan II (2015/16-2019/20), Vol. I: Main Text, (May, 2016) (hereafter GTP II)

³⁵² GTP II, 7.4, and 8.4

³⁵³ National Employment Policy and Strategy of Ethiopia (November 2009) Addis Ababa

government will design job opportunity targeting PWDs.³⁵⁴ However, the institutions intended to implement the action plan has no readiness in terms of their organizational structure and internal commitment. Supervision of implementation is not framed deeply.

The country also issued an action plan which is specific to PWDs. The action plan mixes the issue of elderly people whereas its title is limited for PWDs. The action plan consisted employment of PWDs as one of its basic agenda.³⁵⁵

However, it is not still implemented and no evaluation of its implementation is made despite the elapse of 6 years since its adoption. The reason given for failure of the implementation is the restructuring of the organs of the executive and the merging and splitting of the implementers. MOLSA official explain that its revision is intended for next year.³⁵⁶ The action plan was planned with great budget and the reason provided for non-implementation is not convincing since restructuring is conducted after years and the restructuring does not concern every ministry. The implementation should have been at least started. Although lack of commitment is the basic problem for its non-implementation, the action plan also lacks effective implementation strategy and there is no specific body entrusted to implement it.

Chapter Three

Challenges, Practices, Realities and Solutions in Relation with the Employment of Visually Impaired

3.1. Statistical Issues

In Ethiopia, statistical information related to blindness is not reliable and do not give sufficient information. According to the 2007 census, there are 805,492 people having disability out of

³⁵⁴ The Second Ethiopian National Human Right Action Plan (2016)

³⁵⁵ Ministry of Labour and Social Affairs, National Plan of Action of Persons with Disabilities 2012-2021 (April 2012)

³⁵⁶ Interview with Damtew Alemu, Director of Social Protection Expansion Capacity Building, Information and Statistics Directorate under the Ministry of Labor and Social Affairs (June 14, 2018)

which 94,015 persons are blinds and 154,634 persons have difficulty in seeing.³⁵⁷ This finding is in conflict with the finding of ministry of health. According to the survey of MOH, there are 1.2 million blinds, 2.8 million people with low vision, 9 million children 1-9 year of age with active trachoma, and 1.3 million adults with Trachomatous Trichiasis.³⁵⁸ No count of street residents, no clear definition of blindness, lack of sufficient training for the counters, and lower focus on the importance of the data are supposed to be causes for unreliability of the former data.³⁵⁹ According to MOH's survey, most causes of blindness, accounting 83.3 percentages, are avoidable.³⁶⁰ This shows lack of adequate standard of health protection in the country.

It is not known how many blinds are employed in public enterprise organizations and private sectors. Nor is it known about the situations of existing sheltered employment.³⁶¹ Effectiveness of the anti-discrimination law is not ascertained due to lack of data as to what measures are taken by organizations.

According to the report of federal public service, there were 1009 visually impaired out of 1,462,274 total permanent employees of federal and regional governments from July 2015 to June 2016.³⁶² This accounts only below 0.07% of total employees. In the same year, the number

³⁵⁷ Central Statistical Agency, Population Projections for Ethiopia: 2007-2037 (July 2013) p. 138

³⁵⁸ Federal Ministry of Health of Ethiopia with support from and in collaboration with a consortium of NGOs, National Survey on Blindness, Low Vision and Trachoma in Ethiopia (September 2006) pp. 1-3 (http://www.pbunion.org/Countriessurveyresults/Ethiopia/Ethiopian_National_Blindness_and_trachoma_survey.pdf) last visited May 13,2018 (hereafter MOH survey)

³⁵⁹ Interview with Gebre Teshome, Public Relation Officer of Ethiopian National Association of the Blind (March 16, 2018)

³⁶⁰ MOH survey

³⁶¹ Key officials of MOLSA explained for the researcher that the ministry does not have information about the employability of PWDs of the private sector and public enterprises. Despite their power of implementation vested under proc. 568/2008, the officials believe that their duty is provision of training and awareness creation.

³⁶² Ministry of Federal Public Service and Human Resource Development, "National Public Service Human Resource Statistics" Yearly Published Magazine (2016) p. 11.

Note that this data does not include public enterprises and private undertakings governed by the labor proclamation and other government offices such as, prosecution offices, judicial offices, police and military governed by special

of visually impaired employees of Addis Ababa takes the highest number which is 430 out of 103,180 permanent employees.³⁶³

In 2018, 312 teachers out of around 17000 teachers of Addis Ababa are blinds. Out of 345 employees of Addis Ababa education bureau, there is no blind person.³⁶⁴ In Oromia civil service bureau, there is no blind employee. In the ministry of federal public service, there are 3 blinds out of 446 employees.³⁶⁵ In the ministry of education there is only one blind employee out of 702 employees.³⁶⁶ There is no blind judge in federal courts out of 265 judges.³⁶⁷ Administrative staff of Addis Ababa University is composed of 2934 employees out of which only one is blind.³⁶⁸

All of the data collected from the above sources assure that the number of blind women is far greater than blind men while the reverse is true in terms of employability. They also show that the number of blinds employed in higher position is also very low.

3.2. The Education System

Inclusive education is the system followed by Ethiopia. This is not the right option for its immediate applicability in Ethiopia. For instance, Braille users are not adequately observed in this era because the teachers themselves are not capable of understanding Braille efficiently.

laws. The data of Benishangul Gumuz National Regional State and Gambella National Regional State is not included in the report. There are also regions which did not report data of blind employees and is unknown whether it is due to unavailability of blind employees or lack of organized information. This data does not also include employees whose visual impairment is on their one eye.

³⁶³ Statistics of human resource development of Addis Ababa city administration yearly published magazine (2016) p. 23.

With respect to the number of total permanent employees of Addis Ababa, the data of federal public service and human resource development, and Addis Ababa public service and human resource development bureau is different.
³⁶⁴ Interview with Amlaku Tebeje, Director of Teachers' and Education Leadership Development Director of Addis Ababa Education Bureau (May 22, 2018)

³⁶⁵ Interview with Yetmwerk Alemu, officer of data and statistics in the ministry of federal public service and human resource development, may 18, 2018

³⁶⁶ Interview with Tesfaye Tiraz, Acting Director of Human Resource Development Administration Under the Ministry of Education and Zewde Belay, Human Resource Officer of Ministry of Education (May 16, 2018)

³⁶⁷ Interview with Solomon Belay, director of secretariat of federal judges' administration council and Zerihun Getahun, director of judges' job implementation evaluation and disciplinary issues (may 17, 2018)

³⁶⁸ Due to unavailability of full data in the University, this is found through informal investigation which included data of the University and information of different individuals. Therefore, small error of numbers may occur.

Generally, without the fulfillment of adequate number of teachers acquainted with special knowledge required to teach blinds, with the existing inaccessible environment, with the difficulty of access to facilities for blind students in all educational institutions, with the negative attitude of the society, and so many more reasons, inclusive education need to be customized with the situations of the country rather than a simple copy of the western approach of inclusive education.³⁶⁹ In this respect, the policy gaps need to be also considered.³⁷⁰

The Ethiopian education system is backward in many respects. Visually impaired are still engaged in social science only. They do not take different courses provided for sighted persons. Since grade seven, mathematics, physics and chemistry are not provided for blinds in many institutions including boarding schools.³⁷¹ Since grade eleven, they join social science and do not take parts of different subjects if the subjects have calculation.³⁷² Teachers are not well-acquainted how to teach blinds on those subjects and even subjects that are being provided. Technique and vocational training is not still in operation though initiatives are in progress.

This has negative consequences for employment. It likely prevents employment of students who scored below the passing mark in their grade 10 national examination because of lack of alternative training opportunity. It also reduces competence of visually impaired for the job since jobs may require the capacity of the employee on calculation. One is not expected to be competent on subjects which are not his/her area of interest. Fourth, this creates collection of

³⁶⁹ It is not difficult to copy the laws and policies. However, copying the scenario is not as such simple.

³⁷⁰ Abebe Yehualawork, Policy-Practice Gap in Participation of Students with Disabilities in Ethiopia's Formal Vocational Education Programme (2017) (https://jyx.jyu.fi/dspace/bitstream/handle/123456789/53081/978-951-39-6967-7_v%C3%A4it%C3%B6s10032017%20.pdf?sequence=1) last visited on May 9, 2018

³⁷¹ The researcher is familiar with most of the boarding schools and the regular education system did not still respond to the issue too.

³⁷² Other than mathematics, business subject is not provided for blinds. Even economics and geography are not fully provided on issues of mapping, pictographic chapters and calculations.

blinds in to fewer fields. That is why the number of departments in which blinds are educating is very limited.³⁷³

Many departments prohibit blinds from joining them even while the departments do not have courses requiring higher knowledge on calculation. For instance, there are blinds who encountered prohibition by psychology department.³⁷⁴ Yared music school of Addis Ababa University is also a good example of educational discrimination in Ethiopia.³⁷⁵ The school admitted one visually impaired few years before.³⁷⁶

This also creates collection of blinds in similar jobs and institutions. In Ethiopia most blinds are employed in teaching, public prosecution or in Kebeles/Weredas which do not look at specialization in one subject. This in turn imposes burden on some institutions and departments since blind employees cause employers to incur cost if reasonable accommodation is respected correctly.

Regarding the education available in higher education institutions, inaccessible and endangering infrastructures of campuses, lack of accessible materials, poor teaching method of teachers for blinds and their lack of awareness, backward way of taking exam through assistant, failure to respect provisions of the higher education and senate legislation related with disability in most of the universities and departments have negative consequence on the knowledge and assessment of blinds. Grade report and theoretical and skill knowledge in turn have direct impact on the employability of blinds and the level of position to be occupied.

Apprenticeships are not facilitated for blinds in Ethiopia. Taking law schools and social work is important in this respect as they are among the schools highly joined by blinds and departments which have apprenticeship program or field work. Apprenticeship programs or field works are

³⁷³ The major departments of higher education institutions joined by blinds are: law, sociology, social work, language, history, civics, governance and similar fields only.

³⁷⁴ FGD members witnessed that such prohibition was made on some blinds by Addis Ababa University.

