



**JIMMA UNIVERSITY COLLEGE OF LAW AND GOVERNANCE SCHOOL OF LAW**

**THE RIGHT TO ACCESS TO JUSTICE FOR PERSONS WITH DISABILITY IN CIVIL  
MATTERS BEFORE ETHIOPIAN FEDERAL COURTS**

**A THESIS SUBMITTED TO THE COLLEGE OF LAW AND GOVERNANCE STUDIES  
JIMMA UNIVERSITY IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR  
THE MASTERS DEGREE (LLM) IN HUMAN RIGHTS AND CRIMINAL LAW**

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**JULY 2020**

**JIMMA, ETHIOPIA**

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## **DECLARATION**

‘Lemlem Dejenu Mulugeta declare that this thesis titled; The right to access to Justice for Persons with Disability in civil matter before Federal Court located at Addis Ababa is my own work, which it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references’.

Student Lemlem Dejenu

Signature-----

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## ACRONYMS

AA	-	Addis Ababa
ACRWC	-	African Charter on the Rights and Welfare of the Child
CESCR	-	Convention on Economic, Social and Cultural Rights
CRJP	-	Criminal Justice Police
FDRE	-	Federal Democratic Republic of Ethiopia
FENAPD	-	Federations Ethiopian National Association of Persons with Disability
FFIC	-	Federal first instance Court
FHC-	-	Federal High Court
FSC	-	Federal Supreme Court
ICCPR	-	International Covenant on Civil and Political Rights
PWD	-	Persons with Disability
UDHR	-	Universal Declaration of Human Rights
UNCRC	-	United Nations Convention on the Rights of the Child
UNCRPWD	-	United Nation Convention on The right of Persons with disability
UNDP	-	United Nations Developmental Program
VCLT	-	Vienna Convention on the law of treaties
WHO	-	World Health Organization

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## **ABSTRACT**

*This paper reviews the realizations of the right to access to justice for PWD in civil matters before Federal Courts in Addis Ababa. Persons with disabilities are vulnerable groups of people. Approximately one billion people or 15 percent of the global population experience some form of disability and there were 15 million PWDs in Ethiopia, representing 17.6% of the total population at the time of the study was conducted. The right to access to justice is a fundamental human right in itself and an essential means to realize another human right for PWD. In addition, the right to access to justice is the basic right for PWDs to rectify any human right violations. There are international, regional and national legislation which protect the rights of access to justice in general and United nation convention on the right of persons with disabilities in particular. To achieve the objective, the researcher used qualitative and doctrinal research method. Based on data gathered this paper found that PWD's right to access justice cannot realized in line with signed and ratified United nation convention of persons with disability due to legal as well as practical barriers. PWDs face significant problems in accessing justice because of existed outdated provision, physical unreachability of the buildings hosting the courts, communicational obstacles with the persons working in the institutions of justice; lack of accessible information, delay of proceeding, lack of available and accessible free legal aid, lack of available training for justice organs on PWD right to accommodate them, social attitude affect PWD; financial problem, the unwillingness of PWD to exercise their right and the nominal extent of the State on effectively discharging its obligations to realise the right to access to justice for PWD in civil cases. Accordingly, this research recommended that national laws and practical implementation on the right to access justice in civil matter should be harmonized to be in line with signed and ratified United nation convention on the right of persons with disabilities.*

Keywords: Civil Matters, Ethiopia, Federal Courts, Persons with Disability and Right to Access of Justice

# CHAPTER ONE

## INTRODUCTION

### 1. Background of the study

Approximately one billion people or 15 percent of the global population experience some form of disability based on recent data .<sup>1</sup> The World Report on Disability published jointly with the World Bank and WHO in 2011 estimated that there were 15 million PWDs in Ethiopia, representing 17.6% of the total population at the time of the study was conducted.<sup>2</sup> The disability population size is still debatable which is partly attributable to loose definition of disability and absence of proper census. The exact figure of PWD in Ethiopia ,as a result, is unknown and the available data ,nonetheless,show that 95% of PWD live with poverty.<sup>3</sup>

The right to access to justice is the basic right for PWDs to rectify any human right violation.It is the fundamental human right guaranteed to every individual and key for the protection and enjoyment of other human rights.<sup>4</sup> There are international human rights instruments<sup>5</sup>,regional and national legislation which protect the rights of access to justice.<sup>6</sup>

The Convention on the Rights of Persons with Disabilities (CRPD) is the first international human rights instrument that explicitly provides for the right to access to justice of persons with disabilities. It calls for the elimination of obstacles and barriers faced by persons with disabilities in accessing justice on an equal basis with others and innovate on previous standards developed

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<sup>1</sup> World Bank, Disability: Overview, 29 March 2017, available at [www.worldbank.org/en/topic/disability/overview](http://www.worldbank.org/en/topic/disability/overview) accessed Jan , 2020

<sup>2</sup> Right of persons with disability in Ethiopia ,Sida 2014 available at <https://www.Sida.se> accessed January ,2020

<sup>3</sup> Initial Report, on Ethiopia implementations of the UN CRPWD, Addis Ababa, 2012.

<sup>4</sup>United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General No A/HRC/37/25, 26 February–23 March 2019,para, 1 p,3

<sup>5</sup> International Covenant on Civil and Political Rights, 1966, adopted by the UN General Assembly, Resolution 2200 A (XXI), , New York, 16 December 1966, Article 14, [here in after- ICCPR-], Universal Declaration of Human Rights, 1948, reprinted in Brownlie, I., and Goodwin-Gill, G., (eds.), Basic documents on International Human Rights, 5th ed., Oxford University Press, Oxford, New York, 2006, Pp. 24-28, [here in after- UDHR-], Charter of the United Nations, 1945, at WWW <http://www.un.org/aboutun/charter/> (accessed Feb 5, 2020)

<sup>6</sup> Constitution of the Federal Democratic republic of Ethiopia, 8th day of December, 1994, federal Negarit gazette, ‘extraordinary issue’, Proclamation number 1/1995, article 37 (1) [here in under –the FDRE Constitution]

under international human rights law. The Convention not only clarifies what access to justice means for persons with disabilities but also upholds equal and effective participation at all stages of and in every role within the justice system as a core element of the right to access to justice. The Convention thereby expands this right beyond; the notions of a fair trial and effective remedies which have been the principal features put forward by human rights instruments and their monitoring bodies.<sup>7</sup> When addressing the right to access justice under CRPD it cannot be read in isolation with other rights,<sup>8</sup> such as, the right to equality and non-discrimination<sup>9</sup>, the right to equal recognition before the law<sup>10</sup> and accessibility, including multiple means of communication and access to information.<sup>11</sup>

States have the obligation to respect, protect and promote human rights including the right of access to justice.<sup>12</sup> CRPD also imposes an obligation on States Parties: first, to adopt legislative, administrative, and other measures to implement the Convention, and second, to abolish or amend existing laws, regulations, customs, and practices that discriminate against persons with disabilities.<sup>13</sup> Article 4 further requires States Parties to adopt an inclusive approach to protect and promote the rights of PWD in all policies and programs. Ethiopia recognized the right to access justice for persons with disabilities by signing and ratifying CRPD.<sup>14</sup> An international treaty ratified by Ethiopia is considered to be an integral part of the law of the land by virtue of Art 9(4) of FDRE constitution. The interpretation of fundamental human rights under chapter three of FDRE constitution should be interpreted in line with ratified international human rights treaties<sup>15</sup>. Since Ethiopia is a party to CRPD the rights of persons with disabilities should be interpreted in line with CRPD. Article 37 of FDRE constitution recognizes the right of access to justice as *“Everyone has the right to bring a justiciable matter to and to obtain a decision or judgment by, a court of law or any other competent body with judicial power”*<sup>16</sup>. From this article the researcher understands that right to access to justice is guaranteed for everyone including for PWD. In addition to this

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<sup>7</sup> Ibid para,5,p,3

<sup>8</sup> Ibid

<sup>9</sup> FDRE constitution Art 5, supra note 6

<sup>10</sup> Ibid Art 12

<sup>11</sup> Ibid Art 9 and 21

<sup>12</sup> Human Right General Comment, (2004), No. 31 Para. 8 cum ICCPR art. 2.

<sup>13</sup> United Nation Convention on the Right of Persons with Disability ,2006, Article 4(a )

<sup>14</sup> Convention on the Right of Persons with Disability Ratification Proclamation No. 676/2010

<sup>14</sup> FDRE constitutions Art 13(2) of Supra note 6

<sup>16</sup> Ibid Art ,37

,Ethiopian Criminal Justice Policy also recognizes the obligations of all justice sectors to provide accessible conditions for PWD and the elderly to facilitate their equal participation as parties to suit and witness.<sup>17</sup>

The right of access to justice of PWDs has critical importance in the exercise and enjoyment of all their other rights. It is a significant right that ensures the promotion and protection of other human rights. Having access to the justice system ensures the presence of remedy for the violations of all rights of PWDs. Consequently, the denial of the right of access to justice of PWDs is the denial of all the rights of PWDs. In Ethiopia, just like any other least developing ,<sup>18</sup> the effective implementation of the right to access justice for persons with disabilities in a civil matter is questionable . So, this study aims to deal with the realizations of the right of access to justice for PWD in the civil cases before the Federal Courts of Ethiopia in Addis Ababa especially focusing on the legal and practical challenges PWDs face.

## **1.2. Statement of the Problem**

The issue of access to justice is very crucial because not only it is a human right but also the lack of implementation of this right seriously affects other human rights. Without the existence of the right to access to justice, the other right of persons with a disability cannot be realized; as such, the right to access justice is a fundamental human right in itself and a precondition for realization of other human rights.<sup>19</sup> Throughout history, we have observed a constant exclusion of the concerns of PWDs from national policies and legislation. Only recently did states begin to recognize the rights of persons with a disability after the adoption of human rights instruments through the United Nations. However , in most countries of the world, particularly in almost all developing countries, PWDs have suffered from disability-based discrimination in their social, economic, cultural and political participation. The participation of PWDs in various activities of the society have been barred or restricted by disability-based discrimination.

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<sup>17</sup> Criminal Justice Policy of FDRE, No 25/2003, principle 6.5.

<sup>18</sup> CRPWD concluding observation of the initial report of Ethiopia on implementations of CRPWD ,Geneva ,17,August,2016

<sup>19</sup> European Union Agency for Fundamental Rights, Access to Justice in Europe: An Overview of Challenges and Opportunities, (Luxembourg, Publications Office of the European Union, 2011), p.3.

Discrimination violates all the rights of PWDs, the right of access to justice is one among of those rights of PWDs.<sup>20</sup> The legal provisions PWDs face significant obstacles in accessing justice, including criminal proceedings and the determination of civil rights and obligations. These obstacles include denial of their legal standing and due process guaranteed and the inaccessibility of the physical and communication environments during proceedings. Furthermore, national legislation often contains provisions that denies equal treatment of persons with disabilities before courts and other jurisdictional bodies.<sup>21</sup>

The existence of accessibility and right to reasonable accommodations for all PWD based on their disability-related needs are key to exercise effective access to justice for PWD.<sup>22</sup> However, in Ethiopia implementation of accessibility and reasonable accommodations is an issue of concern.<sup>23</sup> The Government's efforts to promote physical accessibility to buildings have been minimal. The Government's focus is more on new buildings with no attention what so ever on revising existing ones.<sup>24</sup> Accommodation of persons with disabilities' needs before federal court are subject to questions. Taking into account the above problems in relation to the right to access, this paper seeks to examine the realization of the right to access justice for persons with disabilities in civil matters before Federal Court located in Addis Ababa in light of the United Nations Convention on the Rights of Persons with Disabilities.

### **1.3. Objectives of the Study**

#### **1.3.1. General Objective**

The general objective of this study is examining the realizations of the right to effective access to justice for persons with disabilities in civil matters before the Federal Courts in Addis Ababa.

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<sup>20</sup> Concluding observation of CRPWD, supra note 19

<sup>21</sup> UNHCHR, supra-note 4

<sup>22</sup> Future Policy.org FuturePolicy.org is the successor of Policy Action on Climate Toolkit - PACT project, which was introduced in 2007 'Access to Justice' (UN CRPD Article 13) available at <http://www.futurepolicy.org/5789.html> (accessed on Dec,9,2019)

<sup>23</sup> CRPD concluding observation supra note 19

<sup>24</sup> Advocate of human right, Ethiopian compliance with CRPWD, 16th Session of the Committee on the Rights of Persons with Disabilities 15 August - 2 September 2016

### **1.3.2. Specific Objectives**

The specific objectives of the study are

- assessing the implementation of the right to access to justice in civil matters for PWDs before Federal Courts;
- exploring barriers affecting the realizations of the right to access justice for PWDs in civil matters before Federal Courts;
- exploring the Government's obligations towards the effective realization of the right of access to justice for PWDs in civil matters; and
- examining the gaps between the law and practice in relation to the protection of the right to access justice for PWDs in civil matters.

### **4. Research questions**

The major questions this research seeks to address are the following:

- Is the right to access justice for PWDs effectively implemented in the Federal Courts particularly in relation to civil matters? If not what are the challenges or barriers?
- Are the problems, if any, related to the law or practical constraints?
- To what extent is the State effectively discharging its obligations to realize the right to access to justice for PWD in civil matters?

### **5. Literature Review**

There are limited studies that indirectly deal with the right to access to justice. Mahider Mulugeta has conducted research on the title: Gender-Based Violence, Women with Disabilities and Access to Justice Comparative Analysis in Ethiopia and Kenya.<sup>25</sup> She discussed the issues of access to justice in criminal matters specifically on gender-based violence affecting women with disabilities. But, the author failed to discuss access to justice for all persons with disability and on civil matters.

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<sup>25</sup>Mahider Mulugeta, women with disabilities and access to justice in case of Gender based violence :Ethiopia and Kenya comparative[L.L.M thesis ,Central European University Nov,2015]



Thus, the focus of the present research is on the right to access to justice for all persons with disabilities in civil matters to fill the gap of former researcher.

Kokebe Jemane has conducted research on a title reconsidering Access to Justice in Ethiopia: Towards Human Rights-Based Approach.<sup>26</sup> He examines the legal and policy framework regarding access to justice in Ethiopia with a view to identifying gaps in policy, and law on access to justice in general. The author's research did not directly deal on right to access justice for persons with disabilities in general and specifically in the civil matters. So, the present research aims to fill the gap not addressed by this author.

Murado Abdo has conducted research on the title Disability and Access to the Criminal Justice System in Ethiopia.<sup>27</sup>The research paper deals with the accessibility of criminal proceedings to people living with disabilities in the Ethiopian legal systems. Researcher failed to deal with the issue of PWD right to access justice in civil matters in general and particularly before Federal Courts. Therefore, the present research is conducted to address the gap left by those authors by dealing with the right to access justice for PWD in civil matters before federal courts located at Addis Ababa.

Additionally, Mizane Abate, Alebachew Birhanu, and Mihret Alemayehu on their article titled Realizing Access to Justice for the Poor and the Vulnerable through Legal Clinics: the Experience of Ethiopian Law Schools.<sup>28</sup> They tried to indicate the status, operation, and effectiveness or otherwise of legal clinics in the Ethiopian law schools in realizing access to justice for the poor and vulnerable groups. But, they failed to deal on the right to access justice for persons with disabilities in general and specifically on the right of persons with disabilities in civil matters. In general, even if the above authors indirectly deal with the issues of access to justice they failed to deal with directly on access to justice for PWD in civil matters in general and before Federal courts located at Addis Ababa in particular. Therefore, the present work is devoted to contribute

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<sup>26</sup>Kokobe Jemaneh, Access to justice in Ethiopia towards an inventory issues, Center for human rights , published may 2014

<sup>27</sup>Muradu Abdo, Disability and Access to Criminal Justice System in Ethiopia ,Center for Human Rights, Addis Ababa University,2014

<sup>28</sup>Mizanie Abate et al, Clinical Legal Education in Ethiopia: Challenges and Prospects ,Ethiopian Journal of Legal Education, 2009

its own share to fill the gaps on the right to access justice for persons with disabilities in civil matters.

## **6. Scope of the Study**

PWDs have many Rights. But due to different constraints including time and resource, the scope of the research is limited to the right to access to justice for persons with disability in civil matters before Federal Courts located in Addis Abeba . It therefore does not include the case of criminal proceeding. Civil matter unlike criminal matters in which government is expressly required to intervene by the constitution, civil matters are deemed private issues in which government intervention is very rare. So, the researcher would focus on examining the obligations of the right to access to justice in civil matter for PWDs guaranteed under international, regional and national legal frameworks. Geographically, the scope is limited to Federal Courts located at Addis Ababa and it does not include Addis Ababa city administration Court and Federal Court located in Diredawa. The justification to select Addis Ababa is for accessibility of data collections especially from organizations which relevant for subject-matter of this study.

## **7. Limitation of the Study**

There were several challenges that hindered the effective accomplishment of this study. To mention some it is difficult to find enough literature written on the topic in the context of Ethiopia. The attempt to review cases from the courts was very difficult due to absence of identification of files of PWD from non-disabled cases and to conduct an interview with every stakeholder mentioned in the methodology part was difficult due to various inconveniences.

## **8. Research Methodology**

In order to attain the above objectives and answer the research questions stated above, the researcher employed qualitative research method. As the aim of this study is to assess realizations of the right to access justice for persons with disabilities in civil matters, so based on the nature of the research title and the data collected qualitative research method are found to be more convenient for this study. Accordingly, qualitative research methods such as interviews, case review, and observation of court building were employed. Empirical data relating to the right to

access to justice for PWD in civil matter was collected from appropriate stakeholders, i.e. Private attorneys, judges, public prosecutors, Federation of Ethiopian National Associations of People with Disabilities (FENAPD), Ethiopian Disability Association, Addis Ababa University Free Legal Aid Center, and from persons with disabilities. And doctrinal research method is employed to analyze the content and scope of the right to access to justice of PWDs. To this end, the researcher discussed relevant international, regional and national laws, policies, strategies and another document on the right to access justice for persons with disabilities in civil matters.

### **8.1. Sources of Data**

Primary data was gathered from international, regional, national laws, court decisions; semi structured interview with key informants and systematic observation . The collection of primary data would cover a review of international and national instruments and also information from major stakeholders.

Secondary sources of information were used to provide the conceptual and legal frameworks on access to justice and to acquire a general picture of the problem as well as to obtain specific information on various aspects of the study. Documents reviewed for the study include: literature, research outputs on access to justice, national policy or strategy related to access to justice, reports relevant to issues of right to access to justice for persons with disability by governmental and non-governmental institutions, materials published by UN treaty bodies, case study, journal article and fact sheets made by different organizations. In order to gather detail information and to have respondent across relevant stake holder's, the researcher adopted purposive sampling method. This is found to be more appropriate to identify and gather detail information's from appropriate stakeholders. Thus, Federal Courts in Addis Ababa are selected purposively .The selections of this courts are based on number of civil benches they have. From ten Federal first instance Courts Lideta have a 28 benches, Bole and Kolfe karaniyo have 20 benches, lafto 19 and kirkos 18 respectively. To access cases in details the researcher select them based on the rank of their civil bench numbers.

In addition, PWD selected for interview are selected through snowball sampling method for it easily helps to identify resourceful respondents relevant for the study.<sup>29</sup>

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<sup>29</sup> Shari L. Dworkin, Sample Size Policy for Qualitative Studies Using In-Depth Interviews (2012)

## **8.2. Significance of the Study**

This study helped to identify the problem of PWD facing while exercising their right to access justice in civil proceedings. This research will make a major contribution in light of filling the gap in the literature, practical implementation and hence can serve as a source of information for planning effective and relevant activities and providing solutions. Even if the scope of the study is limited to Federal Court similar problem may exist all over the country. So nationally the problem identified may initiate the policymakers and law drafters to work on the area. It will create awareness for persons with disabilities to claim rights to access justice as a right based on human rights approaches not as subject to charity. It can serve as a source for the Government to find out possible solutions for those legal and practical problems pointed out in this study. At the last but not list, it can also serve as baseline information for conducting further research studies on PWD in the areas related to this.

## **9. Ethical consideration**

This research was taken into account ethical considerations. Before directly entering into interviewing her informants, the researcher has informed about the purpose of the study. The respondents were told to participate on a voluntary basis and in a manner of ensuring their confidentiality. The purposively selected informants have been only approached after getting their free, full and informed consent. Also, the respondents have been informed that any confidential information taken from them was not be used unless they have consented to, and solely for the purpose of the study. In addition to these, proper acknowledgments of interviewees' contribution to the study were made.

## **10. Structure of the Study**

The paper is classified into five chapters. Chapter one covered the proposal part. Chapter two deals with the general overview of the right of access to justice under international law; it contains definition of right to access justice, status of right to access to justice under international law, basic elements or components of right to access justice, justifications or importance of right of access to justice and deals with state obligations on realizations of right to access justice.

Chapter three deals with a brief introductory note on the background of the right to access to justice for persons with disability in civil matters. It have been addresses concept of persons with disabilities, models of disabilities; lack of protection of rights of persons with disabilities which negatively or positively affect realizations of right to access justice will be discussed.

Chapter four is devoted to critically analyze the right to access to justice for persons with disabilities in civil matters before federal courts. Common barriers affect realization of effective access to justice for persons with disabilities in civil matters under Ethiopia existed legal framework, practical barriers affect persons with disability to exercise their right to access to justice in civil matters in the case of the federal court located at Addis Ababa has been the subject to be discussed under this chapter. The last chapter provides basic findings in the form of conclution and possible recommendation as solution for problems across the borad.

## CHAPTER TWO

### GENERAL OVERVIEW OF THE RIGHT TO ACCESS JUSTICE UNDER THE INTERNATIONAL LEGAL FRAME WORK

#### Introduction

Access to justice is a basic human right recognized under different international human rights treaties, in this chapter, researcher will discuss the meaning of access to justice, the status of access to justice, justifications of access to justice taken as a human right, and the Governments obligation to realize this right.

#### 2.1. Meaning of Access to Justice

There is no uniform understanding for the term access to justice. Some definitions express access to justice narrowly and some define it in broad ways. As *Flynn* points out the term “access to justice” is generally used to refer to access to the legal system and immediately brings to mind rights to due process rights and right to legal representation, which is narrow interpretation.<sup>30</sup>

*Stephanie* defines access to justice as encompassing peoples effective access to the system, procedure, information, and locations used in the administration of justice. People who feel wronged or mistreated in some way usually turn to their country’s justice system for redress. In addition, people may be called upon to participate in the justice system, for example, as witnesses or as jurors in a trial.<sup>31</sup> The broader definitions of access to justice which used as the working definition for this paper was given by UNDP: access to justice is much more than improving an individual’s access to court and guaranteeing legal representation and it must be defined in terms of ensuring the legal and judicial outcomes are just and equitable.<sup>32</sup> Access to justice as the basic

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<sup>30</sup> Flynn E, Disabled Justice? Access to Justice and the UN Convention on the Rights of Persons with Disabilities, 2015.p. 15.

<sup>31</sup> Stephanie Ortoleva, “Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System,” 17 ILSA J. Int'l & Comp. L. 281 (2011)

<sup>32</sup> Access to justice practice note “paper prepared by the UNDP in March 9, 2004 available at <http://www.undp.org/governance/docs/Justice> Accessed on April 20, 2020

human right and indispensable means to combat poverty, undemocratic governance, and discrimination on the basis of gender, religion, race, age, class, disability and other grounds of differences.<sup>33</sup> The rationale behind the use of definition given for UNDP as a working definition for this paper is it committed to using broad definitions based on the human rights-based approach.

### **2.2.1. The Status of the Right to Access Justice under International law in General**

The term 'access to justice' is not directly and expressly stipulated under most international human right conventions. However, guarantee of access to justice arises primarily by virtue of provisions guaranteeing the right to a fair hearing,<sup>34</sup> equality before the law,<sup>35</sup> the right to liberty and security of the person in particular the right to challenge the legality of detention,<sup>36</sup> the right to effective remedy,<sup>37</sup> right to access court, adequate redress and the right to speedy trial<sup>38</sup>. It is a right recognized under the major international and regional human rights instruments including: the Charter of the United Nations, the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (CESCR), the International Covenant on Civil and Political Rights (ICCPR), the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC).<sup>39</sup> The UDHR also recognizes the right to equality before the law and the right to an effective remedy by competent national tribunals and the right of the individual to a fair trial in both civil and criminal proceedings<sup>40</sup>. The International Covenant on Civil and Political Rights also provides for the right to access justice in Article 14 which among other things includes the equality of all persons before the courts and tribunals and<sup>41</sup> the right to have the free assistance of interpreter if one cannot understand or speak the language used in court.<sup>42</sup> ICCPR stipulates the obligations of

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<sup>33</sup> Ibid

<sup>34</sup> Art 14 of ICCPR, Art 12 and 40 of CRC; Article 5(a) of CERD Article 15(2) of CEDAW and Article 13 of the CRPD

<sup>35</sup> Art 7, 8, and 10 of the UDHR and Art 14(1) and 26 of ICCPR

<sup>36</sup> Art 9 and 4 of the ICCPR; Art 37(d) of the CRC; Art 5(b) of the CERD and Art 12(4) and 14 of the CRPD.

<sup>37</sup> Art 3 of the ICCPR Art 5(b) of the CERD; and Articles 12 - 14 of the CAT

<sup>38</sup> African charter on Human and people Right (Banjul), Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986)

<sup>39</sup> Getnet Mitiku, Access to justice under international human rights framework, <https://www.abssinialaw.com/.../1459>, Jun, 2019, Accessed on Dec, 2020

<sup>40</sup> Universal Declaration of Human Rights, 1948, reprinted in Brownlie, I and Goodwin-Gill, G., (eds.), Basic documents on International Human Rights, 5th ed., Oxford University Press, Oxford, New York, 2006, Pp. 24-28, [here in after- UDHR-], Charter of the United Nations, 1945, at WWW <http://www.un.org/aboutun/charter/> (Accessed On Dec, 2019)

<sup>41</sup> International Covenant on Civil and Political rights, supra note 5, Article 14

<sup>42</sup> Ibid art 14(2)(f)

government to grant the right to equality before the law for every person.<sup>43</sup> In particular, ICCPR requires each State Party to the Covenant :

- a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

The Human Rights Committee recognizes the importance of communication in judicial processes in a language a person can understand by granting an interpreter free of any charge. This right is independent of the outcome of the proceedings and applies to aliens as well as to nationals. It is of basic in cases in which ignorance of the language used by court or difficult in understanding may constitute a major obstacle to the right of defense<sup>44</sup>. Clearly, this concept provides the requisite reasonable accommodation that allows a defense to persons who are hearing impaired and use sign language to communicate with others, and to persons who are visual impaired and cannot read standard print.<sup>45</sup>

Although the International Covenant on Economic, Social and Cultural Rights does not contain a specific access to justice provision, the Committee on ICESCR in its General Comment recognizes that an effective judicial or administrative remedy is indispensable.<sup>46</sup> The right to effective access to justice is considered an effective element of economic, social and cultural rights under the ICESCR.<sup>47</sup> The Committee on ICESCR stated that should an administrative remedy be deemed appropriate, it too must be “accessible, affordable, timely and effective”.<sup>48</sup>

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<sup>43</sup> Ibid art 16

<sup>44</sup> United Nations ,office of the High commissioner for human rights, General comment No.13:Article 14(Administration of justice)Equality Before the courts and the Rights to a fair and public hearing by independent court Established by law (Apr.13,1984),available at <http://www.uhchr.ch/tbs/doc.nsf/obb722416a295f295f264c12563ed0049>(Accessed on Dec 9,2019)

<sup>45</sup> Sphens, supra note 31, ,para,3,p,293

<sup>46</sup>U.N. Econ. & Soc. Council, General Comment 9: The Domestic Application of the Covenant, 9–10, U.N. Doc. E/C/1998/24 ,Dec. 3, 1998 [here in after –ICESCR-]

<sup>47</sup>ICESCR, ‘General Comment 3: The Nature of States Parties’ Obligations’, E/1991/23, 14 December 1990, Para. 5.

<sup>48</sup>United Nations High Commissioner for Human Rights, supra-note 44



### 2.2.2 United Nation Convention on the Right of PWD

CRPWD is the first United Nations' binding international instrument specifically guarantying the rights of PWDs. The other international instruments like the UDHR, ICCPR, and others do not raise the right of access to justice of PWDs in explicit and direct reference to the term "disability" and the other international instruments, that were formulated having the objective of recognizing and respecting the rights of PWDs, CRPD formulated having the purpose of promoting and protecting all the rights of PWDs and it assured the need of effective access to justice for PWDs by protecting their rights.<sup>49</sup> It recognizes the right of access to justice for persons with disabilities by imposing an obligation on the state to ensure effective access to justice for PWD as stipulated under Article 13. Article 13 ( Access to Justice States) provides that:

States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. And in order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote Access to justice appropriate training for those working in the field of administration of justice, including police and prison staff.

The content of the above article is interpreted by scholars as having wider applications of the right to access to justice for PWD. It is particularly considered as encompassing the following major elements:

**A. Right to receive procedural accommodations to facilitate access to justice:** Procedural accommodations might include the manner in which court cases are organized to deal with the many built-in adjournments and delays causing significant inconvenience and difficulty for everyone but particularly for people with a disability.<sup>50</sup> The provision admonishes the States to assure: changes in the proceedings in order to facilitate understanding of them for intellectual disabled people, and accommodations to any kind of disabilities, as eliminating communicating

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<sup>49</sup> UNCRPD and Optional Protocol." Available online: <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> (accessed on Nov,12.2019)

<sup>50</sup> Gibson, F,Article 13 of the Convention on the Rights of Persons with Disabilities: A Right to Legal Aid?" Australian Journal of Human Rights, 2010, volume 132.

barriers or architectural barriers, for example, the use of sign language interpreters, communications assistants as well as devices, utilizing experts to enhance the communication as well as advice on the implications of the disability on the process.<sup>51</sup>

Article 13 expands the equal treatment, not only for trials, but also all kinds of proceedings, such as the preliminary stages of court proceedings and not only limited to direct participation as plaintiff or defendant it allows participation as witness also. Let's set an example. A person with a disability who has /her right to work violated been wish to lodge a claim However, if the justice sectors or labor relation board fails to accommodate disability-related needs i.e. physical access to the court, attorney office, private advocate office, clear communication with the justice organs or access to information that is understandable, then that person may not be able fully exercise her / his right to access justice it also results in denial of protection of the right to work.