³⁷⁵ One reason raised by the school was inexistence of braille nota. This is related with capacity of the teachers because braille nota is already available except the Ethiopian traditional notas. Other alternatives of teaching blinds should also be considered. Discussion with Sisay Mammo, Inclusive Education Officer of Ethiopian National Association of the Blind, March 29, 2018

³⁷⁶ Wuste Birhan Abera third batch graduation magazine, (2016)

important because they give practical knowledge and serve as a bridge between education and the work environment. They may also be source of employment as witnessed by students. However private institutions are neither convenient nor voluntary to admit blind person. The programs do not also employ assistant for blinds. They do not also provide special pay to cover expense of assistant or other means of accommodation. In practice, blinds are helped by voluntary individuals working in the institutions with which they are practicing or by their friend students. Therefore, apprenticeship programs are not well-suited for blinds. This obliges blinds to practice their knowledge while employed. The practice is the same in training institutions³⁷⁷ though proc. No.568/2008 imposes the duty to assign assistant even during training.³⁷⁸ This has negative impact on getting employment, building confidence, doing the right job and extra.³⁷⁹

3.3. Challenges and Practices on Various Steps of Employment

This section shows the possible challenges which are faced by blinds from recruitment up to securing permanence of employment. It contained practical challenges faced by blinds. However, it doesn't mean that all of the challenges are posed by all employers though are faced most frequently. The experiences are collected from personal observation as job seeker and competitor rather than as a researcher, focus group discussion,³⁸⁰ and interviewees of governmental officials of federal, Addis Ababa and Oromia region. Hence, citing FGD members and instances of observation is omitted for simplicity of reading while name of the FGD member or interviewee is depicted when the particular instance best explains the issue.

Advertisements, applications, exams, notifications, admission on the post, probation and assignment of assistant are discussed. Most of these processes of employment are broadly regulated by the directives of the public service sector. The private sector is as varied as the

³⁷⁷ For example, regional judicial training institutes do not employ assistant for blinds. While the researcher and other three blinds were attending judicial training in Amhara region, they negotiated with the institution so that it assigns a sighted trainee to assist the blind trainee.

³⁷⁸ Proc. No.568/2008, art. 6 (1) (c)

³⁷⁹ The focus group discussion revealed the problems faced during apprenticeship or field work programs. The researcher also observed some situations and undertook informal discussions with blind students.

³⁸⁰ Focus group discussion, Ginbot 20, 2010 e.c. at head office of ENAB in the office of director. See: note 23 for the full list of FGD members.

number of undertakings and no directive is issued by governmental body to govern reliability of such processes. The only directive of such kind is the directive issued by MOLSA to implement proc. No.568/2008. It is not broad and fails to ensure neutrality. Therefore, this section sheds light on the situations to be identified and recognized in dealing with the right to employment of PWDs.

3.3.1. Advertisement

Lack of accessible advertisement mechanism is one of the huge problems of blinds for finding job. Schools of Addis Ababa which employ teachers having diploma or more should advertise through newspaper, mostly Addis Zemen.³⁸¹ Ministry of education claims that jobs above level 4 are announced through newspaper, radio and television while jobs below level 4 are posted on the board of the institution.³⁸² Inexistence of fixed hour for the broadcasting media advertisement reduces its effectiveness. According to the directive of federal public service, all vacancies which require professional knowledge should at least be advertised through newspaper.³⁸³

The advertisements of Addis Ababa public service are not also accessible. However, the city devised special mechanism for fresh graduates of the city residents to minimize the effects of inaccessibility. The blinds will be written support letter to one of sub-cities which they desire. Then, the sub-city will call them when vacancy is available.³⁸⁴

There are websites which advertise vacancies. However, the jobs announced through such mechanisms are very limited.³⁸⁵ The date in which the advertisement is posted in the website is very late than the newspaper. Some post the scanned image which is inaccessible for blinds.³⁸⁶

³⁸¹ Interview with Amlaku Tebeje, Director of Teachers' and Education Leadership Development Director of Addis Ababa Education Bureau (May 22, 2018)

³⁸² Interview with Tesfaye Tiraz, Acting Director of Human Resource Development Administration Under the Ministry of Education and Zewde Belay, Human Resource Officer of Ministry of Education (May 16, 2018)

³⁸³ Interview with Mulugeta Wubshet, Director of Human Resource Laws' Research, Implementation and Support Directorate Under the Ministry of Public Service and Human Development (May 24, 2018)

³⁸⁴ Interview with Melaku Temesgen, Director of Human Resource's Job Leadership, Implementation and Evaluation Directorate of Addis Ababa Public Service and Human Resource Development (May 18, 2018)

³⁸⁵ For instance, <https://www.ethiojobs.net>

³⁸⁶ Ethiopian revenue customs authority once posted the advertisement by scanning from the newspaper. Since there is no effective OCR software for Amharic, blinds are unable to read the image found in the photo.

Some institutions also advertise through their own websites.³⁸⁷ Checking the websites of all employers is however impossible. Accessibility of websites for blinds is also at its lowest stage in Ethiopia. Therefore, issuing all vacancies in one accessible website will have positive impact. On the contrary, there are private institutions which only advertise through internet. This is not also right because access to internet is still limited in Ethiopia. Access to computer and internet for blinds both in terms of knowledge and accessibility is not as convenient as sighted people. Special training of screen reader softwares is necessary.

ECDD once had begun messaging vacancies via telephone and email though it was limited to those vacancies advertised by Ethiopian reporter gazette. Few Medias also broadcast very meager number of vacancies.³⁸⁸ All other institutions interviewed by the researcher either formally or informally, told him that their vacancies are advertised either through newspaper or by posting on the board.

The advertisement system is totally unregulated particularly on the private sector. The number of days the advertisement stays on air, the media within which the advertisement will be transmitted, and similar things are not legally stipulated. Many institutions advertise by print Medias which have limited circulation. Even the circulation of Addis Zemen is limited to urban centers only.

The other problem regarding advertisements is their limited information about the job. Finding advertisements which have no or unfunctional address, the salary of which is unmentioned or described to be upon negotiation, is not unique. If this information is not available, applicants are required to find such information from the office or employees which is more burdensome for blinds.

There are also discriminatory Contents of advertisements having no basis of efficiency rather another artificial requirement. Awash bank in 2014 issued a vacancy which requires legible handwriting.³⁸⁹ Some also put the criteria of full physical and mental health as one requirement.

³⁸⁷ Universities are of such instances

³⁸⁸ For instance, Sheger FM 102.1 always reads advertisements in its news though their number is too low and the informations are limited.

³⁸⁹ Visually impaired lawyers including the researcher did not apply discouraged by the requirement.

The requirement of healthy is interpreted by some personnel to disqualify PWDs treating them as non-healthy. The FGD members expressed that they are also sometimes refused by health institutions to get a letter which expresses that they are healthy when they need the evidence to get letter of employment. There are also institutions which structure the job in a way that is discriminatory for blinds while its essential element of the job does not require the fulfillment of those specific criteria. For instance, making driving license a prerequisite to apply a job automatically discriminates blinds which has been experienced in various institutions. In advertisement issued by Ethiopian Trade Corporation to employ public relation senior officer, it included a requirement of “video editing ability”. Arage was then prohibited for applying because he doesn’t meet this requirement only.³⁹⁰ Since reasonable accommodation requires restructuring of job and is applicable during employment relationship including recruitment, institutions should restructure the job or employ assistant which work the video editing part because the blind applicant is competent to do the rest including audio editing and presentation of documentary. The other possible discrimination for Arage may likely be inclusion of such requirement during exam. For example, order to do video editing practically may make him out of competition. So, the exam should also avoid part of the job which will be rearranged by structural change of the job by means of reasonable accommodation. Otherwise, job structuring which is an element of reasonable accommodation becomes meaningless if employers are allowed to disqualify blind applicants by such kind of exams.

Similarly, jobs which only invite fresh graduates are not based on merit. This has no competence issue rather reduction of applicants.³⁹¹ This is allowed by the civil servants proclamation in case of scarcity of the profession in the market³⁹² instead of reducing number of applicants.

³⁹⁰ With great controversy, Arage explains that he is finally registered in the week of Ginbot 13, 2010 by the permission of the higher official. However, he becomes certain from his previous experiences that he will be discriminated by other processes.

³⁹¹ Samsom, who was working in the human resource of revenue and customs authority explained that it is difficult to facilitate exam for large number of applicants and they only screened fresh graduates to reduce number of examinees. (discussion with human resource official of Ethiopian revenue and customs authority in April 2016)

³⁹² Proc. 1064/2017, art. 16 (2)

Organizations whose main job is related with natural science or calculation has tendency to believe that blinds cannot be employed in the organization in whatever position. Arage was first prohibited from being employed in radiation center as public relation officer.

Advertisements rarely encourage PWDs. This shows lack of readiness to accommodate them in the job competition and admit them finally.

3.3.2. Application and Registration

This stage is where the challenges faced by blinds increase in their magnitude. Mulugeta explained that personal appearance is not needed to apply.³⁹³ Conversely, all interviewees admit that application using e-mail, website, and telephone is not experienced. The researcher also witnessed quite few instances of such forms of applications.³⁹⁴

Though the interviewees described that application by post and fax should be allowed, they admit that these means of application also suffer from various problems.³⁹⁵ Lack of fax and post in the advertisement, lack of faxing services in the market, possibility of gap between sending and receiving, and similar problems make these methods unreliable. Alenew argues that e-mail application without alternative is totally discriminatory. He further explains that organizations don't notify reception of the application and their screening process is not transparent.

Application through other person is not prohibited. However, most institutions request original documents for application. The interviewees admit this practice. Mulugeta told the researcher that this is not mandatory requirement set by the directive and the practice is meant to prevent forgery. Requiring original document discourages blinds from applying because providing original document to third party in order that he/she applies in favor of the blind may expose to giving and receiving original documents for and from third parties. Applying printing scanned

³⁹³ Interview with Mulugeta Wubshet, Director of Human Resource Laws' Research, Implementation and Support Directorate Under the Ministry of Public Service and Human Development (May 24, 2018)

³⁹⁴ In Ginbot 2008 e.c., federal supreme court announced its advertisement which allows application by means of telephone for appointing presiding judge. Mada Walabu University issued a vacancy in Nehase 2005 e.c. allowing application by e-mail. However, similar instances are very few.

³⁹⁵ The researcher was rejected in the job competition of one of the Universities on the reason that his application and curriculum vitae did not reach them though the fax gave sign that the documents were sent. Telephone calls of the researcher to the University were not answered to ascertain reception of documents.

documents from external drives on any instance without wandering with original documents would have been possible had this not been required by human resource workers.³⁹⁶

One of the main problems during personal application is inaccessibility of the environment for blinds. This is challenge in every stage of finding employment which is experienced during reading advertisement, application, exam delivery, interview, and employment. Lack of information about the exact location of employers and inexistence of street numbers and standard location names makes it difficult to find the place where one should apply. Life of blinds is in jeopardy and their right to employment is at stake due to the holes, ditches, bridges, rivers, poles, trees, GARBAGES AND DUST-BEANS, NOTICE BOARDS AND INDICATORS, unsuitable land structures especially sidewalks, unstructured parking of vehicles, inaccessible traffic system, poor transportation systems, and so many more problems.³⁹⁷ Indeed, there are encouraging efforts of the government. In Bahir Dar, voice signal of traffic light is facilitated. In Addis Ababa, the city repeatedly advertised that it is working to make roads accessible for PWDs³⁹⁸ though the road accessibility is yet at its worst stage. Priority in the queues of transport has been a right obtained through custom though customary rights are enforced by the will of the people.

By way of interpretation, the right to employment proclamation and the directives issued to implement the proclamation provide that reasonable accommodation is applicable in all stages of employment including recruitment.³⁹⁹ However, the practice is on the contrary. All interviewees admit that no application deadline extension is made for blind applicants except charity/cooperation of persons. FGD members also express that no person guides them in the campus of the employer except benevolence of individuals.

³⁹⁶ It is possible to prevent forgery through different methods even by requiring original documents after selection.

³⁹⁷ Endalkachew Tsedalu, Access to Road and Transport of PWDs: Legal and Practical Issues in Addis Ababa (A Partial Fulfillment, Ethiopian Civil Service University 2015)

³⁹⁸ In its advertisement transmitted on February 19, 2018 8:55 PM via Ethiopian Broadcasting corporate television broadcasting, Addis Ababa road authority announced that it is repairing existing roads and constructing new wide pedestrian roads which are comfortable for persons with disabilities.

³⁹⁹ Cumulative reading of Proc. 568/2008, art.s 2 (2) and 2 (5); Federal Civil Service Directive, art.s 2 (9) and 2 (11); and MOLSA directive, art. 3 (7)

Employers don't expect that blinds may apply for the vacancy. Therefore, most of the settings are inconvenient for blinds. Blinds also face difficulty in filling forms prepared by institutions. Employers do not take filling forms as duty rather as cooperation though the concept of reasonable accommodation covers filling application forms. The provision of access to information proclamation can also serve as interpretative guideline.⁴⁰⁰ Sometimes, they ask other applicant tired of filling his form to assist the blind to apply. Some forms are also full of irrelevant information making application tiresome. There are also employers which require blinds to come with their assistant to complete the application process.

The reception of human resource workers is mostly discouraging and is contrary to human dignity. They try to convince that the job is inconvenient for blinds. Their argument may extend from workplace up to the content of the job.

They also tell blind applicants that they finished their application without explanation. Blinds lose trust of the system without having detailed information. Evidence of registration is not mostly provided for applicants. This may lead to indirect discrimination justifying that the applicant did not apply. It is possible to give tickets which contain the name of applicant and registering officer with registration number and similar information to alleviate this problem.

The other issue related with application form is the fact that disability is not included with forms. Most government institutions included disability within their application form. However, the researcher and FGD members have never seen this form which request disability in the advertisement of private undertakings.

Filling the existence and type of disability helps to notify the employer to take reasonable accommodation measures and respect other rights provided for disabled. For instance, the employer can easily discharge its responsibility to abstain from screening out the disabled and to prepare accessible examination environment if he is aware about the existence of disability. However, knowledge of disability has also negative consequences as it may lead to discrimination. Addis Ababa land administration left the researcher and Dawit from competition due to their blindness. The officer himself filled the type of disability they have and dropped Dawit from registration and dropped the researcher after registering on computer. The researcher

⁴⁰⁰ Proc. 590/2008, art. 14 (1)

and Dawit knew about the discrimination after other applicants are employed. When they challenge the discrimination committed upon them, the officer finally admitted that it is error and rejected them on the reason that they didn't file disappointment within five days of the error. At the same advertisement, the office employed other blind applicants who didn't fill existence of disability.

3.3.3. Notification and Calling

The way exam dates and places are notified to competitors and similar notifications including selection for employment is crucial for blinds. Few employers announce date and venue of exam while advertising the vacancy. Others provide that they will announce by internal board or keep silent about way of notification.

Most employers call only to applicants selected for the exam. Those applicants who are screened out are not informed that they are rejected. Employers don't use alternative methods such as: sending message or e-mail.

Others post selected applicants on internal board of workplace. This is not convenient for blinds since it is not posted in Braille and moving to workplace every time is cumbersome even for sighted person. Employers don't have telephone call for blinds alone to reduce such inconvenience. Some believe that this is discriminating sighted persons because they don't understand about reasonable accommodation. Inaccessibility of location of board, non-alphabetic list of applicants, damage of the post due to failure to lock the board make blinds despair.

The researcher witnessed employers who call for exam after long time.⁴⁰¹ This makes status of the recruitment process unpredictable. This in turn makes investigation of the information more tiresome for blinds since they are mostly discriminated during the screening process. Employers also fail either knowingly or unknowingly to avoid further screening for blinds. The date of notification is mostly done few days before exam. Blinds may be out of competition due to delayed notification because knowing exam place, searching a guide, and similar things have negative effect on their participation in the competition.

⁴⁰¹ Examples of such institutions which examined applicants after six months are: federal supreme court, federal attorney general, private organization employees social security agency, enat bank and development bank.

3.3.4. Exam

Exam is one of the major ways of recruiting persons. Most institutions conduct written and oral exams to select applicants. There are areas which include experimental examination. In most governmental institutions, written exam takes the highest share and percentage of interview is decided upon directives.⁴⁰²

Interview consists of 15 marks in Addis Ababa governmental institutions, 20 marks in ombudsman, 30 marks in petroleum enterprise and 50 marks in federal court's examination. In private undertakings, there is no such limitation. Enat bank conducted interview only.⁴⁰³ Universities are also interviews in practice.

One of the basic problems regarding exam is failure of employers to call blinds for exam. There are employers who do this intentionally to avoid blinds from the competition. Avoidance of further screening is not adopted by regional public service laws. Nor is it accepted by governmental institutions which claim to be governed by special law.⁴⁰⁴ The researcher was victim of such misdeed by federal supreme court for three times.⁴⁰⁵ No blind has ever taken exam though many applied to the Supreme Court.

Arage was not called for exam though he was better than other examinees.⁴⁰⁶ The exam was delivered and other applicant passed. The selected man brought his clearance from his previous

⁴⁰² This is stipulated by the directive of each institution and the researcher witnessed all of them except the federal judges' examination.

⁴⁰³ Enat bank recruitment of lawyers in April 2017

⁴⁰⁴ Examples of such institutions are: federal judicial administration council and its regional counterparts, public prosecutors' offices, universities, ombudsman, and human right commission.

⁴⁰⁵ Their argument is that PWDs are beneficiaries of affirmative action once they reach to exams. However, the institution discriminates blinds because it believes that blinds are not competent for being judge. The researcher is told this fact by insiders. In the vacancy of 2015, the researcher had better grade than many competitors including males. Nevertheless, he did not institute action because the institution intentionally told him false information about the screening and he knew the truth long after the event.

⁴⁰⁶ During his challenge, Arage realized that he was selected for exam by the human resource and finally screened out by the department the vacancy is issued to.

job. However, after the challenge of Arage, the exam was cancelled. Arage won the competition and left the job for the sake of the other person previously selected.⁴⁰⁷

Avoidance of further screening is not known by many.⁴⁰⁸ The researcher and Dawit challenged the recruitment of Enat bank because they were affected by the additional screening requirement of relevance of work experience. They were given exam when they threaten to institute action.⁴⁰⁹

The other issue worth mentioning is concerning exam setting for blinds. The place may be new for the applicant. It may also be surrounded with dangers such as, ditches and obstacles. Therefore, seeking suitable place to deliver exam is necessary.

Similarly, arriving on time is challenging for blinds because the transport system, the road for pedestrian, the address of the institution and the office of the exam are either inaccessible or new for blinds. Due to these problems, blinds most likely reach very late unless they begin their journey very early or they are assisted with non-disabled peer. Preventing latecomer blinds from taking the exam is therefore contradicting with reasonable accommodation. Dawit was denied to take exam only because he was 5 minutes late from other examinees.⁴¹⁰

Blinds are not mostly examined inside rooms rather out of classes. Therefore, the place is prone to noise and unsafe conditions. Sun, rain, and dust may disturb the exam process. Desk is also unavailable and chairs are brought from classes. The system is totally against the dignity of blinds. Facilitating all the above conditions is very simple if not ignorance of rights of blinds. This should also be taken as one form of reasonable accommodation to be provided during exam delivery.

⁴⁰⁷ This shows that securing cancellation of the recruitment has pain for the blind who needs the cancellation too because he/she thinks that the bread of other person is to be interrupted. In the case cited, Arage told that he left to be employed because the other person quitted his previous post when he was notified to have won the competition.

⁴⁰⁸ To its worse, The researcher and his friends including FGD members were not called by many institutions though the institutions are aware of the rule of avoidance of further screening.

⁴⁰⁹ The applicants new that they are screened out after other applicants are examined. The result of the exam was not also notified. Indeed, possibility of rejection is high provided that they are examined with challenge.