**B. Right to legal aid:** Through interpretation, the convention requires state obligations to provide free legal aid for persons with disabilities. Access to justice in most countries is usually available to those who have financial, political or cultural power; whereas minorities, disabilities or other groups experiencing discrimination and subordination are excluded from it.<sup>52</sup> But article 13 of CRPD does not remark precisely in any paragraph the obligation for the states to provide legal aid for persons with disabilities. However, if Article 13 of the CRPD is to have any meaning, then it follows that the Convention requires states to provide legal aid to people with disabilities who cannot access private legal assistance and that, at a minimum, legal aid should be available for cases involving breaches of the human rights referred to in the treaty.<sup>53</sup> It is left to the states' national law to regulate access to that right.

Many states are aware of this relationship, and thus offer basic legal aid programmers for qualifying individuals. It has also been argued that Article 13 of the CRPD should be interpreted to provide that persons with disabilities have a general right to legal aid.<sup>54</sup>When refer the VCLT treaty shall be interpreted in good faith in accordance with the ordinary mining to be given to the

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<sup>51</sup>Volanda De LucchiLópez-tapia, *the Right to Effective Judicial Protection and Disability: the convention on the rights of persons with disabilities*, New York, 2006,

<sup>52</sup>Degener, T. Foreword to the book *Disabled Justice? Access to Justice and the UN Convention on the Rights of Persons with Disabilities*, Routledge, 2015, at 12

<sup>53</sup> Gibson supra note 50

<sup>54</sup> Ibid

terms of the treaty in their context and in the light of its object and purpose<sup>55</sup>. The purpose of CRPD is to promote, protect and ensure the full and equal enjoyment of all PWD and promote respect for their inherent dignity.<sup>56</sup> Access to free legal aid in civil matters might be vitally important for PWD to realize their right to access justice. Therefore Art 13 of CRPD should be interpreted in manners PWD has the right to free legal aid.

**C. Obligation to provide training to those working in the administration of justice:** This is a new provision in international texts regulating persons with disabilities' rights. But it is fundamental to understand effective access to justice. If we want to eliminate barriers that could be a hazard for the person with a disability, one of the main points lays in the people who work in the system. Their collaboration is fundamental to eliminate those barriers, and their collaboration is only possible if they are enough trained to understand what the barriers are and how to eliminate them.<sup>57</sup>

### **2.3. Justifications of the Right to Access to Justice as a Human Right**

All Human rights are universal, indivisible, and interrelated.<sup>58</sup> They should be treated equally under the same foot without any priority and implementing one human right without the enforcement of other human rights is not possible. Hence, Access to justice is a fundamental human right as well as key means to defend other rights.<sup>59</sup> Persons with disabilities are vulnerable groups of people most of the time marginalized due to poor health, educations, economy, environmental hindrance, limited employment prospect society attitude, and etc.

This interaction when adding to their impairment they lack participation within society equally with nondisabled persons.<sup>60</sup> Therefore, the right to access justice is very curcial for persons with disabilities in order to fight any discrimination against their right, by promoting equal and just right with others.<sup>61</sup> Without the existence of the right to access justice, the other right of persons

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<sup>55</sup> Vienna Convention on the law of Treaty 1969,Art,31

<sup>56</sup> CRPD , Supra note no 14,Art 1

<sup>57</sup> CRPD ,Ibid ,Art 13(2)

<sup>58</sup> Vienna Declarations and programs of actions 1993 , principle 5,

<sup>59</sup>Access to justice :practice Note, United Nation Development programme,Sep,3,2004,at [http://www.undp.org/governance/doc/ Justice](http://www.undp.org/governance/doc/Justice) accessed on Feb,6,20

<sup>60</sup> J Beqiraj, L etal , Access to justice for persons with disabilities: From international principles to practice, International Bar Association, October 2017,p10

<sup>61</sup> Ibid

with disabilities cannot be realized; due to this, the right to access justice is a fundamental human right in itself and preconditions to realize other human rights.<sup>62</sup>

#### **2.4. Elements of the Right to Access to Justice**

Access to justice is a human right which encompasses broad components or elements. Thus, it is important to provide a brief description of some of its components as follows. The right to a fair hearing is the basic element of the right to access justice. It attained status of universal accepted principle granted for everyone.<sup>63</sup> It is a key element of human rights protection and serves as a procedural means to safeguard the rule of law. It recognized at international, regional and domestic levels.<sup>64</sup>It refers existence of fairness on all fact of the case from opening of file to final executions of judgments. It includes the right to equality of arms, the right to a reasoned decision as well as the right to secure the execution of final judgment. In the same way, the right to effective access to court is very important to enforce one rights .The right to access the court is an integral part of the due legal process.<sup>65</sup> For access to be effective, physical and nonphysical barriers should be removed or at least kept at minimum physical proximity of court and tribunal should be guaranteed and court fees should be kept at a minimum not to bar individuals from petitioning courts to obtain redress.<sup>66</sup>.Right to an effective remedy also a central component of the right to access justice and an element inherent in the effective enjoyment and exercise of all rights. <sup>67</sup>

For access to justice to be meaningful, petitioners should be able to obtain adequate redress or effective remedy. <sup>68</sup> What is adequate redress depends on the harm suffered as a result of the infringement of human rights. However, redress my include: restitution, compensation, rehabilitation, satisfaction, and guarantees of no repetition.<sup>69</sup>.To have effective remedies, persons with disabilities require: (a) equal and effective access to justice (i.e., available and accessible complaint mechanisms, investigation bodies and institutions, including independent judicial

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<sup>62</sup> European Union Agency for Fundamental Rights,Supra note 19,p.3

<sup>63</sup> Human right committee ,general comment No.32,para.2

<sup>64</sup> Ibid

<sup>65</sup> Klodjan Skenderaj etal, The right to access to court ,Academic journal of business Administration, law and social sciences, Vol 1 no 1,march 2015

<sup>66</sup> Mizanie Abate etal‘ Supra note 28

<sup>67</sup>Ibid

<sup>68</sup> Ibid

<sup>69</sup> Basic principles and guideline on the right to remedy and reparation for victims of gross violations of international human right law,2005

bodies capable of determining the right to reparation and awarding redress<sup>70</sup>); (b) adequate, effective and prompt redress and reparation for harm suffered; and (c) access to relevant information concerning violations and reparation mechanisms.<sup>71</sup>

Legal awareness is the foundation for fighting injustice by raising knowledge of rights and protections, which is crucial to assert them. To seek remedies knowing what right they have is essentials for everyone including for PWD.<sup>72</sup> They cannot seek remedies for injustice when they do not know what their rights and entitlements are under the law. Promoting programs to educate and inform the public about their rights and duties and the role of lawyers in protecting fundamental freedom, with special attention to be given to assisting the poor and the disadvantaged enables them to assert they're and to call upon the assistance of lawyers when necessary.<sup>73</sup> Legal aid also one element to access justice help, to advise people on their legal problems, assists people to understand their rights and the law, and represent people in court. It helps to avoid discouraging people from seeking justice as a result of the high cost associated with formal adjudications.<sup>74</sup>

Legal aid support can help disadvantaged groups, including PWD to access justice for infringement of their rights. The government usually a duty bearer to provide free legal aid; however, governmental organizations are also involved in providing free legal aid. If disadvantaged group supported by free legal aid it help them to open door to exercise their right to access justice in a meaning full way because the absence of free legal aid is one of the most common barriers to equality of arms and equal access to justice, particularly for persons with disabilities, who number disproportionately among the world's poor and face challenges in affording legal advice and representation. The right to legal counsel is a fair trial right and includes the right to free legal aid.

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<sup>70</sup> Committee against Torture, general comment No. 3, Para. 5

<sup>71</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147.

<sup>72</sup> United Nation Development programme, supra note 59

<sup>73</sup> International Commission Of Jurists, *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors*, A Practitioners' Guide Series No. 1 (Geneva, 2004)

<sup>74</sup> United Nations Principles and guidelines on Access to Legal Aid in Criminal Justice Systems, Resolution adopted by UN General Assembly, June 2013(Res. No. 67/187)

The right to be tried without undue delay is a basic element of a guarantee that “relates not only to the time by which a trial should commence, but also the time by which it should end and judgment be rendered; all stages must take place ‘without undue delay’<sup>75</sup>. To make this right effective, a procedure must be available in order to ensure that the trial will proceed without undue delay’ both in the first instance and on appeal. This view has been further emphasized in the Committee’s jurisprudence, according to which article 14(3)(c) and (5) “are to be read together, so that the right to review of conviction and sentence must be made available without delay. Delays in legal proceedings have the effect of keeping litigants in a protracted state of doubt that may be considered equal to denial of justice<sup>76</sup>. If disputes are not resolved in a timely manner it amounts to violations of the right to access justice as a case rendered by ECHR.<sup>77</sup>

Legal representation is crucial to ensure the fairness of proceedings by ensuring the equality of arms of the parties to the case. The challenge is to ensure that access to defense services to the poor is sufficiently resourced and of the required quality. Although legal assistance may only be provided by lawyers, some limited services may be provided by paralegals, lawyers-in-training, law students, or advocates when lawyers are in short supply.<sup>78</sup> With proper supervision and training, such assistance can be vital for people whose needs might go otherwise unmet.<sup>79</sup> Laymen i.e. persons who are not legal professionals may not have sufficient knowledge on how to institute a suit of action in the court of law. This obliges all persons to come and ask advice and guidance from the legal professionals or as a result of the inability to present their cases to the court due to the difficulty of determining the justiciability of an issue. Due to this the right to representations is an essential component used to realize access to justice.

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<sup>75</sup> Office of the high commissioner for Human Right in cooperation with the international bar association, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, series N0 9, New York and Geneva, 2003

<sup>76</sup> Anderson, M.R. (2003) Access to justice and legal process : making legal institutions responsive to poor people in LDCs. Working paper series, 178. Brighton: IDS ‘Available at <http://bldscat.ids.ac.uk/cgi-bin/koha/opac-detail.pl?biblionumber=140910> (Accessed on Dec 21,2019)

<sup>77</sup> Damell v. United Kingdom (1994) 18 E.H.R.R., P.205; Robin v United Kingdom (1998) 26 E.H.R.R...P.572; Seudy v Italy (1995) 19 E.H.R.R...., P.187

<sup>78</sup> Legal Defense and Legal Aid, UN Criminal Justice Toolkit, New York, 2006), p.6.

<sup>79</sup> Ibid p. 9

## 2.5. The obligation of the State to realize the right to access justice

When States agree to International treaties through a process called ratifications, they assume the obligations to respect, protect and to fulfill the human right included in these treaties.<sup>80</sup> Under international law States have the obligation to respect, protect and fulfill human rights.

**The obligation to respect** ; means that States must refrain from interfering with or limiting the enjoyment of the human rights of persons with disabilities. It also described as negative obligations, as the state has to abstain from violating human rights.<sup>81</sup> They must also eliminate laws, policies, and practices that are contrary to human rights. The other two obligations categorized under positive obligations Include the following:

**The obligations to protect**:, indicate the state's obligations to protect every one human right including PWD from violations by third parties. States must be diligent in protecting the human rights of persons with disabilities from mistreatment or abuse.<sup>82</sup>

**Obligation to fulfill** –State parties must take appropriate legislative, administrative, budgetary, judicial and other actions towards the full realizations of these rights: For instance, the ICCPR obliges states “to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, to take necessary steps to give effect to the rights, to ensure effective remedy in case of violation, and enforce such

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<sup>80</sup>United Nation Office of the High Commissioner for Human Rights hand book for Parliamentarians No 26 published by Inter-Parliamentary Union, 2016

<sup>81</sup> Ibid

<sup>82</sup> Ibid

remedies when granted.<sup>83</sup> Generally, states have the obligation to respect, protect and promote human rights including the right of access to justice.<sup>84</sup>

CRPD also imposes general obligations of States Parties to UNCRPD: first, to adopt legislative, administrative, and other measures to implement the Convention, and second, to abolish or amend existing laws, /regulations, customs, and practices that discriminate against persons with disabilities.<sup>85</sup> Article 4 further requires States Parties to adopt an inclusive approach to protect and promote the rights of persons with disabilities in all policies and programs. Art 13 specifically imposes a duty on government to provide effective access to justice for PWD and obligations to give training for persons work on administrations of justice on how to accommodate PWD when come to their office to seek justice.

In summary, access to justice is a fundamental human right in itself and essential means to enhance other human rights of persons with disabilities. Its definitions do not express directly and explicitly in most human rights treaties. Definition gave for the right to access justice not similar, some define narrowly and widely. For this study the wide definitions of right to access justice were applied, different international human right treaties recognized right to access justice, CRPWD is the international human right treaties enacted for the protection of the right of PWD and express the status of the right to access justice for PWD widely. Therefore the right to access justice is a human right for PWD and states have obligations to realize this right.

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<sup>83</sup> ICCPR, art. 2. See also the Declaration on Human Rights Defenders, Art. 2(1).

<sup>84</sup> Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, available at: <https://www.refworld.org/docid/478b26ae2.html> [accessed 26 June 2020] See also Declaration on Human Rights Defenders art. 2(1); and ICCPR art. 2.

<sup>85</sup> Ibid art 4(a)



## CHAPTER THREE

### THE RIGHT TO ACCESS TO JUSTICE FOR PERSONS WITH DISABILITIES IN CIVIL MATTERS

#### 3.1 Definition of Persons with disability

Different national laws and international human rights laws aimed at the protection of the rights of PWDs defines persons with disabilities in various ways.<sup>86</sup> Some definitions focus on medical conditions, while others focus on the functional limitations that result from the disability. Again, others focus on the types and severity of the disability.<sup>87</sup> However, there is no international consensus on any of these definitions.

The UN Declaration on the Rights of Disabled Persons defines “PWD as any person unable to ensure by himself or herself, wholly or partially, the necessities of a normal individual and or social life, as a result of a deficiency, congenital or not, in his or her physical, or mental capabilities.”<sup>88</sup> The provision contains the clause “unable to ensure by himself or herself, wholly or partially, the necessities of a normal individual and or social life”.<sup>89</sup> This clause of the provision denotes that the definition relies on the ability of an individual to survive alone. In this context, a person with any kind of disability is no longer considered to be disabled if he or she is able to ensure his or her own necessities at all. The clause excludes disabled persons who may be able to take care of themselves.

The Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities: similarly defines “disability” based on the incapacity to perform daily activities. The term "disability" means a physical, mental or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities of daily life, and

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<sup>86</sup> Belayneh Admasu, Legal Protections Accorded to Persons with Disabilities under Ethiopian Law, *Bahir Dar University Journal of Law Vol.3, No.2 (2013),P,300*

<sup>87</sup> What is the legal definition of Disability? Say the word” disability” and people often think of the most obvious types of disability mobility. Available at [www.ucp.org/document](http://www.ucp.org/document), accessed on January 2020

<sup>88</sup> Declaration on the Rights of Disabled Persons, proclaimed by UN General Assembly Resolution 3447 (XXX) of December 1975, No. 1.