⁴¹⁰ Exam of Ethiopian petroleum enterprise to employ attorney in December 2016

One of the major problems of blinds in taking exams is the way they take the exam. The exam is not provided with Braille. Nor are blinds allowed to take the exam by utilizing their computer. This is due to various reasons. First, the soft copy of the exam is not readily available. Second, employers are afraid that blinds will read materials related with questions in the exam if they are allowed to use computer whereas, others do not. To the other extreme, there are persons who believe that the computer works the exam by its own. Using computer has also disadvantage for blinds. First, the knowledge of computer of the blind may be limited. Second, it may likely expose him/her for discrimination. Alenew took exam to be employed in Addis Ababa University using computer. However, the exam coordinator told him that his exam will more probably be rejected.⁴¹¹

Because of the above factors, blinds need assistant to read them the question and write them their answer in today's Ethiopian context. It has been so many times controversial as to who has the burden of bringing the assistant. It is not however difficult for disability right lawyer, if not human right lawyer, to encapsulate that this is part of reasonable accommodation.

However, the practice is not uniform in this respect. Some allow the blind to bring assistant by himself. Some reject this for fright of plagiarism of the blind examinee from his assistant. Such institutions prefer to prepare assistant by themselves to prevent plagiarism. This is very useful for the blind too because it diminishes suspicion of the employer that the blind applicant will be helped by his assistant in answering the questions going beyond his task of reading and writing. Others provide assistant out of charity rather than prevention of plagiarism or dictated by duty. Conversely, there are institutions which make the duty of bringing assistant fall on the shoulders of the examinee itself. Alenew suffered from this experience while he was legible to take exam in Law School of Addis Ababa University.

The other problem is related with the quality of assistant during exam. The unfortunate blind may be assisted by unqualified person. This is true if the institution considers provision of assistant out of charity rather than dictated by the sense of duty. Employers may also use it as opportunity not to employ blinds by intentionally assigning an assistant who is unqualified and

⁴¹¹ Alenew adds that the exam was very easy for him because he has rich experience on the area and believes that his rejection is based solely on his blindness or the way he took the exam.

cause the applicant score lower marks. The employer may also order the assistant to write wrong responses. FGD members expressed that most of the assistants assigned by the employers are unqualified. Guards and cleaners are mostly brought to become exam assistant of blinds.

The researcher witnessed both extremes in terms of qualification. To cite the positive example, he was assisted by a person who is the worker on the job issued for the vacancy. The assistant was qualified enough since he reads very well without error of pronouncing jargon words and easily understands what the blind examinee wanted him to write. To prevent plagiarism the response of the researcher was recorded and another person was assigned to control the process.⁴¹² This may create frustration for the examinee because he may likely think that his voice is being recorded without stop. However, this can be one solution for satisfying qualification of assistants.

Generally, there are reliable methods of preventing plagiarism by the blind. Recording, controlling by other person, examining the profession of the assistant are among the options.

Plagiarism should also be controlled for other examinees as this problem is observed frequently by the experience of the researcher. As a bystander, the researcher observed different institutions which don't try to prevent plagiarism at all. If plagiarism is allowed for one and in effect denied for other, the competition becomes meaningless. Therefore, employers should protect blinds too by controlling other examinees from committing plagiarism though it is not fully possible as can be on blinds.

The other problem is related with the time allotted for exam. Blinds take their exam by means of assistant. Reading and writing through other person surely takes more time than taking by their own. Using the trend of some universities for blind students is indispensable here. For instance, law school of AAU increases one-third of the exam time. This should be included under the principle of reasonable accommodation being elaborated by a guideline or directive for its effective implementation.

⁴¹² Exam of Ethiopian petroleum enterprise to employ attorney in December 2016

Neutrality of the process of exam is one decisive factor for recruitment. Sometimes, the issuance of vacancy and all other recruitment processes are conducted to legalize the interest of employers/their workers to employ persons whom they desire.⁴¹³

To prevent this, institutions follow different procedures. Outsourcing the preparation and organization of written exam is being considered as one way of ensuring reliability.⁴¹⁴

Others use exam code to achieve the same result assuming that the person who knows the exam and the persons who undertake the evaluation don't have connection.⁴¹⁵ Here, it should be noted that exam papers of visually impaired should not be collected separately because this informs blindness of the examinee and may lead to discrimination.⁴¹⁶ It's sometimes heard that exam codes are divulged to evaluators.

Some institutions prefer to prepare the exam few minutes before the exam is delivered. They entrust group of persons or a committee to discharge such responsibility. Members of the group or committee don't join with any examinee since the exam will be delivered immediately. This becomes difficult when the examinees are very large and even this method is not dependable in written exams as they require series of preparations.

⁴¹³ The FGD members agree with this assertion. The researcher saw this kind of phenomenon in a vacancy which was issued to employ an apprentice of a government institution which is not important to cite here. After the process, the person for whom the vacancy is suspected to have been issued joined the institution.

⁴¹⁴ Among the exams taken by the researcher, the only institution which followed this procedure was Addis Ababa city administration house construction project office.

⁴¹⁵ This method is now being accustomed and is found in many recruitment directives. See for example the directives issued by civil service ministry, Addis Ababa civil service agency and the federal judges' administration council. Melaku describes that all exams provided by the Addis Ababa administration relies upon exam code. The researcher observed this procedure in the exam prepared by federal attorney general. (Interview with Melaku Temesgen, Director of Human Resource's Job Leadership, Implementation and Evaluation Directorate of Addis Ababa Public Service and Human Resource Development (May 18, 2018))

⁴¹⁶ In Addis Ababa University law school department, exam papers of sighted persons will be collected and stamped. Consequently, few papers which are clearly identified to be that of blinds will be collected and stamped separately. The researcher ascertained this from teachers too. This is not done knowingly however may have effect of discrimination or mistrust.

Others prefer to prepare the exam by one superior body and the exam will be opened at the same time in different places. This is mostly practiced when recruitment is done at the city or regional level.⁴¹⁷

Generally, totally avoiding leaking of exam and plagiarism is impossible. Nevertheless, preparing objective exam, relating exams with the subject matter of the specific job rather than general questions which lack specificity, and dispersing Key answers immediately after delivery of the exam are good methods of improving neutrality despite lack of these practices.

Mostly, exams are issued from manuals and brochures. These materials are not most often accessible for visually impaired. Therefore, institutions should make these materials accessible whether private or public if they really want to make their evaluation fair for all.⁴¹⁸ On the other hand, exams are not absolute measurements or perfect mechanisms to know the most capable candidate.

3.3.5. Selection

Institutions follow multitude of criteria for selection. Institutions under the public service mainly depend on written and oral exam including practical exam as the case may be. Private institutions consider many things. As already explained, there are institutions which only use interview for selecting applicants.

Exam through interview alone may have negative consequences. It gives unlimited discretion to examiner. It is mostly abused because of biases and prejudices. Dawit has been victim of discriminations committed during interviews.⁴¹⁹ Addis Ababa left out interview for PWDs competing for vacancies requiring not more than three years work experience despite repeated

⁴¹⁷ Addis Ababa city administration mostly follow this method. Regions also follow similar procedure when they recruit lawyers for training in the justice professionals' training institute and appointing them later.

⁴¹⁸ Although this is imposed as obligation by the access to information proclamation, the applicability of proc. No.590/2008 is on public institutions only.

⁴¹⁹ Though it is not important to cite names of employers, he was given lower mark by calculating the mark difference he has with other competitors.

incompliance of such rule.⁴²⁰ Melaku explains that this is done to reduce discrimination because interview is exposed for committing discrimination.⁴²¹

What makes worse interviews is that most employers do not follow strict procedure in evaluation. Sometimes, they even take minute after they are challenged, especially, when blinds express that they are going to court proceeding. The interview is not recorded. They do not transcribe the answers of interview. During interview, they simply give result which is clearly susceptible of biases and prejudices. Yohanese was discriminate in such way.⁴²²

There are instances in which the weight of each question in both written and oral exams is not known. Employers may give higher marks for questions which are not well done by the blind applicant. Hence, proper notification of each stage of screening makes the process reliable. Example, announcing the result of written exam before oral exam is provided⁴²³ and informing competitors the weight of each question reduces the possibility of manipulation of result of written exam.

Quickly screening also reduces abuse. Notifying the period of time within which screening will be completed enables victims of discrimination to rectify the mistake before it reaches irremediable stage. Allowing the inspection of any examinee for other competitor enables the possible victim of discrimination to know whether discrimination is committed because this is not privacy rather open competition.

⁴²⁰ Addis Ababa circular art. 4

⁴²¹ However, he does not have sufficient response why interview is not avoided for PWDs who have more than three years work experience.

⁴²² Alenew explains that a blind with the name Yohanese was claimed to have been discriminated by human right commission and representing ENAB, Alenew was requested his advice. He further told the researcher that he expressed for the commission the existence of great difficulty to believe that there is no discrimination since there is no any document which indicates how the interview was evaluated.

⁴²³ Addis Ababa house construction project office posted the result of written exam when the applicants are called for interview.

There are institutions which select applicants based on curriculum vitae only. This is without forgetting employees selected based on recommendation. These methods make the possibility of discrimination wider.

University grade report sometimes consists of certain points for selecting applicants which is prejudicial for most of the blinds due to the problem of the education system.⁴²⁴

Discrimination is one of the basic challenges of realizing the right to employment of blinds. Discrimination can be direct or indirect. Direct discrimination occurs when someone is treated less favorably than another person because of a protected characteristic they have or are thought to have (perception discrimination), or because they associate with someone who has a protected characteristic (discrimination by association).⁴²⁵ Indirect discrimination based on disability occurs when a requirement (or rule) that appears to be neutral and the same for everyone in fact has the effect of disadvantaging someone because he has disability.⁴²⁶ More uniquely with other grounds of discrimination, lack of reasonable accommodation for PWDs is deemed to be discrimination.

The way and form discrimination is committed is uncountable. The main source of discrimination is related with attitude and barriers. During selection, departments for whom the recruitment is made and human resource have great role in discrimination. Increasing criteria which are not essential element of the job, such as, requiring driving license is common way of discrimination.⁴²⁷ Believing the incapability of blind to follow up the selection procedure gives courage for discriminating.⁴²⁸

⁴²⁴ For instance, Amhara National Regional State justice professionals' training and legal research institute allotted 40 marks for University grade report result in order to admit candidate appointees.