<sup>89</sup> Ibid

which can be caused or aggravated by the economic and social environment.<sup>90</sup> A disabled person is someone who is unable to perform at least one essential daily activity. This does not account for situations in which a PWDs is capable of performing many essential activities. Hence, it is also not free from deficiencies.

The UN Convention on the Rights of Persons with a disability does not give a definition for disability; it refers disability as an evolving concept and that disability results from the interaction between persons with impairment and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.<sup>91</sup> And define PWD as; “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.<sup>92</sup> This seems descriptions rather than a definition. But it reflects the latest understanding of the concept of PWDs. Unlike some of the definitions we have discussed above, it includes persons with all kinds of disabilities. Physical, mental, intellectual or sensory impairments are specified in order to ensure that the definition is as inclusive as possible. Hence, the definition is not all-inclusive disability must be permanent in order to qualify a person as disabled. In addition, the impairment must affect the person’s participation in society on an equal basis with others. In fact, the physical, mental, intellectual or sensory impairment must prevent his or her full and effective participation in all aspects of life.

When coming to Ethiopia there is no constitutional definition of disability, impairment or PWD. Before the introduction of the latest understanding of the concept of disability, the prevailing definition of disability was that of the medical and traditional conception of physical limitation and ill health and the consequent inability to earn a living.<sup>93</sup> The recent and legally valid definition of the concept of disability in the Ethiopian context is that of the UN CRPWD, and it has been included in the national plan of action of Persons with disabilities<sup>94</sup> . National plan of action on

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<sup>90</sup> Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, adopted in Guatemala City, Guatemala, at the twenty-ninth regular session of the General Assembly of OAS, held on 7 June 1999

<sup>91</sup> CRPD, preamble Supra note 14

<sup>92</sup> CRPD Supra note 14 and Optional Protocol, United Nations, 2006

<sup>93</sup> Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) Initial Report, December 2012, Addis Ababa.

<sup>94</sup> Ministry of Labour and Social Affairs of the Federal Democratic Republic of Ethiopia, “National Plan of Action of Persons with Disabilities, 2012-2021”, Addis Ababa, published by the Labour and Social Affairs. pp. 4-5, available at: <http://www.molsa.gov.et> . [accessed on February 2019]

PWD in Ethiopia defines persons with disability in conformity with the CRPWD: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”<sup>95</sup>We, therefore, find that as is the case globally, at present, Ethiopia has adopted the social or human right perspective of disability by incorporating the definition given by the UN convention in its totality. Even if, a national plan of action of PWD copied the definition given by CRPD it used to guide the implementation of the disability action plan and does not have binding force on legal action and court that there is a need to develop contextual and formal definitions of disability in order to address all issues and cases.

### **3.2. Models of Disability**

Persons with disabilities face discrimination due to attitude, misconception, and absence of awareness<sup>96</sup>. There are four models of disability developed over time that describe approaches to disability; these are charity, medicine, social and human rights models.<sup>97</sup> Historically, disability was considered as an issue of medical support, welfare or charity. This attitude resulted in discriminatory laws, policies, and practices that excluded PWD from participating in socio-economic, cultural and political aspects of society, thereby resulting in serious marginalization of PWD. Those models are; charity, medical, social and Human rights models. The charity model is the oldest models considered PWDs as objects of charity, persons who are unable to defend themselves, inherently need and dependent on the charity of others for survival and belief they are a dependent and helpless segment of society<sup>98</sup>. This is the model related to cultural and religious beliefs and practices. It considered PWD as passive instead of active members of the community and right holders see PWD as an object of benevolence.

These models cause a negative influence on persons with disabilities to exercise most of the human rights including the right to access justice. The second model was the medical models, as understand it from its name medical models is, the models characterize PWD by their medical

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<sup>95</sup>CRPD Supra note 14

<sup>96</sup> Janet E.Lord,et al Human Rights yes !Action and Advocacy on the rights of persons with disability,2<sup>nd</sup> Ed,(2012),p.11.

<sup>97</sup>] National plan of action for PWD ,supra note 94

<sup>98</sup> Janet E.Lord,etal,supra note 96 p 2

status. Disability was considered an illness that can be cured with medical treatment<sup>99</sup> According to this model PWDs are perceived as patients who need treatment and considered abnormal persons.<sup>100</sup> They are considered to suffer from medical problems that require medical solutions and any difficulties are connected to the individual's impairment. Fail to address the external barriers of the external environment or community which cannot be fixed solely by medical experts.<sup>101</sup>The third model was a social model, it challenges the assumptions forwarded by the medical and charity model and understands persons with disabilities as being disabled not by their impairment but by society's reaction. The problem rests not with the individual but with society. Society creates barriers that hinder PWDs. These may be legal or physical, related to factors that include information, communication, and attitude. These hindrances are created in the environments PWDs live in. Due to these factors, the environment is not favorable for PWD.

Therefore society has a responsibility to solve these problems by making PWDs' interaction with society and the environment more convenient and comfortable<sup>102</sup>. To this end, society has a duty to make the environment inclusive, to remove barriers and eliminate discrimination.<sup>103</sup> In short, society must create an environment that can embrace disability as one of many forms of diversity among human beings. This model contributes to the right to access justice for PWD by removing obstacle hinder accessibility and reasonable accommodations created by society.

The other model is a human right model. It was the most relevant model for the legal definition of PWDs, as the ideas have been incorporated into numerous currently applicable international legal instruments and domestic laws. The human rights model complements the social model, address the argument that all human beings are inherently equal and entitled to equal enjoyment of all human rights without distinction of any kind, including disability;<sup>104</sup>. This approach views

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<sup>99</sup> MJ Oliver, The Disability Movement and the professions, retrieved on March, 2015, ([http://disability-studies.leeds.ac.uk/files/library/oliver- The Disability movement and the professions.pdf](http://disability-studies.leeds.ac.uk/files/library/oliver-The%20Disability%20movement%20and%20the%20professions.pdf)) (Accessed on Dec, 10, 2019)

<sup>100</sup> Grant Carson, "The Social Model of Disability", and Scottish Accessible Information Forum, 2009, available at: [www.saifscotland.org.uk](http://www.saifscotland.org.uk) [accessed Jan, 2020].

<sup>101</sup> Janet E. Lord, et al, supra note 99, p 28

<sup>102</sup> MJ Oliver supra note 99

<sup>103</sup> Dr. Raymond Lang, "The Social Model of Disability: The Development and Critique of the Social Model of Disability," Cheshire Disability and Inclusive Development Centre, 2007, available at: [http://www.Ucl.ac.uk/Ic-ccr/center publications/ working papers](http://www.Ucl.ac.uk/Ic-ccr/center%20publications/working%20papers/) (accessed on 26 Dec 2019)

<sup>104</sup> Bhanushali K., changing face of disability movement; from charity to empowerment, Indian Law Journal, PY - 2007/03/08 10.2139/ssrn.965999

PWD as right holders, the rationale has been used to support PWDs' claims to equal access to services and opportunities. According to human rights models, all human rights models disability neither subtracts from nor adds to a person's humanity, value, or rights, it is simply character and diversity of humankind.<sup>105</sup> These models have served as a basis for the definition of disability and PWDs in international legal instruments and pertinent domestic law.

Both international legal instruments and domestic laws enacted before the UN CRPD used the traditional charity and medical models for this purpose, but, those that have been passed since the CRPD's enactment apply the social and human rights models in combination. These models play a basic role to ensure the right to access justice for PWD by ensuring the right to equality for PWD to access justice as of right without any discrimination. po

### **3.3. Specific Human Rights of PWD affecting the right to access justice**

When seeing the following rights we can understand the violation of human rights of PWD may positively or negatively impact the ability of persons with disabilities to enjoy access to justice.<sup>106</sup>

#### **A. The Right to Accessibility**

Historically, the persons with disabilities movement have argued that access to the physical environment and public transport for persons with disabilities is a precondition for freedom of movement, as guaranteed under article 13 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights.<sup>107</sup> Similarly, access to information and communication is seen as a precondition for freedom of opinion and expression, as guaranteed under article 19 of the Universal Declaration of Human Rights and article 19 paragraph two cum to Article 25 (c) of the ICCPR stipulate the right of every citizen to have access on general terms of equality to public service in his or her country. The provisions of this article could serve as a basis to incorporate the right of access into the core human rights treaties, the ICESCR, CERD guarantees everyone the right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks (art. 5 (f)). Thus, a precedent has been established in the international human rights legal framework for viewing the right to access as a right . Admittedly for members of different racial or ethnic groups,

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<sup>105</sup> Ibid

<sup>106</sup> Stephanie ortoleva, Para 2,p 286,supra note 31

<sup>107</sup> UDHR Art 13,Art 12 of ICCPR

the barriers to free access to places and services open to the public were the result of prejudicial attitudes and a readiness to use force in preventing access to spaces that were physically accessible.

However, persons with disabilities face technical and environmental barriers, in most cases human-built environmental barriers such as steps at the entrances of buildings, the absence of lifts in multi-floor buildings and a lack of information in accessible formats. The built environment always relates to social and cultural development as well as customs; therefore the built environment is under the full control of society. Such artificial barriers are often the result of a lack of information and technical know-how rather than a conscious will to prevent persons with disabilities from accessing places or services intended for use by the general public on the fundamental issue by doing so, the countries should ensure that the way in which PWDs can access their environment, transportation, public facilities and services, information and communication technologies.

When addressing any rights of PWD the accessibility right should be indivisible. The term accessibility can be employed as referring to the right to use and obtain an equal benefit from, the provision of goods, services, facilities, and accommodations generally available to the public without discrimination because of physical disability.<sup>108</sup> Accessibility is a precondition for persons with disabilities to live independently, participate fully and equally in society, to choose where and with whom to live, to have access to community support services and particularly the court services where they can claim the violations of their rights including the issue of discrimination. Without access to the physical environment, to transportation, to information and communication, including information and communications technologies and systems, and to other facilities and services open or provided to the public, persons with disabilities would not have equal opportunities for participation in their respective societies<sup>109</sup> ‘Accessibility’ is not only a conventional right in itself but also a general principle of the CRPD.<sup>110</sup> Therefore, the CRPD articles on accessibility in general, and Article 9, in particular, cannot be read in isolation.

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<sup>108</sup>Fina, Cera&Palmisano, *The United Nations Convention on the Rights of Persons with Disabilities*, a Commentary ed, (2017) page 227

<sup>109</sup> Committee on the Rights of Persons with Disabilities, General comment No. 2 (2014), 31 March–11 April 2014

<sup>110</sup> CRPWD Supra note 14 Art 3(f)

Accessibility has to be applied when other rights in the CRPD are applied including the right to access justice.

The term accessibility includes physical or environmental, informational, and financial accessibility when it is defined in relation to PWDs. Due to their patterns of impairment; PWDs suffer from the inaccessibility of information. Despite the fact that all PWDs face the problem of inaccessibility of information, the severity of the problem highly affects some types of disabilities than the other. For instance, persons with hearing impairment are not able to communicate with those persons who are not skilled in sign language and cannot be accessible to the media equally with others unless the mode of communication is designed considering them. Therefore, the inaccessibility of information highly affects the participation of persons with hearing impairment including their rights of access to justice. On the other hand, persons with vision impairment cannot read books, magazines; newspapers and other materials including the legal documents except these materials are transcribed into large print and Braille. Most of the information is reached to the community through different Media that are not accessible for PWDs.

Regarding the inaccessibility of information, the convention on the rights of PWDs stated the promotion access to information by providing information intended for the general public in accessible formats and technologies by facilitating the use of Braille, sign language, and other forms of communications and by encouraging the Medias and internet providers to make online information available in accessible formats.<sup>111</sup> If all information is provided for PWDs in these conditions, they are able to do everything and equally participate in any activity of the community. This is because, information is valuable economically, socially, culturally, political and legally for equal participation of the whole society in any country. Absence of physical access to court for PWD taken as the amount to discriminations when referring case laws.<sup>112</sup>

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<sup>111</sup> . Convention on the Rights of Persons with Disabilities On the fundamental issue of accessibility (Article 9), the Convention requires and ensures that persons with disabilities can access their environment, available at [www.ucn.org/disabilities/convention](http://www.ucn.org/disabilities/convention). Accessed on January, 24, 2020.

<sup>112</sup> The first discrimination disability suit before the Equality Court in South Africa was brought by a South African lawyer EsheMuller who was a wheelchair user. She complained under the Promotion of Equality and Prevention of Unfair Discrimination Act against the Justice Department and the Department of Public Works because of the inaccessibility of the courthouses. She had to be carried down a flight of stairs to enter the courthouse and, on another occasion, the Court had to postpone her cases because she could not get into the room. The Court reached a final settlement in which the government admitted that it had failed to provide proper wheelchair access and that this was a form of unfair discrimination against the complainant and other people with similar accessibility needs.

## **B. Right to Equal Protection of Law**

A fair and comprehensive legal framework is essential to ensure access to justice as it has the capacity to protect and defend the interest of the disadvantaged and vulnerable groups.<sup>1</sup> The legal framework refers to the set of legal rules that define rights and duties, and layout the channel for asserting rights<sup>113</sup>. Laws that discriminate against the poor, and are insensitive to the needs of the marginalized and disadvantaged sections of society need to be identified and revised accordingly<sup>114</sup>. The normative framework that is necessary to use a system of effective access to justice is that which sets a progressive set of rules in conformity with internationally agreed human rights standards, inclusive of disadvantaged groups' concerns and set standards for scrutiny and accountability of government conduct.<sup>115</sup> This normally requires review of the existing normative framework, both formal and informal, to see if there are gaps and biases in protecting the needs of the disadvantaged, enhance the capacity of law-making organs; increase the participation of the community in policymaking and the legislative process; and ensure that administrative regulations and other subsidiary legislation do not contradict rights in primary legislation and human rights instruments.<sup>116</sup>

As it is clearly stated in UDHR, all persons are entitled to equal protection of the law and are protected by the law against any discrimination.<sup>36</sup> Thus, all rights endowed to the human kind can be protected only when the laws that are powerful to protect these rights are promulgated. Law has the capacity of creating rights and recognizing those rights that existed already and protect them not to be violated or if they are violated, it gives a remedy. No one can claim the protection of a right which is not legally protected in the court of law. The reason is that provisions of a legal document have the ability to ensure and enhance the protection of rights, Therefore, the purpose of the international conventions, treaties, rules, etc and the national Constitutions and other subsidiary laws is to protect and ensure the full and equal enjoyment of all rights of humankind. But, unless the specific laws are legislated for the disadvantaged groups especially for the PWDs, the laws that are made for the whole community are not able to protect the rights of those persons who need special treatment. This is why, the different laws are designed and made for the different

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<sup>113</sup> UDHR. Supra note 40 Article 7

<sup>114</sup> J Beqiraj, L etal, supranote 60

<sup>115</sup> Ibid

<sup>116</sup> Ibid



sections of the society like for the children, women, and for others. Therefore, to protect and promote the rights of PWDs, laws should be legislated as possible as sufficient to address the special needs of these persons.<sup>117</sup>

Persons with disabilities are often excluded from the mainstream of society and denied their rights in all fields as the result of their impairment. Discrimination against the PWDs takes various forms, ranging from invidious discriminations such as the denial of educational opportunities, to more indirect forms of discrimination such as segregation and isolation because of the imposition of physical, socio-economical, legal barriers. Above all, the effects of disability-based discrimination have been severe in the fields of Education, employment, housing, transport, cultural life, and public places and services. This negative effect of discrimination resulted from distinction, exclusion, restriction or preference, denial of reasonable accommodation on the basis of impairment; which effectively invalidates or prejudices the recognition, exercise, and enjoyment of the rights of PWDs.<sup>118</sup> These discriminations and violations of the rights of PWDs can be protected by the law only. Because they have no ground to claim and demand remedies for the violations of their rights by wanting justice before the court of law unless the rights of PWDs are protected and guaranteed by the special laws.