⁴²⁵ **The Equality Act 2010 - guidance for employers** (<http://www.acas.org.uk/media/pdf/8/a/Equality-Act-2010-guide-for-employers.pdf>) last visited on April 7, 2018;

Why have discrimination law? (http://hrc.act.gov.au/wp-content/uploads/2015/03/Discrimination_T2-Dec10.pdf) last visited on March 29, 2018

⁴²⁶ Ibid

⁴²⁷ The case of Arage indicates this though committed at the advertisement stage.

⁴²⁸ The case of Getu is evidence of this type of discrimination. See the case in the next section.

Relevance of work experience is one of the most abused requirements. Whether the experience is relevant for the position is to be decided by the employer. Mulugeta described that federal public service is preparing standard with regard to the public sector because the institution ascertained through study that relevance of work experience is being abused by many institutions. Adbaru was also denied employment based on reason of irrelevance of work experience after knowing that he has scored the highest mark among the competitors. In this case, it is difficult to convince that he was discriminated due to his blindness.

Point reduction of the disabled,⁴²⁹ point increment for non-disabled competitor,⁴³⁰ cancellation of the vacancy,⁴³¹ and delay of notice of result⁴³² are the major manifestation of discrimination of blinds.

Close Point Preference

The rationale behind point increment or point comparison should be scrutinized. There is high possibility that the result of the blind examinee does not reflect his/her true quality. Most of the time, the exam is provided for blind using assistant. There is a possibility for the existence of gap

⁴²⁹ Particularly, the point of blinds is decreased during interview as repeatedly committed on Dawit Oticho. As Dawit ascertained from insider after he is employed in one of such institutions, some persons assigned in recruitment used to argue that the blinds couldn't score the mark they obtained unless they got the exam before. They concluded that the mark of the two blinds, one of which was the researcher, should be decreased.

⁴³⁰ In one of the federal institutions among which the researcher competed, the researcher called to the office and was told that he brought 80 out of 100 while the other female examinee brought 79-100. It was further explained that she is selected because 3 marks will be added to her without knowing that the researcher is blind. When the researcher asked them in person they expressed that the result of the female competitor is 80.6-100. Finally, the researcher was employed arguing in different ground.

⁴³¹ In September 2013, MOLSA itself notified that is cancelled the vacancy which has five posts because five blinds secured the recommendation of civil service minister for direct employment without further requirements. Though the letter of the civil service was not mandatory, human resource officials of MOLSA believed as such and preferred cancellation.

⁴³² The researcher faced many institutions which describe that the recruitment is yet under process even after a year. Whether another person is employed on the position cannot easily be ascertained by competitors and can be used as a means of discriminating blinds.

between the examinee and the assistant. Time is not also extended for blinds. It is clear that it needs more time for a blind to listen the question, dictate for the assistant and write by the assistant. Questions of exam are most of the time focused on the institution and the specific area on which the vacancy is announced. Information of the institution and the specific vacancy are most of the time found on the brochures, pamphlets, and other documents. These are not produced in the forms which are accessible for blinds. Result of higher education may also be considered by the institution. With the existence of a great deal of limitation of higher education in Ethiopia in the provision of education for blinds, the grade of the blind much more likely does not reflect his/her true quality on the subject. When we take in to account all of the above factors, the result of the blind does not speak the true capacity of the blind examinee. This is not presumed by the directives. The directives provide that all these should be solved by the institution except the problems of higher education. It's also applicable for all PWDs. Therefore, close point preference is not meant to fill the gap between the exam and the true knowledge of the blind.

There is close point preference for females too. The point preference is in comparison with other competitor. If the disabled scored higher mark, there is no need for comparison. The comparison lacks however clarity and has been source of controversy. Some institutions put minimum threshold or pass-mark for selection. If the disabled is below the minimum, he cannot be selected. The disabled argues that he is not exceeded by more than 3 or 4 percentage according to the directive which applies for the case. In effect, the candidate which does not exceed the disabled candidate with a single mark passes only because the disabled is below the threshold.⁴³³ The directives, except the Addis Ababa circular, do not resolve such dispute unless this is further interpreted by the courts.

The other controversy may be when a disabled person is exceeded by a male candidate for more than 3 percent and when he/she is exceeded by less than 3 percent by female candidate in a situation where the female candidate is not exceeded by male candidate with not more than 3

⁴³³ In the vacancy of federal attorney general held in March 2017, the pass mark was 50/100. Those blinds who scored 47 upto 49 were rejected while sighted persons who scored 50 were admitted.

percent.⁴³⁴ For example, the disabled scored 77 the female 80 and the male 83 mark out of 100. The female candidate claims her selection because she is not exceeded by male candidate for more than 3 percent. When the female is selected, the disabled claims that he should have been selected because the female candidate does not excel him by more than 3 percent. If the disabled is selected based on this argument the male candidate without disability claims that he should have been selected while he excelled the disabled candidate by more than 3 percent.

The other controversy is quota system for females and nationalities with lower representation. In such cases, the disabled may claim that certain females are selected based on quota while he has greater marks than them because the directive and the proclamation provide that preference should be given for the disabled if he is not exceeded by more than certain percentage. It is frequently observed that females and applicants of certain nations and nationalities are allowed to pass for final exams with lower grade than other candidates. This protection is mostly ignored for disabled.⁴³⁵

3.3.6. Placement

Placement would be an issue when large number of vacancy is available and their place of work covers different areas. Placement of blinds to a place inconvenient for them may have the consequence of denying their employment at all. In Welo, a blind woman was raped due to her placement to inappropriate place.⁴³⁶

The issue of placement is envisaged by the definition of reasonable accommodation.⁴³⁷ This and other experiences show that placement of blinds should be considered. FAG respected choice of

⁴³⁴ Note that PWDs have 3 percentage preference by Addis Ababa city administration circular of 2012 and MOLSA directive of 2011 while the percentage is 4 percent by the civil service ministry directive of 2014. The directive which gives preference for women is the federal civil servants employment implementation directive of 2007.

⁴³⁵ The researcher was rejected by a number of universities in different times, federal supreme court in august 2015, and ministry of justice in November 2014 though he had higher grade than some female applicants and some members of nationalities with lower representation.

⁴³⁶ This information is found by a snowball sampling method and citing the name of the women is not important.

⁴³⁷ The phrase, “working environment” is one element of the definition of reasonable accomodation. It is clear that working environment includes place of work.

blinds during its placement of fresh prosecutors in 2017 though not strengthened by directive like Oromia.⁴³⁸

3.3.7. Probation and Assignment of Assistant

Probationary period is a period in which the institution tests the capacity of the employee. It is free will of the employer to believe that the employee is competent or not. Therefore, it is easy to manipulate the law by dismissing the blind employee claiming that the employer found the blind employee incompetent. This needs practical solution. On the other hand, assistant is not employed immediately. Probationary period is provided during the earliest time of employment. Without assistant, the blind employee may be unable to work with full efficiency.

The assignment of assistant for blinds is becoming better from time to time. Melaku claims that assistant is assigned for all blind employees of Addis Ababa city administration except teachers. Oromia public service bureau admits that there is lack of uniformity in the employment of assistants despite the progress from time to time. Ministry of education assigned assistant for its sole blind employee. Federal attorney general, Oromia justice bureau and Amhara Attorney general employ assistant consistently despite the problems of delay and lack of assistants in the market.

The issue of teachers is still in deadlock. Yilikal ascertained that the practice of selected zones of Amhara region is still below satisfactory in terms of employing assistant.⁴³⁹

Addis Ababa public service and human resource development bureau dispersed letter which prohibits assignment of assistant for blind teachers and termination of contracts of assistants already assigned. Melaku argues that assigning assistant for a teacher whose work does not last for 8 hours is wastage of budget. He adds that the education bureau should study and seek other solution.

⁴³⁸ In 2016, the Federal Attorney General had vacancy in all of the regions. It first placed blinds based on their choice and placement of other prosecutors was identified by lot.

⁴³⁹ Yilikal Hassabie and Sisay Debalkie, "ASSESSMENT ON THE Duty to Assign ASSISTANT OF THE AMHARA NATIONAL REGIONAL STATE GOVERNMENT EDUCATION BUREAU for the Blind Teachers" (January 2017) (unpublished)

Blind teachers however argue that assistant is indispensable for teachers too. Correction of exams, checking notebooks, filling forms of evaluation of the teacher, delivering exam and supervision of exam, reading reference books, guiding in campus and to transportation, writing on the blackboard and similar importance of assistants are raised.

Reasonable accommodation should be provided for all workers having disability. This has the effect of making reasonable accommodation provided for the disabled whether their work is temporary/permanent. Lack of willingness to employ assistant for temporary workers with disability is noticed by the researcher. For example, the researcher was not selected to become assistant lecturer seemingly because of reluctance of employing assistant for the researcher for shorter period though the researcher finally convinced and worked without assistant. This may also be more cumbersome when the employment is through project the budget of which is apportioned to each expense.

In practice, employing assistant takes range of process. Employers are employing assistant through the regular process which include, advertising, written and oral exam and similar processes. This may lead the end of the temporary work before the assistant is employed. This in turn has the effect of pushing blinds from competing in the labor market. Therefore, devising multitude of solutions is important for the multifarious problems that may happen. For example, immediately advertising via newspaper, allowing the disabled employee to bring his/her own assistant without the strict employment requirement, paying money to the blind to use any person to undertake its day to day activity, delegating the task of assistance to other employees with lower work load until the assistant is employed only, and consulting with the PWD how to tackle the problem. Even the project can cover the expense of assistant by doing simple readjustment of the project. This cannot be defense in any way for government offices since it should cover from the other expenses.

3.4. Self-Employment

The number of blinds who are self-employed is scanty. As explained before, the system does not equip them with the necessary knowledge and skill which enables them to be self-employed. There is no incentive from the government too despite the 2009 employment strategy.

The officials of Addis Ababa small enterprise bureau told the researcher that blinds do not engage in self-employment because of the type of disability they have. One of the highest officials also described that the bureau had experience in providing sheds for blinds and snatched them because they are found renting it rather than working by their own. He further added that PWDs other than blinds are more visible in their engagement of small enterprises. The bureau did not design training for blinds other than expecting them to work by their own without any training.⁴⁴⁰

Street sellers are somehow observed. Sheltered employment is observed employing fairly large number of blinds.⁴⁴¹

Sheltered employment is not needed by those who have severe disability only but also by those blinds who are not effective in education. If a blind is not effective in the limited education available in Ethiopia, the option becomes self-employment. If self-employment cannot be secured due to various reasons attributable to the visually impaired or the whole system of the country, the blind is left with no option. In such cases, sheltered employment can be good solution. It also helps blinds to improve their education by extension and distance programs which thereby transforms their employment in to the regular employment scheme.

3.5. Institutional Capabilities of Implementing Bodies

The power to implement proclamation no.568/2008 is vested for MOLSA, federal public service and its regional counterparts.⁴⁴² However, its implementation is quite low. First, the council of ministers did not issue regulation and all regions except Addis Ababa did not issue directive to implement the proclamation. Even those directives issued by MOLSA, federal public service and Addis Ababa are not even well known by the implementers. Among the interviewees, there is no person who immediately described the existence of proc. No.568/2008. The close point

⁴⁴⁰ Those officials of Addis Ababa small enterprise development bureau whom the researcher requested information were not willing to be formally interviewed and they pushed him to one another and led him from appointment to appointment.

⁴⁴¹ Examples of such sheltered centers are: hager Tibeb maderaja dirjit, yemisrach artifact, and Hope for the Blind.

⁴⁴² Proc. 568/2008, art. 9 (2)

preference is unknown by many human resource management workers. What it means by 3 or 4 percent is confused by some persons too.⁴⁴³

Lack of specific department which is responsible for implementing the proclamation is the main problem. Even MOLSA did not have specific department or focal person which implements proc. No.568/2008 and proc. No.676/2010.⁴⁴⁴

MOLSA officials who the researcher interviewed formally and informally are evidence that the proclamation is not even correctly understood by implementers. They have never instituted court action and don't believe that it is their power.⁴⁴⁵ There is no any guideline which elaborates rights vested under the proclamation except the directive.

They limited their power to the provision of training. Even the training is not undertaken through study. For instance, blinds are not covered by the trainings. Judges and lawyers are not also addressed by the trainings. There is no information about the employment of blinds in the private sector and public enterprises. MOLSA officials are unable to explain how they are implementing the proclamation and implementing directive. They did not collect any data about the employability of PWDs in the private sector.⁴⁴⁶ Nor did they conduct research on the practical implementation of the proclamation on the private sector.

⁴⁴³ An official leading the inspection department of federal public service told the researcher that the 3 percent is to be calculated in reference to the highest score rather than out of 100. He further analyzed that the real mark is below 3 percent based on the correct calculation. However, the reading of the provision shows that the percentage should be calculated out of the total exam rather than the highest point. Interview with Abebe Seifu, Head of Job's Leadership Supervision and Evaluation Or Inspection Office of Ministry of Public Service and Human Resource Development (May 24, 2018)

⁴⁴⁴ Currently, the ministry is establishing directorate and is under the process of filling employees. (<http://ethiopage.com/static/jobs/images/1544866502.jpg>) last visited on January 6, 2019

⁴⁴⁵ Interview with Wasihun Bimrew, Advocacy Officer of the Ministry of Labor and Social Affairs (May 25, 2018)

However, the proclamation clearly stipulated that the appropriate organ can institute action and the MOLSA directive made the task of instituting court action fall on the labor inspector. (proc. No. 568/2008, art. 10 and MOLSA directive, art. 13)

⁴⁴⁶ The public sector at least yearly collects data about the number of employees with specific types of disability and tried to collect data about measures of reasonable accommodation though its finding and data collection methods are under question especially with the latter data.

FGD members elaborated that any type of reasonable accommodation either before or after employment is even thought when the blind requests. The researcher assured that the meaning of reasonable accommodation has not been changed in to practical languages and the institutions which are vested with the power of implementing the proclamation did not make any change to discharge their task.

Although the proclamation determining definition of executive organs of the federal government which imposes duty of mainstreaming on every ministry is issued prior to 8 years and retained by the proclamation issued 2 years ago, MOLSA proved that disability is not mainstreamed within the ministries. MOLSA claims to have prepared check list in which the ministries will be assessed about their work on disability though the check list is waiting for ratification by the federal public service and human resource development.⁴⁴⁷ Interviewees also told the researcher that disability is covered under the cross-cutting issues in their institution. This ascertains that disability is not agenda independently rather swallowed within uncountable issues.

The issue of awareness is yet in its lowest stage. The researcher ascertained this through the observation of various stake holders and even the response of interviewees. Devising national awareness strategy is also suggested by the CRPD committee.⁴⁴⁸ Teaching disability as a course in any higher education institution, setting up a ministry which wholly deals with disability issues and department within all other ministries, devising range of training plans for major implementers and courts, building capacity of associations having proven engagement in advocacy, designing national strategy to foster awareness of the society, transmission of disability related programs in state owned medias without expectation of sponsors, blending disability issues within the curriculum of the whole education system, conducting pragmatic researches having meaningful impact on the livelihood of PWDs, enacting a comprehensive law easy to know and implement, and taking other measures which spark the awareness of the society can improve situations of PWDs.

⁴⁴⁷ MOLSA explanation to public wings, June 29, 2018

⁴⁴⁸ CRPD Concluding observations, para 17

3.6. Court Decisions

In this section, five court decisions are briefly consulted. Parties of all of the cases are blinds on the one hand and governmental institutions on the other hand. The cases depict the challenges in which blind face in relation with employment. This thesis does not analyze every issue and the facts and laws discussed are the main points only related with disability.

Case One

Justice Bureau v. Mekonin⁴⁴⁹

The respondent was applicant in the federal first instance court. The respondent was public prosecutor his claim was based on discriminatory transfer and reduction of 425.00 birr salary by the applicant Addis Ababa justice bureau. As a relief, he requested return to his previous position with the prior salary and benefit and assignment of assistant.

As a preliminary objection, the applicant argued that the jurisdiction is that of city courts and the applicant has the authority to transfer the respondent. As a substantive argument, the applicant defended that the transfer is to the position where the respondent can achieve better result and that the money reduced is transport allowance unavailable for the position.

The federal first instance court passed judgment in favor of the respondent reasoning that article 2 (7) of proc. No.568/2008 shows that courts have jurisdiction and the applicant failed to prove lack of discrimination pursuant to article 7 (2) of the proclamation. This decision was confirmed by the federal high court.

The issue framed by the cassation bench is justiciability of the relief of the respondent.⁴⁵⁰ It provided that the reading of articles 2(7), 10, 3, 4 and 5 show that the proclamation did not

⁴⁴⁹ Addis Ababa city justice bureau v. Mekonin Teklu, (civil file no. 75034, federal supreme court cassation division, november 13, 2012), federal supreme court cassation division's decisions, vol. 14 p. 233

⁴⁵⁰ The issue framed by the federal supreme court inquiry of cassation bench was appropriateness of the decision of lower courts by applying public prosecutors' regulation no.24/2007 and by disregarding the claim of applicant that the civil service tribunal has jurisdiction based on proc. No.568/2008. It is not clear from the judgement of the cassation bench whether the argument of the applicant was based on proc. No. 568/2008 or Addis Ababa city administration regulation no. 24/2007 and which law is based for the decision of lower courts. In this respect, the judgement has clear errors on the argument raised by the applicant and basis of judgement of lower courts.

intend to govern positions obtained through appointment. According to the judgment, applying article 2 (7) of the proclamation will have the effect that bodies established by the appropriate law will not look the issues of prosecutors and judges' with disabilities. Because of this, the court decided that the issue is non-justiciable and such issues will be entertained by appropriate bodies applying the proclamation and other appropriate laws. It further analyzed that public prosecutors' administration council is established by regulation no.24/2007 and the regulation is applicable because the proclamation did not make it clear that it replaced the regulation.

The court mixed non-justiciability with jurisdiction. It says that the matter is non-justiciable at one juncture and provides that the council has jurisdiction on another statement. For justiciability to exist, existence of the right, availability of remedy and possibility of presenting the case to the judiciary is required.⁴⁵¹ All these three are fulfilled. Even the minute explains that the proclamation set minimum right of disabled with a view to realize its implementation criticizing the repealed law for not well defining appropriate organ. It adds that appropriate organ is changed to court and civil service tribunals to realize the respect of rights and to enable victims get relief.⁴⁵² The word court is clearly defined and there was no need to depart from the definition. The law didn't even give jurisdiction to regional regular courts as a principal jurisdiction rather through delegated jurisdiction.⁴⁵³ This is to give judicial protection despite its ignorance by the cassation bench.

The cassation bench reached to the conclusion that claims of public prosecutors are non-justiciable because of the regulation governing public prosecutors. However, non-justiciability cannot be decided even by the HPR except in line with the FDRE constitution. The constitution allowed adjudication of all justiciable issues. Giving the power of identifying what is justiciable from non-justiciable to the legislators will be against the constitution. Extremely speaking, this will give legislators the power to extinguish courts by providing that all of the issues are non-

⁴⁵¹ Amare Tesfaye, Justiciability of Socio-economic Rights in the Federal democratic Republic of Ethiopia (2010) p. 11;

Sisay Alemahu Yeshanew, "The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia", African Human Rights Law Journal Vol. 8, (2008) no. 2

⁴⁵² Minute of proc. 568/2008

⁴⁵³ Proc. 568/2008, art. 2 (7)

justiciable. It is to be noted that making grievances on prosecutors justiciable is not new to disabled persons. In Amhara, the decision of the council is appealable to the Supreme Court on the question of law.⁴⁵⁴ If justiciability is to be decided by the spirit of FDRE constitution, there should be no variation among states.

In effect, the cassation bench allowed non-legislatures to deprive the jurisdiction of courts and to leave the rights of disabled with no protection. The power to issue legislation is not inherent to the executive. If the proclamation did not give this power by being applicable on all offices, then, the executive cannot claim delegation of legislative power. The court gave less meaning to principles of interpretation of laws such as, “the later law prevails over the former” and “the special law prevails over the general law”. The reasoning is not convincing because had the proclamation been clear that it replaced the regulation, there would have been no need for interpretation since interpretation is needed when the law lacks clarity or is arbitrary.