### **C. Right to Free Legal Aid for Persons with Disability in Civil Matters**

The right to legal aid is any sort of legal assistance that is provided to the poor not only in criminal cases but also in civil and administrative matters by governmental and non-governmental organizations committed to the realization of access to justice for all irrespective of the depth of their pockets.<sup>119</sup> The right of access to a court must be meaningful and practical, not theoretical need to grant the right to free legal aid<sup>120</sup>. European Convention on Human Rights, Article 6(1) suggests that there is a right to legal aid in cases involving a civil right' or civil obligation'. As to the meaning of civil rights and obligations" there is the broad interpretation, generally based on

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<sup>117</sup> Article 9: Accessibility, information and communication. The UN to use CART at the General meetings during the Convention. What's new with the CRPD? Available at [www.chha-fhohcongress2008.com/.../](http://www.chha-fhohcongress2008.com/.../) UN convention on rights of persons with disabilities. Accessed on Oct, 2019.

<sup>118</sup> UN Enable Overview of International Legal Frameworks, Persons with disabilities often is excluded from the mainstream of the society. Available at [www.un.org/esa/socdev/enable/disovlf](http://www.un.org/esa/socdev/enable/disovlf) . Accessed on February 2019

<sup>119</sup> Claudia Andritoi; Florentina Lupsa, Connections and Interferences between the Right to Defense and the Right to Legal Assistance, 3 Persp. Bus. L.J. 227 (2014) pp 122

<sup>120</sup> European Court of Human Rights decision on Airey v. Ireland; Application No. 6289/73; Judgment of 9 October 1979

definitions in domestic law, but the ECHR extends to rights and obligations of a civil character.<sup>121</sup> Legal aid whether it is state-provided or non-state actors provided represents one of the few ways to overcome the obstacles to the right of access to justice and to ensure the basic right of equality in accessing justice. Legal aid is an institution and serves as a gate which takes into the justice system. Because it opens the door for those whose socio-economic status is bad entry to the justice system to exercise their right to access justice.

The basic principle on the role of lawyers requires governments to ensure that the efficient procedures and responsive mechanisms for equal access to lawyers are provided, including the sufficient provision of funding and other resources for legal services to all persons in general, and to the poor and disadvantaged groups in particular. This funding and other supports for the provision of legal services create a good opportunity for getting legal services for those who are poor and disadvantaged sections of the society.

Regardless of its form, the purpose of legal aid is to guarantee people who for any reason are not able to have access to court, legal professionals and laws and that fill the gap in the enjoyment of the right of access to justice. The PWDs are thus, one and the most disadvantaged section of the society as the result of the disability with which they are living and have not accessed to court, and legal professionals and laws. Therefore, this legal aid is the most important and necessary for PWDs since it makes them the beneficiaries of legal service equally with others who do not have any impairment.

#### **D. Right to equality before the law**

Legal capacity is the ability or capacity to hold rights and duties (legal standing) and to exercise those rights and duties (legal agency)<sup>122</sup>. States are required to ensure that persons who lack capacity are able to participate effectively in proceedings.<sup>123</sup> Violations of legal capacity and substitute decision-making arrangements can prevent and exclude persons with disabilities from participating in legal proceedings and may force their representation by a third party, such as a legal guardian. The exercise of legal capacity is intrinsically connected with the right to access to justice, as often the

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<sup>121</sup> Ibid

<sup>122</sup> Ibid

<sup>123</sup> ECHR, *Zehentner v. Austria*, No. 20082/02, 16 July 2009, pp, 65 and 78.

second cannot be exercised without the first.<sup>124</sup> Art 12 of the CRPWD grant the right to equality of persons with disabilities before the law article 6 of the ECHR requires an applicant's presence at proceedings in which his or her legal capacity is to be determined.

An individual's presence at a hearing on capacity is crucial for two reasons: first, to enable the person to present his/her own case, and second, to allow the judge to form his/her personal opinion about the applicant's mental capacity.<sup>125</sup> The UNCRPWD Committee recommends that the State party take immediate steps to revise the relevant laws and replace substituted decision-making with supported decision-making. This should provide a wide range of measures that respect the person's autonomy, will and preferences, and is in full conformity with article 12 of the Convention, including with respect to the individual's right, in his or her own capacity, to give and withdraw informed consent, in particular for medical treatment, to access justice, to marry, and to work. Article 12 changes the focus of legal capacity decisions from a medical model of disability that addresses the deficit of the individual to a social model that seeks to offer support to a person in exercising his or her legal capacity on an equal basis with others. As the CRPD Committee has written recently, the CRPD's "human rights-based model of disability implies the shift from a substitute decision-making paradigm to one that is based in supported decision-making."<sup>126</sup>

### **E. Right to legal awareness**

Legal awareness is the basic means of fighting off the inaccessibility of justice. If the persons are not aware of their rights and entitlements under the law, they are not able to claim for deprivations of their rights and entitlements.<sup>127</sup> Consequently, the whole disadvantaged groups in general, and the PWDs in particular, highly suffer from the problem of lack of awareness about their rights under the law, which negatively affects their right of access to justice for the reason that they are

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<sup>124</sup>CRPD GC 1para 35,pp10, supra note 23

<sup>125</sup>ECHR, X and Y v. Croatia, No. 5193/09, 3 November 2011, pp, 84–85.

<sup>126</sup> UN Convention on the Right of persons with disabilities ,Ad Hoc committee on a compressive and integral convention on the protection and promotion of the Rights and Dignity of persons with disabilities :General comment on Article ECHR, Zehentner v. Austria, No. 20082/02, 16 July 2009, pp, 65 and 78. Available at <http://www.un.org/disabilities/convention/conventionfull.shtml>. (Accessed on Jan 21,2020)

<sup>127</sup> J Beqiraj, L etal,supranote 60

unable to easily communicate with the society and media and the challenges of cultural, socio-economical, physical and legal barriers in their lives.

The service of legal awareness, therefore, should be accessed for all persons by different governmental and non-governmental actors although the duty to inform the public about their rights and entitlements by different communications is initially imposed on the governments. These governmental and non-governmental actors inform the public of their relevant rights by legal aid centers, making legal awareness campaigns, by the use of media such as radio, television, magazines, newspapers and etc. If persons with disabilities are able to make contact with legal professionals or find legal resources, they can then face another significant barrier: a lack of accessible communications and/or documents that will enable them to make informed decisions. This includes a lack of easy-to-read or plain language formats, as well as a failure to provide Braille or sign language translation. It has been noted that: given the diversity in requirements of individuals, and since corresponding needs to be accommodated will vary, it is also worth considering whether legal information and services can be provided in a way that is more generally accessible to people with disabilities as a whole, or, at a minimum, to specific groups of people with disabilities.

This, in short, would be to take a ‘universal design’ approach to enhance the accessibility of legal services and information to people with disabilities<sup>128</sup>. What should be considered here is that most of PWDs are not comfortable with these modes of communications due to the result of their impairments. Thus, legal awareness should be reached to PWDs by the adjustment of the reasonable accommodation. The reasonable accommodation makes aware of legal information for PWDs if it is made considering the types of impairment; i.e. informing about their relevant rights for persons with hearing impairments in sign language communication, for persons with vision impairment in Braille print, soft copy and by audio- recording and informing the others in a way they can understand. For the purpose of a reasonable accommodation to address the legal awareness for PWDs, legal professionals have to be skilled by governmental and non-governmental actors in the respective fields of knowledge that can easily assist the transmission of legal information to PWDs. Therefore, persons have to be trained in sign language, Braille reading,

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<sup>128</sup> Ibid

and writing, psychologically understanding the problem of the PWDs to make them aware of their legally protected rights.

#### **F. Training in the fields of administration of justice and legal education**

Attitudinal barriers affect access to justice for persons with disabilities, as they may negatively influence the way in which laws, legal policies, procedures, and practices are implemented. Often, these attitudinal barriers stem from lack of awareness of the rights of, and appropriate practices for, persons with disabilities in the justice system on the part of police officers, public defenders, and professionals working as public defenders or providing legal aid, legal service providers and others. The provisions of Article 13 (2) promote appropriate training as a measure to overcome these barriers. States parties should design and deliver mandatory regular training programs, which should be properly funded, involving persons with disabilities at all stages of legal proceedings, including in rural areas.<sup>129</sup>

CRPD stipulate state parties to disability conventions have obligations to do things to make everyone else aware that disabled people have the same rights as everyone else and to show them what disabled people can do. They should do this by having campaigns to change the way some people think about disabled people's lives.<sup>130</sup>

#### **G. Right to access to court**

Access to court is a fundamental human right that is intrinsic to all human rights treaties.<sup>131</sup> The right of access to court is the assurance of physical or structural court accessibility and informational, documentary, personal and transportation court accessibility by PWDs. This right is a right which is given to all persons without any reservation. The inaccessibility of court for PWDs, therefore, violates the individuals' civil rights, undermines the integrity of the court system and the workplace, and adversely affects the equal administration of justice. For the purpose of equal exercise the right of access to court by PWDs as those persons without disability as possible the state or non states role players in this field should facilitate the physical accessibility of the

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<sup>129</sup> Ibid

<sup>130</sup> CRPD , Art 8, supra note 14

<sup>131</sup> Stephanie Ortoleva, supra note 31

court that comprises of roads to courts, routes of entry, parking's, clerk's offices, including public services counters, courtrooms, toilet and others that are within the environment of the court service.

#### **H. Right to legal counseling and legal representation**

Protecting the rights of PWDs by legislation and informing them about their relevant rights is not enough for the equal protection of the rights of PWDs. Laymen i.e. persons who are not legal professionals may not have sufficient knowledge on how to institute a suit of action in the court of law. This problem highly affects the PWDs who are not accessible to different ways of communication due to their impairments and discriminations on the basis of their disability. As a result legal professionals have to know how to council the PWDs by using sign language, Braille print and other modes of addressing reasonable legal counseling. Besides to serve to present PWDs in the court of law, legal professionals have to be aware of this reasonable accommodation and the laws that are made for the specific purpose of protecting the rights of PWDs nationally and internationally.<sup>132</sup>

To summarize this chapter, there are no specific and clear cut definitions of disability and persons with disabilities. The UNCRPWD provide description of PWD and left to define disability clearly and expressly and puts in its preamble in a way which is very vague and puts its definitional value under questions. Through history PWD were subject to restrictions to exercising their rights and such restriction was reflected in various ways such as traditional for different rights as expressed above with different approaches or models, which are, charity, medical, social and human right models. The two models respectively classified under traditional approach which affects the human right of PWD including the right to access justice. The social and human rights approach is the latest models ensure the respect and promotion all right of PWD including the right to access justice. The specific human rights violation affects Persons with disability human rights to access justice negatively or positively are discussed .Therefore, the right to access justice for PWD is the basic human right itself and essential means to enforce other human rights.

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<sup>132</sup> UNDP, supra note 32

## CHAPTER FOUR

### THE RIGHT OF ACCESS TO JUSTICE FOR PERSONS WITH DISABILITY IN CIVIL MATTERS UNDER ETHIOPIAN LEGAL SYSTEM AND ITS PRACTICAL IMPLIMENTATION BEFORE FEDERAL COURTS

#### Introduction

The rights of PWD have not had got any attentions in Ethiopia until very recently, as a result, it is difficult to find a specific and comprehensive dealing with persons with disabilities that progress through time. There is only the law that has been legislated to regulate the employment of persons with disabilities; it is the proclamation of the FDRE that specifically and exclusively address disability rights, protect the right of PWD to employment and prohibits discriminations.<sup>133</sup> In addition to employment proclamation building proclamation contains specific articles that deal with the accessibility of design and construction for physically impaired persons.<sup>134</sup> In this chapter, the right of access to justice of persons with disabilities in the civil matter will be assessed and analyzed with reference to the general legislation of the country and the practice made before a Federal Courts located at Addis Ababa.

#### 4.1. The Right of Access to Justice for Persons with a Disability under Ethiopian Law

The constitution is the supreme law of the land and source of legitimacy for all other laws.<sup>135</sup> The foundation for the respect and enforcement of the human rights of the individual in Ethiopia is the constitution. Legislations, practices and decisions of government organs that violate the constitution have no effect and it is null and void.<sup>136</sup> One-third of the provision of the FDRE constitution deals with the fundamental right and freedom of individuals. The Constitution also safeguards the principles set out in the UDHR by stipulating that “*every individual has the right*

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<sup>133</sup> Right to Employment of Persons with Disability Proclamation No. 568/ 2008, published on Federal Negarit; Gazeta, No. 20 25th March, 2008 .

<sup>134</sup> Ethiopian Building proclamation published on Federal Negarit Gazeta No. 31 6th May, 2009 , Art 36

<sup>135</sup> FDRE constitution article 9 (1) supra note 6

<sup>136</sup> Ibid

*to human dignity, and to be recognized as a person everywhere.*”<sup>137</sup> These rights apply to persons with disabilities and are in line with the human rights-based approach of disabilities. Ethiopia has ratified many international human rights documents and these international instruments ratified by Ethiopia form integral parts of its domestic laws . Interestingly the interpretation of Bills of Rights recognized under chapter three should be in line with the international instruments and principles ratified by Ethiopia.<sup>138</sup>

CRPWD is one of the human rights treaties ratified by Ethiopia.<sup>139</sup> It is an integral part of the law of Ethiopia and has a binding effect on Ethiopia. Thus, Ethiopia is obliged to incorporate the rights under CRPWD into domestic laws, make rules and laws relevant to PWD, change any laws that discriminate PWD, include right of PWD in all policies and programs to ensure equal treatment of PWD with person without disability, using new technology to help PWD and giving accessible information’s to PWD.<sup>140</sup>

The right to access to justice is a constitutional guaranteed right for everyone including PWD as stipulated under Article 37 of the FDRE Constitution.<sup>141</sup> This Constitution guarantees everyone has a right to bring justiciable matter before the court or competent organs that have a power to decide on the matter.Regarding the right to equality,the FDRE Constitution provides, under Article 25 “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”It adds in this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or another social origin, color, sex, language, religion, political or another opinion, property, birth or another status.<sup>142</sup>

The FDRE Constitution like another international human right instrument not clearly stipulated disability undergrounds of non discriminations. The phrase “other status” found at the end of Article 25 of the FDRE Constitution implies the implication of the right of equality before the law and the equal protection of the law to the unmentioned grounds of discrimination, like disability-

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<sup>137</sup> Ibid ,Art 24(3)

<sup>138</sup> Ibid ,Art13(2)

<sup>139</sup> Ethiopia signed the convention on the 30<sup>th</sup> of March 2007 and ratified it on the 7<sup>th</sup> July, 2010

<sup>140</sup> Supra note 14 Article 4(a )

<sup>141</sup> FDRE Article 37, supra note 6

<sup>142</sup> Ibid article 25.



based discrimination.<sup>143</sup> The expression “all persons”, “everyone”, “every child”, “every citizens” in chapter three of the same constitution reveals applicability of human rights equally for all persons including persons with disability. To ensure equality in reality, “the phrase effective protection” in constitution could be taken as it recognizes de facto equality or positive measures for the promotion and protection of rights of vulnerable groups including persons with disability. It also directly provides a guarantee of affirmative action for all women includes women with disability.