The decision lacks coherence and clarity and is full of contradiction. It provides that the proclamation is applicable on all offices. On the contrary, it puts that the issue is non-justiciable. If it is non-justiciable, the right will be respected upon the benevolence of the employers. For this charity, no law is needed. Applying the proclamation becomes meaningless. The cassation systematically skipped the meaning of government office, the term which was fundamental to decide on whom the proclamation is applicable. The calculated crafting of the proclamation to include all government offices by departing from the civil service legislation should have been given meaning. The court’s inference of non-justiciability from the provisions of proc. No.568/2008 is without foundation.

The other fascinating issue is the practical inexistence of the council in all of the trial processes. The fact that the law established the council is not enough and there should be practical availability of remedy.

⁴⁵⁴ The Revised prosecutors' Administration Council of Regional Government Regulation, 2007, art. 96 (2), Regulation No.52, Zikre-Hig Gaz. year 12, No,15

The right to fair hearing by competent, independent and impartial body is recognized by international instruments.⁴⁵⁵ Public prosecutor offices do not have independent council.⁴⁵⁶ Members of the council are appointed by the attorney general. Most of the measures are the product of the council itself. Any measure which is taken on the worker is either decided by the council or the attorney general/bureau officials.⁴⁵⁷ Disciplinary measures are also taken by the council and the higher official. Therefore, this would be submitting the case to the violator of the right. Deciding such becomes meaningless for the victim because there is less likelihood in which the violator can be compensator.

The objection of jurisdiction was not raised claiming the power of the council rather the defendant itself argued that the civil service tribunal has the jurisdiction. Though the court has the power to raise material jurisdiction by its own, it should be quite careful in cases where even both parties do not claim the jurisdiction the court is claiming. Whether the cassation has the power to review basic errors of law is not also clear as the decision raises the non-justiciability of the right to employment of PWDs in relation to prosecutor offices.

In general, it is a decision which darkens the rights of blinds because as expressed repeatedly, law is profession of many blinds and prosecution and judicial offices can easily be out of blinds' work participation as its long term effect. The decision of the lower court was better in many respects to ignite the little hope sparking on the rights of PWDs in Ethiopia. It applied article 7 and made the applicant liable based on failure to discharge burden of proof. It correctly analyzed the power of court from the definitional part of the proclamation.

⁴⁵⁵ ICCPR, art. 14 (1)

ACHPR, art. 7 (1) (a) and (d)

⁴⁵⁶ Most of the public prosecutor councils do not also have independent and impartial appellate body.

⁴⁵⁷ For example, see: federal public prosecutors regulation no. 44/1998, art. 85

Case Two

Getu v. Yeka Sub-City et-al⁴⁵⁸

The plaintiff instituted action against defendants claiming order for employment and compensation for discrimination committed by defendants. The court rejected the case for lack of material jurisdiction because the applicable law is proc. No.515/2007.⁴⁵⁹ The plaintiff instituted the same action before the federal civil service tribunal though the registrar did not accept it for lack of material jurisdiction.⁴⁶⁰ He also instituted action before Addis Ababa public service and human resource development tribunal. The tribunal rejected the case based on lack of material jurisdiction because the tribunal's power is limited to those employed as civil servants only. Finally, he submitted his case to the federal Supreme Court based on proc. No.25/1996. The court decided that the federal first instance court has jurisdiction because the federal civil servants proclamation is applicable after employment relationship is created and based on Art.s 2 (7), 10 and 7 of proc. No.568/2008.⁴⁶¹

The claim of the plaintiff was that he was discriminated by the defendants during selection for employment. He alleged that the first and second defendants decreased his exam result while he answered the question and scored 85 out of 85. The remaining defendants were accused of not taking remedial measures. He attached evidence which demonstrate all of his efforts to avert the discrimination and prove that his answer was correct.

⁴⁵⁸ Getu Asnakew Atalay v. Addis Ababa city administration Yeka sub-city Wereda 7 public service and human resource development office et-al (Civil File no. 122411, Federal first instance court yeka branch, November 03, 2017) (unpublished)

⁴⁵⁹ Id, order on January 30, 2017

⁴⁶⁰ The tribunal did not even open the file. Since civil service tribunals are governed by the Civil Procedure Code, the power to reject a case is power of judges rather than registrar pursuant to article 231 of the Civil Procedure Code. Moreover, the plaintiff cannot adduce evidence of submitting his case to the tribunal in his further claims and this has denial of justice without remedy and needs to be discouraged by disciplinary measure. Telephone Interview with Getu Asnakew On April 29, 2018

⁴⁶¹ Getu Asnakew Atalay v. Addis Ababa city administration Yeka sub-city Wereda 7 public service and human resource development office et-al (civil file no. 137365, Federal supreme court, February 27, 2017) (unpublished)

Here, we should note that both the federal first instance and federal supreme court are referring the federal civil servants proclamation while they should have cited the Addis Ababa civil servants proclamation since the institutions belong to the city administration.

The relief sought were: order of his employment, compensation which is equal to the salary he would have obtained had he not been discriminated until he finds job or he is employed, damage lost for lack of work experience due to the discrimination or issuance of work experience as alternative, 12,000 birr compensation for damage sustained during his efforts of averting discrimination, moral damage of 1,000 birr, and cost of this suit.

The defendant claimed that the answer given by the plaintiff during the exam was wrong based on the BPR study that they have. They further alleged that the manual/BPR prepared by the city administration in July 2013 and which show that the answer of the plaintiff was correct did not reach to their office.

The court examined the documents presented by the plaintiff and collected by the order of the court and reached to decision that the plaintiff was discriminated by the defendants because it is not convincing to argue that the manual which is issued by the upper organ of first and second defendants did not reach them.

Regarding the relief, the court rejected claim of salary and issuance of work experience reasoning that no salary should be paid and no work experience should be written for a work not performed. Finally, order of plaintiff's employment, in conjunction with moral damage of 1,000 birr and 4,000 birr for costs before the court were provided as a relief for the plaintiff.⁴⁶²

The first error of the court is its failure to respond to all of the reliefs. 12,000 birr Damage for costs incurred for seeking administrative remedy was not expressly dealt with. The damage lost as a result of losing work experience due to the discrimination was not also discussed by the court. The court only looked the alternative which is issuance of work experience.⁴⁶³ It could have assessed the damage of losing work experience because of the discrimination by comparing

⁴⁶² The decision of the lower court is confirmed by the Federal High Court Bole branch. Telephone Interview with Getu Asnakew, December 31, 2018

⁴⁶³ The decision of federal first instance court was passed a year after the commission of the discriminatory act. It is known that one year work experience has higher benefit in terms of employability and the salary to be paid. Therefore, the existence of damage by lack of work experience is certain in the language of the Civil Code.

the average salary between the plaintiff and those persons who have work experience of which he could have found.⁴⁶⁴

However, the basic error of the court was its failure to correctly identify the applicable law. The principle of “no salary for work not performed” is the principle of labor law while the claim is damage based on extra-contractual liability. The court did not cite any provision in its judgment. It is clear that discrimination is committed against the plaintiff. Therefore, the issue should have been whether the plaintiff lost any material benefit by the discriminatory act or whether he would have gained any material benefit had he been employed in the position. It is clear that the plaintiff lost income of salary otherwise no one can compete for employment without expecting salary. Even the labor law supports this assertion. The plaintiff deserves payment of wages because his inability to work was not attributable to him rather due to the discrimination.⁴⁶⁵

The other weakness of the court was its failure to deliver judgment within the 60 days time limit set by proc. No.568/2008. It took 233 days to pass judgment counted from the moment it knew to have jurisdiction.⁴⁶⁶

Cancellation of the previous employment is not ordered by the court. Therefore, the institution will be ordered to employ two persons and pay double salary for the single position. This may have negative effect of providing no work for the plaintiff as gaining wage alone is not sufficient. The civil servants proclamations provide that any employment executed in contravention of any law should be cancelled/nullified.⁴⁶⁷

The federal Supreme Court appreciated the issue of jurisdiction in light with both the civil servants proclamation and proc. No568/2008 though it should have cited the Addis Ababa civil servants proclamation though cannot be taken as precedence.

⁴⁶⁴ For instance, if the plaintiff lost one year work experience, taking the public service grade of positions and identifying the amount of salary that will increase by having one year work experience can be calculated.

⁴⁶⁵ Proc. 377/2003 art. 54 (2)

⁴⁶⁶ The closed file was moved on march 15, 2017 and the judgement was delivered on November 03, 2018.

⁴⁶⁷ Addis Ababa civil servants proclamation, art. 83;

Proc. 515/2007, art. 82;

Proc. 1064/2017, art. 94

Apart from the civil suit, the plaintiff also tried to file criminal suit though the police refused to initiate criminal case.⁴⁶⁸ The commission of Corruption crimes by the officials such as abuse of power should have been investigated.⁴⁶⁹

Case Three

Wesen et-al v. Training Institute et-al⁴⁷⁰

The plaintiffs exerted their effort to avert the probable discrimination that may happen because of their blindness. The region was reluctant to be reserved from committing discrimination and decided to appoint them as public prosecutor claiming that the long-lived prohibition of blinds to serve as a judge should be studied. The plaintiffs instituted action before the House of Federation claiming violation of their constitutional right to choose their own profession by the customary practice of the defendants contravening the constitution.

The defendants argued that the prohibition is not committed by them and substantively the inability of blinds to serve as a judge because the post requires seeing witnesses and proving evidences. Lack of local and international experience to appoint blinds as a judge was further alleged to be proof for the correctness of the prohibition.

After such debate, the council proposed and the house approved that the prohibition is unconstitutional and article 41/2, 25 and 9 of the FDRE constitution are violated. In inquiring the incompatibility of the nature of the work, the council found out that there is no convincing evidence submitted by defendants which proves the appropriateness of the prohibition. Besides, it underlined that the nature of the work should be evaluated considering reasonable accommodation. The council referred to the convention⁴⁷¹ and the proclamation⁴⁷² related with disability including the constitutional provisions in reaching to its conclusion.