## **4.2. Barriers During Implementation of the Right to Access Justice for Persons with Disability in Civil Matters**

As stated above, persons with disabilities have a constitutionally guaranteed right of access to justice equally with others. However, the real practice in the administration of Ethiopian justice is contrary to this right. On the basis of selected some Ethiopian legal provisions, kinds of literature and particularly interviews made with judges, public prosecutor, attorney, Ethiopian disability federations, Ethiopian disability associations and with persons with disabilities, they are not accessible to the justice institutions in civil matters due to different challenges. The challenges PWD face in accessing justice is discussed in the next section.

### **4.2.1. Legal Barriers to the Right of PWD in Ethiopia**

As discussed in chapter three, legal protection play a great role in implementations of one right, without the legal protection one may not ask a remedy in the court of law or in other concerned bodies for the reason that demanding justice for the violations of rights. Hence, a law has the power of fully recognizing or restricting the exercise of a right. As a result, it is a tool by which the right of access to justice is exercised. On the contrary, the law may negatively affect a right rather than recognizing and guaranteeing the protection and promotion of that right.

The FDRE Constitution provides that “the state, shall within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guardian”.<sup>144</sup> Article 41 (5) of the FDRE Constitution is the only sub-article which dedicated to the concern of disability right. It is the provision in which

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<sup>143</sup> The Federal Democratic Republic Of Ethiopia National Human Rights Action Plan 2013 – 2015, pp153-154

<sup>144</sup> FDRE Constitution Art 41(5) supra note 6

the drafters of the FDRE Constitution tried to address persons with disabilities. It is true that those individuals with disabilities who cannot be engaged in any kind of productive activity should be assisted and supported in provisions and subsistence. But, all individuals with a disability are not persons who are dependent on the assistance and support of the provisions of the state and other charity organizations since these persons have the capacity to work and earn their own income. The Constitution seems to consider all persons with disabilities as unproductive groups of the society and failed to give persons with disabilities the proper protection given to them by the international human right instruments. This sub-article raises PWD rights in the sense of a charity approach but not in the sense of human rights issue as the former mainly deals with rehabilitation and assistance, In addition, the Constitution cannot impose obligations on government to provide accessibility support to PWD. Even the rehabilitation and support right guaranteed under these provisions are subject to restrictions based on available resources. It indicates the government's duty for progressive realizations rather than imposing immediate realizations; the existence of progressive realizations based on the country available resource is a challenge for PWD to ask most of the right including access to justice as of a right specifically in civil matters.

#### **4.2.2. Legal Challenges under the Civil Procedure Code and Civil Code of Ethiopia**

The right to access justice for PWD guaranteed under substantive law should be enforced by procedural laws. However when seeing one provision of civil procedure code of Ethiopia; it imposes restrictions on some persons with disability to exercise their right to access justice in civil matters unlike what stipulated under CRPD. Civil procedure code stipulates only persons capable under the law can become a party to a suit, both as a plaintiff as well as defendants.<sup>145</sup> The Civil Procedure Code restricts the capacity of PWD legal standing right under article 34 which states that;

*1. A person under disability may sue or be sued through his Legal representative.*

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<sup>145</sup> Ethiopian Civil Procedure Code of 1960 Art 33

2. *Where a person under disability is not represented by his legal representative, the proceeding shall have stayed until a legal representative is appointed in accordance with the relevant provisions of the Civil Code.*<sup>146</sup>

The above provisions lack clarity as it generally refers to persons under disability without giving definitions for the category of persons. It seems to refer to PWD and restricting persons with all types of disabilities from exercising their right to access justice by themselves without representations through, their guardians or tutors. The law here is not talking about ordinary representations by a lawyers who will be appointed to act on behalf of the party to a suit ,PWD cannot appoint a lawyer their right already restricted to act any juridical acts rather the law referring to appointment of a tutor, who will act on behalf of the persons with disability.

The practice before Federal Court unlike what the law provides was to some extent good but with some limitations. There was no access to justice right restrictions to sue or be sued by themselves for all types of PWD. However, for persons with intellectual, physiological and visual hearing impaired person restriction was made to exercise their right to access justice in civil matters by themselves. The Practice of legal capacity restrictions made on certain groups of PWD under the civil code and civil procedure code of Ethiopia is contrary to article 12 of CRPD.

This can, for instance, be seen from the following cases. In the *Hamsale Genene* case, the applicant lodged applications for tutorship to FFIC of *Kolfe Keraniyo* branch.<sup>147</sup> The application was made by her children to impose legal restrictions on her because of her mental problems that she couldn't know or understand any activities and that she had no capacity to own and administer her properties. It was stated that she was undergoing medical treatment at Bethal Teaching Hospital. Based on application the court order Bethal Teaching Hospital to produce medical results on the health status of the patient. Medical certificate indicates the patient was on treatment and she did not know and understand her activities. Based on the medical result, the court imposed legal restrictions to exercise any legal rights and grant tutorship status to the applicant.

In addition in *Mr. Birhane Abrham* case, the applicant made applications for tutorship and guardians for his son who was 25 years old due to intellectual problems on the ground that he does

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<sup>146</sup> Ibid Art 34

<sup>147</sup> Applicant Hamsale Genene , Kolfe karaniya, civil file No00/0108/87610

not know and understand the consequence of the act and unable to administer his property.<sup>148</sup> It was said that his son was following medical treatments at Amanual Hospital and thus asked the court for imposition of legal restriction on his son based on Article 351 of civil code and give a tutorship and guardians status to him for the best interest of his son and his property protections. The court order the hospitals to send the health result which indicates patient health status on adjournment date; then the court granted the applicanta tutorship and guardian rights depending on the medical result without visiting the person's intellectual disabilities.<sup>149</sup>

From the above two judgments we can understand that still the approach to treat persons with mental disability are based on traditional medical approach not based on social and human rights models. There is legal gap in that denial of legal capacity by following substituted decision making to guardians rather than allowing supportive decision making for them. In both cases, the court rendered its judgment only based on medical results; there was no attempt to order the persons concerned to appear before the court with the view to see the persons and identify the personal appearance of such persons ; it also failed to examine either by delegating one of its members or by appointing an experts the actual situations of the persons concerned.<sup>150</sup> This kind of practice negatively affects PWD by opening room for fake tutorship applications especially intended to have control over the property interests of the interdicted persons.<sup>151</sup> The reason was not for the interest of PWD rather than for own sake to benefit themselves from the right interdicted persons exercised.

#### **4.2.3. Legal Challenges under the Ethiopian Civil Code**

Ethiopian civil code enacted during imperial regime is an outdated law when it comes to human right protection of persons with disability were not the concern of human rights. As a result, there are some provisions that restrict PWD to not exercise their civil rights. Article 340 of the civil code is one among provisions which negatively affect PWD rights. It stipulated that “infirm, deaf-mute, blind persons and other persons who as a consequence of a permanent infirmity are not capable to take care of themselves or to administer their property may invoke in their favor of the law

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<sup>148</sup> Applicant Birhane Abraham, FFIC Kolfe karaniyo ,civil file N0 00/0108/85362

<sup>149</sup> Ibid

<sup>150</sup> Ethiopian Civil Code of 1960, Art 351

<sup>151</sup> Interview made with Mr. Endale Tadesse ,Civil matter coordinators judge at FFIC located at kolfe karaniyo on ( 24,Jan ,2020)

which affords protection by imposing legal restrictions by court.<sup>152</sup> As it is clear from this provision, it negatively affects the right of persons with disabilities in multi directions including; use of the terminologies. The legislature drafted to this provision using abusive and derogatory terms that are not any longer in use today; this psychologically jeopardizes the individuals with disabilities. The terminology used to express PWD under Amharic version of this provisions are, **ድጋፊ ሰው ለግብርና ስጦት ለሌሎች ሰው ለማድረግ ጥሩ ሰው** which appear insulting to PWD and this causes grave psychological harm to PWD <sup>153</sup>. In addition, the above provision expressed infirm persons as not capable to take care of themselves or to administer their property. It indicates PWD as incapable to do any acts including exercising the right to access justice; it considers PWD as dependent persons on others, it follows traditional charity models that discriminate PWD contrary to human right approaches to disabilities.

In practice most of the visually impaired persons complain art1728(3), *Art 1728(3) of the civil code reads; the signature or thumb-mark of a blind or illiterate person shall not bind him unless it is authenticated by a notary or judge acting in the discharge of his duties.*<sup>154</sup> The intention of this provision seems for better protections of PWD and illiterate person’s interest from fraud as understand from federal bench cassation division case between *W/o Etenesh Kasa Vs. Haji Jemal* which gives decision infavor of illiterate persons who sign contract out of the notary; not bound by his/her signature.<sup>155</sup> However, the practical application of this provision restrict the day to day activities of PWD to not exercise most of civil matters in relation to financial activities. It negatively restrict the legal capacity of persons with visual impaired to exercise most of the civil rights when going to bank to withdraw money deposited in bank, bank follow bureaucratic procedure and not allow withdraw money just like nondisabled persons.<sup>156</sup> They are not accepting signature of visually impaired persons unless they sign before three person’s eyewitnesses. “Most of visual impaired complain Art 1728 of civil code as a draconian law which restricts the legal

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<sup>152</sup> Supra note 150, Art 351(3)

<sup>153</sup> Interview made with Darresse Tadese ,physically impaired , Communication officer, at Ethiopian Federation on persons with disabilities at (12 ,Jan, 2020)

<sup>154</sup> Civil procedure code supra note ,45 Art 1728 (3)

<sup>155</sup> Etenesh Kasa Vs. Haji Jemal Yimam, Cassation File No.83674, Federal Supreme Court Cassation Decision, Vol.15, Pp.65–68.

<sup>156</sup> Interview made with Mr Abate Dajane visual impaired ,Legal Department head at FSC on ( 13, Feb 2020)

capacity of visually impaired in civil matters.<sup>157</sup> From the above practical implementations deeply indicate legal capacity of visual impaired restricted to exercise financial activities.<sup>158</sup>

#### **4.2.4. Legal Challenge in Accessing Free Legal Aid Services**

Free legal aid help to ensure constitutional guaranteed right to access justice and equality of all persons before the law ;it makes persons not lose his right based on the absence of legal knowledge, economy, social problems and helps people not marginalized from accessing justice for their rights.<sup>159</sup> Free legal aid services provided by governmental and non-governmental institutions. The power to supervise a free legal aid was given for attorney general based on attorney general establishment proclamations.<sup>160</sup> Until now there is no clear and uniform binding law on free legal aid in Ethiopia it is in manual status. Ethiopian National strategy on free legal aid also still on draft<sup>161</sup>; the main objective of draft Ethiopian free legal aid strategy is to ensure quality, accessible and available free legal aid service for community, to ensure more human right protections for right under constitution on other legislations and right under ratified international human rights treaties ,to put directions on free legal aid providers coordination’s between them, to make uniform applicability of the service provider specifically for vulnerable group of society in accessible manners, to make government discharge his duties in a meaning full manners, and to make accessible information’s to community on service provided.

At the federal level, this attorney General Proclamations stipulate “attorney power and duties to conducts litigations by representing citizens who do not have the financial capacity to institute civil action under federal courts especially women, children, PWD and the elderly persons.”<sup>162</sup> However, there are legal challenge related to providing free legal aid for PWD in civil matters. These are; one being poor or having low economic capacity is a pre-requirement to provide free legal aids in civil matters. However, proclamation remains silent on what uniform criteria help to

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<sup>157</sup> Example, one visual impaired phase one upon a time; he get a condominium house and went bank to conclude loan contracts. But bank restrict him to make a contract by himself by saying your signature is not accepted unless it made before notary and order him to represent other persons on behalf of him, then to get the loan the only chance he had is representing other persons.”

<sup>158</sup> Interview made with Mr Yilikal Admasu , visual impaired Attorney, at Federal court , (10, Dec 2019)

<sup>159</sup>M .capplletti and J.Gordley, legal aid: Modern Themes and variation, Stanford Law Review,Vol,24,No.2,1972,p347

<sup>160</sup> Federal Attorney general establishment proclamation No 943 Art 6(11) Federal Negarit Gazette No. 62, 2nd May, 2016

<sup>161</sup> Ethiopian draft national strategy on free legal aid ,2011

<sup>162</sup> Supra note 160 ,Art 6(4)(e)

determine one person's economy capable or incapable to represent private attorney and on exceptional case difficult to bring certificate of paupers due to current situations unable to control his/her properties.

The need to fulfill pauper certificate as an objective criteria is very challenging for persons sometimes who cannot present a pauper certificate evidence since he/she owns a valued property in-kind may stand in need of free legal aid service since under his/her current situation, he/she may not have access and control over his/her property to avail it for the service expenses. These are the case most of the time with women with disabilities who leaving their home because they are bettered by their husband and the persons who do not have valid Kebele card who would not be considered as Kebele residents and are not eligible to request pauper evidence from the Kebele.<sup>163</sup> Bringing certificate of paupers from Kebele they live difficult for PWD due to existence of various inconvenience such as problem-related to physical accessibility of Addis Ababa transportations road, bus, absence of giving first chance for PWD client within Kebele, delay procedures by Kebele to issue the certificate, transportation cost and etc. Those existed challenges make PWD lose hope of using free legal aid and exercise right to access justice before courts.<sup>164</sup>

There is an absence of clarity on the services provided in civil matters specifically the silent of law on defendant person's representations by government attorney in civil cases. FDRE constitution Article 19(5) reads as accused persons have the right to be represented by legal counsel of their choice, and if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense.<sup>165</sup> From This provision, one can understand that right to representation in civil matters in Ethiopia not clearly stipulated, as a result, there are practical limitations of government representations in civil matters in general and specifically for PWD.

Accessibility of free legal aid in civil matters before Federal Courts seems more emphasis given in criminal matters and there is a low level of free legal aid provided in civil matters. Due to attitudinal assumptions that grave human rights violations in criminal matters and as much as no

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<sup>163</sup> Interview made with Mr Mangesha Kibret Federal general attorney civil matter free legal aid focal persons in Lideta on (Jan 10 ,2020)

<sup>164</sup> Interview made with Mr Lama Arada who is physically impaired wheelchair user client, in Lideta FFIC on (Jan,10,2020)

<sup>165</sup> FDRE constitutions ,supra note 6 art 19(5)

human rights violations by the absence of legal representations in civil matters. But the reality is far from this assumption the violations of civil rights due to absence of free legal aid lead miscarriage of justice for persons have no capacity to hire private attorney and existence of human rights violations have no questions.<sup>166</sup>In addition to this, the law is silent on free legal aid service for vulnerable group of society based on their vulnerabilities to get the service without economic capacity as pre-requirements.

The other challenge related to legal aid service provide by attorney general in civil matters at Federal Court is absence of independent budget allocations clearly stipulated on the law on each branch to cover the indirect cost of beneficiaries. In principle beneficiaries access legal aid service free of charge in all institutions which provide legal aid services. However budget is centralized by attorney generals, all branches including directorate office have no independent budget to cover indirect cost of beneficiaries I.e. Expenses for translations of evidence, example medical result, medical expense, and other evidence need translations, payment of stamp duty (timber expense), transportation cost, court fees, cost for adverse party when unfortunately represented prosecutors not appear on adjournment date, witness per diem, and cost of copying judgment of lower court in case of appellate jurisdictions required to cover by beneficiary of the services .This made the beneficiaries lose interest to take their case before court if have no means to bear this cost.<sup>167</sup>

Mandatory pro bono service is the typical legal aid service stipulated by the Federal Court's advocates licensing and registration proclamation Advocates licensed to practice law in the Federal Courts are required by law to render a minimum of 50 hr legal service a year free of charge or upon minimum payment (pro bono public). The beneficiary of servic Are those persons who cannot capable of afford private attorney payment. 50 hr free legal aid rendered by attorney as per this provision lack clarity it silent on how to calculate it, from which stage of proceeding start to calculate the time. Based on this legal gap the practice of attorney on render mandatory pro bono service not a uniform and the practice of supervising its implementations also not established in institutionalized form.

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<sup>166</sup> Interview made with Mr Yadata Tasama , Civil matter coordinator judge in lideta FFIC on ( 25 Jan ,2020)

<sup>167</sup> Interview made with Mr Henok Tesfaye, Attorney general directorate director in lideta on (24,Jan,2020 )



### **4.3. Practical Problems Affecting the Realization of the Right to Access to Justice for PWD in Civil Matters before Federal Courts**

It is possible to classify practical barriers in relation to the right to access to justice in civil matters into two ; those that concern the supply-side and demand sides, the challenges related to supply-side include; problem-related to physical accessibility, communications, accessible information, and lack of available free legal aid in civil matters, lack of training for persons work on administration of justice on how to accommodate PWD and those related to the demand side include reluctant of PWD to exercise their right to access to justice before formal dispute resolutions (courts), poverty and social attitude toward PWD.

#### **4.3.1. Practical Problems from Supply Side**

##### **A. Physical Accessibility**

The idea of accessibility widely associated with availability, acceptability and inclusiveness of the country's infrastructures for persons with disabilities to realize fully and equally their human rights such as the right to access justice, access to information, adequate standard of living, education, and right to job opportunity.<sup>168</sup>

Ethiopia enacted building proclamation that addresses the design of both private and public buildings should be based on acceptable and comfortable building design rules.<sup>169</sup> Its address building shall be accessible to physically impaired persons including wheelchair users and those who are unable to negotiate steps.<sup>170</sup> After the coming into force of the proclamation, regulation and directive were enacted by the council of ministers and ministries of urban development and construction, respectively. The regulation issued to enforce this law mandatory stipulated that any building that has more than twelve meters height to have accessible stairs, parking lots and toilets for PWD<sup>171</sup> and including suitable lifts<sup>172</sup>. This regulation also requires accessibility and suitability of any building for all persons with disabilities.<sup>173</sup> Moreover, the directive also

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<sup>168</sup> CRPWD Supra note 14 , Art.3, 9,14,24,25 and 27.

<sup>169</sup> Ethiopian building proclamation supra note 134 Art 30

<sup>170</sup> Ibid Art 36

<sup>171</sup> Council of Ministers Building Regulation No. 243 ,Art 28(8)

<sup>172</sup> Ibid Art 33

<sup>173</sup> Ibid, Art 28(2&3)

mentioned out basic standards of design which fit for better enjoyments of rights by persons with disabilities.<sup>174</sup>

The Convention stipulates the involvements of different actors for implementing and monitoring to it. For that matter, treaty body, civil society or NGOs, international cooperation, *Regular states meetings*, independent national institution, and the creation of focal point with the government are a mechanisms designed for the effective and efficient implementation of rights of persons with disabilities.<sup>175</sup> In this regard, Ethiopia actively after ratification of the convention established the Ministry of Labour and Social Affairs primarily mandated for improving human rights of persons with disabilities through the provisions of social and vocational rehabilitation. Ministry of Labour and Social Affairs has a duty to ensure accessibility of government service to PWD.<sup>176</sup> In addition this body, 25 Ministries of federal government of Ethiopia bears the responsibility for mainstreaming disability affairs in exercising of their power and function within their jurisdiction.<sup>177</sup>

Be that as it may, within Ethiopia , the concept of universal design is not enforced in domestic law and the policies on accessibility are limited to physical impairment and not targeting all persons with disabilities.<sup>178</sup> There is no compressive plan of action and standards on accessibility, including accessibility of transportation, building, environment, communication and information.<sup>179</sup> Nevertheless, the new law regulating executive power and duties of Ministers interestingly requires the creation of favorable environment for equal opportunities and full participation of persons with disabilities in all areas including access to court.<sup>180</sup>

The practice within Federal Court located in Addis Ababa is contrary to what stipulated under CRPD, building proclamation and regulation. There is a great problem in relation to physical accessibility of court building, most of them not accessible to reach even the court registrar;

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<sup>174</sup> Development and Construction Directive, Ministry of Urban Development, 2011, Art 33

<sup>175</sup> Convention, Art 33(1)

<sup>176</sup> National plan of action of PWD supra note 94

<sup>177</sup> Powers and Duties of the. Executive Organs of the Federal Democratic. Republic of Ethiopia Proc.No.916/2015, Art 10(4)

<sup>178</sup> Committee on the right to persons with disability concluding observation on the initial report of Ethiopia on 29 , August 2016.

<sup>179</sup> Ibid

<sup>180</sup> Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation,2015, *Fed.Neg.Gaz.*,Proc.No.916, 22th year, No.12, art.10 (4) [Hereinafter,Proc.No.916/2015]

Persons with visual and physical impaired who have a mobility problems phase a great challenge to exercise the right to access to justice.<sup>181</sup> Most of the court, public prosecutors and private attorney offices are not accessible for physically impaired except some newly constructed building which have separate ramps. When seeing Lideta FFIC building it relatively a new building and its physical accessibility are to some extent good in relative to other court buildings; it has a separate ramp for persons with physical impaired wheelchair users. Besides building has nine floors having lift, but lift is not functional sound systems for visually impaired persons and all floor lift are not accessible due to technical errors it functional only on odd numbers it is very difficult for physically impaired persons to go to floors out of odd numbers. Toilet not constructed by taking into account PWD it is not accessible. When see Lideta FHC building its constrictions are old structured not accessible for PWD. It has three floors that have no separate ramp for persons has mobility problems, no lifts on the building and no separate rooms prepared for physically impaired persons on ground floors. One wheelchair users appear before court as a plaintiff, when come to court on the adjournment date the bench entertain his case located on third floor; he cannot able to go to third floor without lift, then he stays on ground and persons come up with wheelchair users tells to the judges that the plaintiff is physically impaired persons have mobility problems unable to walk on straight then judge postpone adjournment to other day and see him case on ground floor.<sup>182</sup> Absence of physical accessibility of court room causes delay of proceeding, and reluctance of PWD to go to courts to exercise their rights.<sup>183</sup>

Bole branch FFIC has their own new building having of six floors; when the researcher sees the physical accessibility of the court building it is not accessible for physically impaired persons it has no separate ramps, lift on building totally not give functions. Kolfe Keraniyo branch FFIC building is leased one, it's not their own building and this building not physically accessible for physical and visual impaired persons ; it has no separate ramps for wheelchair users and have no lifts .when physical impaired persons appear before court the same challenge phase PWD like other court which physically not accessible for physical and visual impaired .FSC court building also old structure constructed during Italian inventions' by Italians, court building has no separate ramps, no lifts on the floor it's not physically accessible for physically impaired

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<sup>181</sup> Interview made with Mr. Gizachew Belay visual impaired client at lideta FFIC on ( 18 Jan ,2020)

<sup>182</sup> Interview made with Mr. Shelema Bekele, Judge at Lideta FHC, on (Jan 18 2, 2020)

<sup>183</sup> Ibid

persons. The same is true for lafto and kirkos FFIC, it's building not physically accessible for persons with physical impaired have mobility problems and for visually impaired persons.

Therefore, it is safe to argue that Ethiopia has failed to carryout its international human rights obligation to implement fundamental right of access to justice for PWD.

## **B. Communication Problem**

The other problem of persons with disabilities in accessing justice is the communicational problem. Individuals with disabilities are expected to communicate with the law enforcing agencies for the purpose of accessing to justice. However, some individuals with disabilities are not comfortable with the normal mode of communication due to the effect of their disabilities. In this aspect, persons with hearing impairment are the most disadvantaged group. There is no law or policy that clearly requires justice sector professionals to make sign language interpreters available for communications with persons with hearing impaired.

Article 20 (7) of the FDRE Constitution provides that “they have the right to request for the assistance of an interpreter at state expense where the court proceedings are conducted in a language they do not understand.” hearing impairment can communicate with and easily understand is the language of sign language, the language they understand” may include a large group of languages that are verbal and nonverbal. The researcher thinks the FDRE Constitution given emphasis for languages of nations, nationalities, and peoples of Ethiopia, which is out of working languages. For example in federal court the working language is Amharic so that the constitution’s does not seem provide a guarantee for persons who cannot understand Amharic and use other language interpreters allow for them by government expense.

In Ethiopia, the sign language is recognized as the official communicational language of persons with hearing impairment. It is recognized as the main means of communication between persons with hearing impairment and others. Hearing-impaired persons did not understand the language the court used for working since understandable language for them is sign language so its government obligations to provide sign language interpreters when hearing-impaired appear before the court by covering the cost of interpreters. Persons with hearing-impaired need the service of sign language interpreters which will facilitate communications with justice sectors but

in the absence of these vital communication tools, hearing impaired cannot express themselves and neither nor able to understand communications with the judge.

The practice made before the Federal Court located at AA is contrary to CRPD, regularly employed sign language interpreters not exist within the court. When hearing-impaired appear before a court, Judge adjourn other appointments and sent letter to Ethiopian national association of hearing impaired for cooperation to send sign language interpreters on adjournment date, cost of interpreters who come from hearing impaired associations bears by persons with hearing impairment, not by justice sectors. This negatively affects the persons with hearing impairment who are economically poor to exercise their right to access justice.<sup>184</sup>Sometimes, the interpreter sent from the PWD organizations and hearing impaired who seek justice do not understand each other due to the illiteracy of hearing-impaired people as most of hearing-impaired may have no access to educations.<sup>185</sup>

Other options judge used when hearing-impaired appears before court if not know sign language, Judge use family members who can communicate with persons with hearing impairment as an interpreter. Example hearing impaired plaintiff case between Eyarus Belay vs. Gedilu Adisu court entertained the case by using family interpreters.<sup>186</sup>However, Family interpreters may limit persons with hearing-impaired to narrate history of their claims to their families and also there may be intentional misinterpretations to affect interest of persons who have hearing impairment problems especially in some civil matters, I.e. Succession, contract, and will cases to benefit from his/her interest.<sup>187</sup>Sometimes hearing impaired communicates in writing if they are educated; Example at kolfe karaniyo FFIC on case between Mr. shimalis Musa v Zenebech Musha, Plaintiff has educated hearing impaired persons communicate in writing<sup>188</sup>.Most of the time sign language interpreters to much busy and few in number, difficult to get them immediately and at all stage of proceedings, if they come at first adjournment difficult to get them on rest of proceeding .To wait sign language interpreters hearing impaired case delayed too much.<sup>189</sup>

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<sup>184</sup> Interview made with Mr Aron Dagol ,Human resource directorate ,at FSC ,(6 Dec, 2019)

<sup>185</sup> Interview made with Miss kebebush Daniel, civil matter coordinator judge ,at Bole FFIC,(18 Dec,2019)

<sup>186</sup> Eyerus Belay v Gedalu Adisu, Lideta FFIC, execution ,civil File No.0021(2010E.C)

<sup>187</sup> Interview made with Miss Etenesh Bekele ,attorney at Federal court ,(15, Dec 2019)

<sup>188</sup> shimalis Musa v Zenebech Musha Lideta FFIC civil File No 60212/(2011E.C)

<sup>189</sup> Interview made with Mr. Muliken said ,AA University School of law legal aid provider ,AA University , on(10,Dec 2019)

Hearing-impaired come to free legal aid provider office to get free legal aid on succession cases. However, to communicate with persons with hearing-impaired difficult for them because they are not familiar with sign language as persons and institutions. There is no sign language interpreters and not taken as an agenda to take actions in the future.<sup>190</sup> In the same way one of Lideta FFIC Judge expressed; there is no hired employee to interpret sign language to persons with hearing-impaired within their court like another language out of working languages.<sup>191</sup> Most of the time their case delayed too much for searching signs language interpreters. Even if interpreters come from cooperation of disability associations they are not specialized legal sign language interpreters, the word used in court of law is different from that are used in everyday conversation as they involve a lot of legal jargons which are difficult to be easily understood by persons who are out of the legal profession.<sup>192</sup>

### **C. Lack of Accessible Information's**

Ministry of labour and social affairs mandated to prepare information booklets about laws, policies, and strategies.<sup>193</sup> Information of all government sectors should be provided for PWD in accessible formats <sup>194</sup>.However in practice PWD did not get accessible legal information in understandable ways because most ratified human rights treaties and domestic laws of Ethiopia are not translated in Braille, in electronic copies. The human right action plans require sign language to be used to ensure freedom of expression of PWD. However the daily news on national TV are not broadcasted in sign language and there is no explicit legal framework that binds the media to transmit sign languages. Based on the researcher personal observations there is no accessible information in practice for PWD before Federal courts when seeing information's disk of the court it prepared by taking into account Persons without disability without considering PWD put direction - indications written on board by listing the office number and on floor it located. There is no sounding system help visually impaired persons to get in a way understandable for Persons without disability , no sign language on information disk for hearing impaired.

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<sup>190</sup> Ibid

<sup>191</sup> Interview made with Mr. Fasika Dange ,Judge at Lideta FFIC on ( Dec 3,2019)

<sup>192</sup> Ibid

<sup>193</sup> National plan of action on PWD of Ethiopia ,supra note 94 p.16

<sup>194</sup> Ibid p. 150

In Lideta and Kirkos FFIC there is a modern electronic soft machine applications used to give information's on directions and client case to follow on what stage it appears by entering their file numbers. Existence of this kind of application very important for clients to follow their case easily by accessing it. However this software is not taking into account client who is visually impaired to access their case by themselves without help of others.