⁴⁶⁸ Telephone Interview with Getu Asnakew On April 29, 2018

⁴⁶⁹ Proc. 881/2015, art. 9 (1) (a)

⁴⁷⁰ Wesen Alemu et-al V. Amhara National Regional State Justice Professionals' Training and Legal Research Institute et-al, (File No. 019/08, House of Federation, October 12, 2017) (the news is available at: http://addisadmassnews.com/index.php?option=com_k2&view=item&id=19040:ዓይነ-ሰው-ራን-ለመጀመሪያ-ጊዜ-በዳኝነት-እንዲሰሩ-ተወሰነ&Itemid=180) last visited may 14, 2018

⁴⁷¹ CRPD Ratification Proclamation

This decision is landmark because it is evidence of justiciability of socio-economic rights and discredited long-lived countrywide discrimination. It is also effective in ascertaining inappropriateness of discrimination even during appointment. Though the defendants denied the right of the plaintiffs under the guise of the need to conduct research to change the existing customary practice, they have done no research even after 20 months. Such defense was simply served as means of discriminating. Generally, prohibition should not precede research rather respect for right should be favored until research proves the need for prohibition.

Decision's inclusion of disability under the prohibited grounds listed under the FDRE constitution resolves the dispute as to the meaning of the provision.⁴⁷³ Applying rights applicable to the general public to disability issues as repeatedly underlined by the committee of CRPD⁴⁷⁴ is also the other benefit of the decision.

Case Four

Training Institute v. Dawit⁴⁷⁵

This case is continuation of the previous case in many respects. The plaintiff sued the defendant to pay all benefits he received from the plaintiff for failure to discharge his contractual obligation of serving for 3 years as a public prosecutor after training.

The defendant raised plenty of defenses including preliminary objection. No liability of the defendant because of failure of the plaintiff to discharge its obligation and its discrimination by obliging the defendant to serve as a public prosecutor, failure of the plaintiff to meet reasonable accommodation particularly, failure of employing assistant, placement of the defendant to the

⁴⁷² Proc. 568/2008

⁴⁷³ FDRE Constitution art. 25

⁴⁷⁴ Committee on the convention of the rights of persons with disabilities in its consecutive general comments bases every provision of CRPD on the rights provided in the other convention such as, ICCPR and ICESCR. Likewise, article 41 (2) of the FDRE constitution is a right applicable to all persons and the decision of the house of federation to apply this general right to issues of persons with disabilities opens a way for similar application of general provisions.

⁴⁷⁵ Amhara National Regional state Justice Professionals' and legal research institute v. Dawit Oticho, (civil file no. 0124164, Amhara National regional state Semen Shewa zone high court, January 26, 2018) (unpublished)

area geographically unsuitable for blinds, discrimination on request of transfer, and similar arguments were the major defenses raised by the defendant.

The court based its decision solely on the defense of prohibition of the defendant to choose his profession and the decision of house of federation. It concluded that the plaintiff cannot request the defendant to meet his obligation because it itself did not discharge its duty. It further provided that the decision does not bar the plaintiff from instituting fresh action when it discharges its own obligation. The case is appealed by the plaintiff to the Supreme Court and the defendant also filed cross-appeal.

The court failed to show what the effect of discrimination is on the obligation of the discriminated. Allowing the discriminator to fulfill its obligation whenever it likes is unjust. The defendant has to continue his livelihood in a manner he likes. This decision however, preserved the interest of the plaintiff to institute suit after meeting its obligation. Indeed, this has no consequence of judgment to automatically oblige the defendant to serve or pay sanction when the plaintiff meets its obligation. Nevertheless, it at least exposes the defendant to further suit. The court surely would not have allowed the defendant to meet its obligation whenever it likes had he been with no defense.

Case Five

Gebreteklay v. Railway Corporation et-al⁴⁷⁶

The plaintiff claimed that he sustained permanent bodily injury by falling from pedestrian road in to 6 meters deep railway line due to inexistence of safety measure/protector on the road. His journey was from Urael to Kazanchis to go to his place of work. Due to lack of remedy through negotiation and difficulty of identifying the liable person, the plaintiff sued four persons claiming to have joint and several liability. The Relief sought was Total damage of 1,679,737.90 birr including, damage for moral injury, loss of future income due to the injury, present and future

⁴⁷⁶ Gebreteklay haylemariam tiruneh v. Ethiopian Railway Corporation, Addis Ababa Road Authority, IFH Engineering PLC, and China Railway Engineering Corporation (CREC), (Civil File no. 171101, Federal High Court Lideta bench, February 07, 2018) (unpublished)

cost of hospitality, transport expense for medical treatment, and cost of purchasing sheep and butter.

The defendants pushed the liability to one another. Plenty of arguments were also raised by defendants. Fault and contribution of the plaintiff to the injury by going without the help of sighted person and by going in the dark along with lack of caution of the plaintiff were alleged to exempt second defendant. The fact that the road was under construction and was not opened for pedestrians is another defense of second defendant. Evidences of the cause of injury, extent of injury, age, salary, amount of damage, correctness of receipts, and the like were challenged by the defendants.

The court made the third defendant liable because constructing the pedestrian road from which the plaintiff fell down was the responsibility of the third defendant by virtue of the contract it entered with the second defendant. The court preserved the right of the blind plaintiff by applying professional fault though clear law is absent with regard to the obligation of constructors to construct protectors.

The court did not well explain why the fourth defendant is not liable while the railway line should have protector which makes the people free from injury by falling in to the railway. The court also failed whether the first and second defendants have the responsibility to supervise and whether the design obliges to construct protector.

The court rejected some claims on the ground of lack of evidence. However, judicial notice could have been taken about the indispensability of special food for broken bones and inevitability of transport expense for follow-up. Therefore, it should have either put estimation or request expert testimony.

The court assessed the damage in consequence of permanent bodily injury based on the percentage. However, it should have considered temporary injury during which the plaintiff is unable to work. The basis of estimation of the salary is not expressed by the court. Courts usually estimate without explaining their reason and have the tendency not to accept the whole claim.

The court did not discuss the existence of fault by the plaintiff. Nevertheless, the defense raised with regard to caution and fault is not only illegal but also against the moral of blinds and the

defense should have been amended. Prohibiting blinds from moving without sighted person is against the liberty and dignity of blinds. Requiring blinds to go with caution by fabricating ditches and dangers is irresponsibility. Roads should be free from such kind of barriers and caution should not totally be raised as a defense. This case is fundamental in showing that the building proclamation is not sufficient to ensure accessibility of the whole environment.⁴⁷⁷ The plaintiff himself did not base his argument based on human right provisions and CRPD rather on the basis of social responsibility.

Chapter Four

Conclusion and Recommendations

4.1. Conclusion

Ethiopia took fragmented legislative and policy measures to ensure the rights of PWDs and right to employment of PWDs in particular. Regions showed the tendency to employ visually impaired with special intake procedure. the position of the federal and Adis Abeba government is on the contrary. The new civil servant proclamations recognized affirmative action though it can be meaningful with directives. The practice shows that the employment of blinds in the public service sector is dependent upon the benevolence of individuals.

The situation in self-employment, employment in the private sector and in the public enterprises, and employment in the higher positions of blinds is at its infant stage. The challenges to find employment are serious for blinds. the laws and policies lack specificity to effectively deal with right to employment of blinds. The laws and policies of the country are not conditioned with the status quo of the country. those laws and policies suffer from big problems particularly with regard to their implementation and there are even institutions which defend that they are not governed by the laws. In particular, the laws, policies and strategies are not capable of responding to the challenges of the blinds. anti-discrimination policy cannot effectively address the current problems of blinds. Even the existing laws, policies and action plans are not implemented almost totally. The reason is lack of effective implementing legislations and structure capable of implementing the same. There is no institution which can effectively implement even the rights set out in the laws and policies of the country. Therefore, the

⁴⁷⁷ The laws are limited to buildings and not to constructions in general.

government should come out of rhetorics and conceptual framework and target towards implementation.

4.2. Recommendations

This thesis tried to demonstrate the challenges and practices in line with the laws and policies of the government. To achieve the respect of right to employment of blinds, institutional, policy and legislation reforms are needed. Charities, societies, all employers, Medias, educational institutions and other stakeholders need to act pragmatically. In general, the researcher recommends the following:

Establishment of specific ministry wholly concerned with PWDs and establishment of specific departments within each ministry and institution for this purpose with sufficient structural consideration for blinds;

Enforcing strong legislative and practical commitment towards mainstreaming disability within all ministries;

Establishing independent special bench which entertains employment grievance cases of PWDs and clearly vesting jurisdiction to courts only;

Adoption of comprehensive disability specific legislation in consultation with DPOs and other stakeholders in conjunction with repealing laws violating the rights of PWDs or using derogatory terms;

Adopting binding quota system for blinds on both public institutions and private undertakings because fighting discrimination totally is impossible;

Introducing increased affirmative action for blinds such as, higher mark addition/bonus;

Devising effective remedy for any violation of rights of PWDs with sufficient consideration of blinds too;

Devising law and strategy which provides meaningful incentives for private employers that employ PWDs in general and blinds in particular;

Setting clear and measurable plans for improving the education of blinds targeting towards choice and competence of employment;

Elaborating disability specific reasonable accommodations through guidelines starting from advertisement up to termination of employment taking in to account the needs of visually impaired adequately;

Designing national awareness strategy including the provision of mandatory course of at least three credit hours for university students, series of trainings for implementers, human resource workers, the judiciary and others with adequate coverage of the rights of visually impaired;

Classifying levels of blindness and providing narrower definition for the purpose of affirmative action and broader definition for anti-discrimination protections;

Building the confidence of employers on blind employees by activist organizations or the government as BDF does in UK;⁴⁷⁸

Improving blinds' employment by facilitating job search and job matching, training in technology and other job skills, and in interview skills;⁴⁷⁹ and

Setting accessibility standards in various issues.

⁴⁷⁸ Megan Galeucia, "Working with Employers to Improve "Disability Confidence": The Business Disability Forum" (2014) pp. 71-105

⁴⁷⁹ work and employment, P. 246 (http://www.who.int/disabilities/world_report/2011/chapter8.pdf) last visited on March 31, 2018

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