Hearing-impaired persons have no accessible information; they do not know their rights and duties, most of the hearing-impaired person's fraud by their families on their interests by making them sign on document they cannot understand the issues.<sup>195</sup> CRPD ratified by Ethiopian government stipulates a good point on protection of PWD. However the problem is lack of implementation. when come to why it is not implemented most of the time taking responsibility by assuming PWD problem as own problems is very less as much as not emphasis is given or no PWD right activists in Ethiopia like another vulnerable group of people I.e. women and children's, most of the time there is negligence.<sup>196</sup>

#### **D. Practical Challenge in Accessing Free Legal Aid Services in Civil Matters**

In terms of accessibility most of the free legal aid providers not located in physically accessible places for PWD. When see Bole branch attorney general free legal aid providers it not physically accessible for the physical and visual impaired. Because the office located on fifth floor of the building and building have no functional lifts. The same is true at kolfe, lafto and kirkos. The physical accessibility of attorney general located at lideta branch accessible to some extent than the rest office. It located on ground floor but has no separate ramp for wheelchair users and use stair not accessible for persons with disabilities

. Absence of accessible communications is the main challenge for persons with hearing impaired.

When hearing-impaired persons go to office to need the free legal aid service difficult to communicate each other's unless they come up with interpreters.<sup>197</sup> Addis Ababa Uuniversity free legal center provides free legal aid for persons have no economic capacity to hire private attorney; the same with other free legal aid providers vulnerability is not criteria to grant free legal aid. Free

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<sup>195</sup> Interview made with Miss Tigist Alamayo hearing impaired executive directorate at Ethiopian hearing impaired associations at (8 Jan,2020)

<sup>196</sup> Ibid

<sup>197</sup> Interview made with Mr Nahom Solomon Assistant Judge at Lideta High Court on ( 10 Jan, 20120).

legal aid provided by AA University School of law was not extended to legal representations in practice. However, there has been no clear laws prohibits and allow representations at a federal level. It is the main limitations of free legal aid provided by Universities law school at federal levels. When seeing the availability of this institution, there are only three offices located at federal levels though are; at Lideta FFIC, Cherkos FFIC, and main office located within AA university). It does not exist within other Federal Courts located at Addis Ababa and their three offices located at regional level at Oromia special zone (saris high court, legal tafo, and oromia supreme court). Most of the office has not accessible for PWD they are physically inaccessible. The building of main office was difficult to access for PWD who use wheelchair or for persons has mobility problems and for persons with visual impaired. When seeing the physical accessibility of free legal aid located at Lideta FFIC it located under fifth floor even elevator exists it not functional all times. Free legal aid office at Chirkos accessible to visual and physical impaired it located on the ground floor. Awareness creations on free legal aid for the community through radio, TV, gazette, free telephone, community legal educations, and etc are very rare. Most people not familiar about existence of free legal aid; where get the service, type of service, requirement need to be fulfilled a beneficiary of the service etc.<sup>198</sup>

As discussed above Attorney General have the power to supervise the pro bono service provided by attorney.<sup>199</sup> An Attorney General criteria to assign attorney render pro bono service is based on pauper ship evidence of beneficiary; being a vulnerable group of society is not their criteria. The thing they do upon criteria of paupers ship fulfilled making phone contact with attorney to handle beneficiary case and exchange phone with client.<sup>200</sup> After assigning the attorney there is no follow up on the case, they will meet only on renewal of license at the end of the year. It indicates Attorney general weak supervisions on pro bono service rendered by attorney.<sup>201</sup> For PWD it is very difficult to meet attorney assigned for them to provide pro bono service, Because he may have no constant office, he may be reluctant to pick up his phone. Because private attorney most of the time give more emphasis for the case they rendered by money as much have no initiations to provide service free of payment. Based on nine-month report On the Federal level there are

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<sup>198</sup> Phone Interview made with Wendimageng Tadesse visual impaired law instructor at Haramaya University (April 7, 2020)

<sup>199</sup> Art 6(11) of supra note 160

<sup>200</sup> Interview made with Mr. Fikadu Asfaw, Federal attorney directorate director at Addis Ababa (25, Dec, 2019)

<sup>201</sup> Ibid



4600(four thousand six hundred) attorneys, they rendered pro bono service for 916 persons and for one church,552 for female,334 for male, the number of PWD benefit this service are 19 male and 17 female.<sup>202</sup>

It indicates imbalance between the beneficiaries and attorney provide pro bono service. A federal court attorney generals have ten branches on each sub-city to render free legal aid in civil matters for persons have no capacity to represent private attorney, The attorney renders free legal aid in civil matters only three in each sub-city including focal persons. There is great workload on prosecutors who provide free legal aids in civil matters; due to the scarcity existed on attorney assigned in civil matters to render free legal aids and absence of supportive staffs.<sup>203</sup> For example Bole sub-city is a broad sub-city contains 15 weredas it indicates imbalance between prosecutors provides free legal aid in civil matters and the beneficiary of the service.<sup>204</sup> Awareness creations on free legal aid for the community through radio, TV, gazette, free telephone, community legal educations, and etc are very rare. Most people not familiar about existence of free legal aid; where get the service, type of service, requirement need to be fulfilled a beneficiary of the service etc. Even; rare awareness creation made is not understandable for PWD, no sign language indicator where to get service for persons with hearing impaired, no sound systems for visually impaired persons.

#### **E. Delay of Proceeding**

Undue delay of proceeding affect the right to access justice. Ethiopian employment proclamation on PWD stipulated “any PWD those rights are infringed due to non observance of the provisions of proclamation, regulations or directives issued for the proper implementation of this proclamation or the association of PWD which he/she is a member, or the concerned organ entrusted to implement this proclamation may institute a suit befor/e the competent court and the court shall render its decisions within 60 days from the date on which the suit is instituted.”<sup>205</sup> However the practice made within federal court on entertaining employment case involves PWD far from the day stipulated under the above proclamation. As understand from case between

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<sup>202</sup> Nine Month performance Report of Federal attorney General for the fiscal Year 2020E.C

<sup>203</sup> Interview made with Semanyew Menberu , Attorney civil matter free legal aid focal persons at Bole sub city on (Jan 15,2020)

<sup>204</sup> Ibid

<sup>205</sup> Supra note ,133

physically impaired plaintiff Mr. Mokonin Shitaye vs Gulale soup factory,<sup>206</sup> still now the case is pending for more than two years, witness also not heard until Researcher gather this evidence. So imagine how much time it takes until reach execution stage. In addition, there is no organized bench to deal PWD cases for better enforcement of right to speedy trials, PWD like other clients stay until they called by clerk of courts.<sup>207</sup>

#### **F. Lack of Awareness on the Right of PWD by Justice Organs**

Among justice sector stakeholders researcher Interview, 15 judges,10 prosecutors and 10 attorneys only two judges, three prosecutors, and four attorneys have the current understanding of persons with disability ,the rest considered PWD persons with disability as charity and medical approaches, most of the judge, prosecutors, and attorney were not familiar with CRPD ;they did not know what rights of PWD have under the convention. Few numbers of professions know the convention by their personal initiations there is no training given for judges, to an attorney and for prosecutors on how to accommodate PWD. At the year of 2009 and 2010, the Ministry of justice starts to give sign language training for some attorney. But it stopped without getting continuity and the training given itself not sufficient, it not available for all attorneys.<sup>208</sup> There is lack of practical enforcement of ratified human rights treaties; justice organs reluctant to direct referral of those treaties including CRPD.Only rare cases refer CRC on the best interest of child ,until now there are no cassation bench decisions rendered by referring CRPD.It indicates the weak practical implementations of guaranteed rights by justice sectors.

#### **G. Attitudinal Barriers**

Social attitude affects PWD by seeing PWD as inherently wicked, abnormal or deviant and persons lack self-reliant depend on beggars.<sup>209</sup> This stigmatization is used to justify harassment, social isolation or violence against them. Discriminatory attitude and false beliefs dehumanize PWD and create de facto barriers to accessing different facets of the justice system.<sup>210</sup>

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<sup>206</sup> Mr. Mokonin Shitaye vs Gulale soup factory, Lideta FFIC, Pending, civil File No. 210921

<sup>207</sup> Supra note, 182

<sup>208</sup> Interview made with Miss Wesenyelesh Admassu, Head of coordination office for women's, children and Youth Affairs, of attorney general directorate office ,Lideta,Addis Ababa, Ethiopia on (6, Feb 2020)

<sup>209</sup> Interview made with Mr Murad Endris physically impaired persons on (Feb 6,2020)

<sup>210</sup> Ibid

### 4.3.2. The Practical Challenge from Demand Side

#### A. Economic Problems /Financial/

Ethiopia is one of among developing countries in which the living standard of PWD almost 90% poor due to limited participation of PWD on employment. If an individual has limited financial ability they are likely focused on basic survival and thus have little time and resource to pursue costly and lengthy legal proceedings, and engage and pay for quality legal counsel services. Poverty can lead to secondary disabilities for those individuals who are PWD.<sup>211</sup> Many states including Ethiopia offer free legal aid programs for qualifying individuals upon them bring certificate of pauper ship from Keble.

#### B. Reluctant of PWD to Exercise their Right

PWD including are reluctant to approach the judicial system for many reasons. The judicial systems and other justice sectors are very complex and bureaucratic in the eyes of PWD they lose hope to follow their case until enforcement procedures they see themselves as a marginalized group of society and going to court for their human rights violations like waste of time and money. They perceive government sectors especially justice sector officers have a God-given position and they say approaching these persons with a justiciable matter is scary and overwhelming and all they can do is leave the matter to God and pray that the worst does not happen. This whole problem and frustration undermine their trust in the justice system and they prefer to approach their problems in informal manner or leave them unresolved.<sup>212</sup> Example on case between Birtukan Hayilu v Alemishet Getacho on extra-contractual liability case to ask compensations for car accidents cause physical impairment on applicants. The applicant is one of domestic workers in AA and her permanent residence is at Hadiya zone and the car accident occurred on her at AA. Then she returned to her family at rural after ;Attorney represents her case challenged to get necessary evidence from victims.

To wind up this chapter, the right to access of justice for persons with disabilities in civil cases under the Ethiopian legal framework stipulated under some provisions of civil code and civil procedure code of Ethiopia are contrary to what stipulated under UNCRPWD. There is some

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<sup>211</sup> Toolkit on disability for Africa , module 8, Access to justice for persons with disabilities p,7

<sup>212</sup> Ibid

outdated law that negatively affects PWD rights to access justice, starting from using wrong terminology affect persons with disability psychological makeup and by putting the law which affects PWD legal capacity to access to justice in civil matters. In addition to legal barriers PWD affected by practical challenges which restrict their right to access justice in civil matters coming from supply-side or from service providers as interview and observation made before federal courts ,I.e absence of physical accessibility, communication problem, lack of accessible information's, barriers to access free legal aid in civil matters, delay of proceeding, lack of awareness on disability right by justice organs and attitudinal barriers . When seeing from demand-side or from side of PWD themselves economic problems, and reluctance of persons with disability to access their right to access justice addressed. Therefore, from the above finding I found there is lack of realizations of the right to access justice for persons with disabilities before federal court located at Addis Ababa due to legal and practical challenge which restrict its implimentations.

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.1. CONCLUSION**

The right to access to justice is a fundamental human right in itself and a precondition for realization of other human rights. It is very crucial because not only for being a human right but also the lack of implementation of this right seriously affects other human rights. So, without the existence of the right to access to justice, the other right of persons with a disability cannot be realized.

In Ethiopia, the right of access to justice is a constitutionally guaranteed right. The 1995 FDRE Constitution ensures the exercise and enjoyment of the right of access to justice as a general in its Art. 37. In addition, several international and regional laws provide for the right to access justice directly or indirectly and the UNCRPWD is the first international human rights instrument that explicitly provides for the right to access to justice of persons with disabilities. Ethiopia is one of the state parties which signed and ratified UNCRPWD convention. The signed and ratified Convention is the integral part of the law of the land has a binding effect on Ethiopia.

However, the right to access justice for PWD in civil matter cannot be realized due to, legal as well as practical challenges that affect its realizations. Still Ethiopia doesn't have a comprehensive law on the rights of PWD. The civil code and civil procedure code contain outdated provisions which constrain PWD from accessing their right to access to justice in civil matters by restricting to make decisions by themselves for specific types of disability and use of derogatory words. In addition, in Ethiopia the law and practice concerning the right to access justice for PWDs in civil case is contrary to social and human right models and it seems to follow charity and medical models of disability. This study found that lack of equal participation of PWD in exercise and enjoyment of the right of access to justice in civil matter. They are undermined by wrong assumption of some outdated legal provisions, physical inaccessibility of the buildings hosting the courts, communicational barriers with the persons working in the institutions of justice; lack

of accessible information, delay of proceeding, lack of available and accessible free legal aid ,lack of available training for justice organs on PWD right to accommodate them ,social attitude affect PWD; financial problem , the reluctance of PWD to exercise their right and the minimal extent of the State effectively discharging its obligations to realise the right to access to justice for PWD in civil matters . Therefore, the right to access justice for persons with disability in civil cases could not be realized in Ethiopia in general and specifically before Federal Court in Addis Abeba as per UNCRPWD due to the existence of legal and practical gaps as the researcher stated above .

## **5.2. Recommendations**

The researcher would like to recommend that legal and practical measures should be taken to enforce international human rights and remove barriers regarding the right to access justice for persons with disability in civil matters. Particularly the following key measures should be taken by the Government:

- harmonize all existing legal frameworks and make consistent with the UNCRPD. In particular, the laws should be revised to accommodate the effective participation of persons with disabilities in the Ethiopian justice system.
- enact comprehensive laws on the rights of PWDs with the view to eliminate discriminations in all types of services and accessing justice for individuals with disabilities in Ethiopia.
- consider in consultation and cooperation with persons with disabilities developing a comprehensive disability access plan that covers communications and informations with persons with disabilities in ways that are accessible to them, for example, sign language interpreters, Braille, and others.
- strictly enforce the laws on the physical accessibility of the buildings to persons with disabilities.

- conduct awareness campaigns and training for justice sector professional on concept of reasonable accommodation and accessibility for PWDs.
- hire professional sign language interpreters in the courts similar to the way an interpreter is assigned for other languages.
  
- ensure the availability and accessibility of free legal aid service for PWD so as to solve problems related to financial obstacles to access to justice.
  
- provide capacity building trainings for justice sectors on relevant international instruments particularly on CRPWD..

## **BIBLIOGRAPHY**

### **I.Books and Journal Articles**

Belayneh Admasu, Legal Protections Accorded to Persons with Disabilities under Ethiopian Law, Bahir Dar University Journal of Law Vol.3, No.2 (2013)

Basic principles and guideline on the right to remedy and reparation for victims of gross violations of international human right law,(2005)

Claudia Andritoi; Florentina Lupsa, Connections and Interferences between the Right to Defense and the Right to Legal Assistance, 3 Persp. Bus. L.J. 227 (2014)

Eide, Asbjorn, Krause, Caterina and Rosas, Allan, Economic, Social and Cultural Rights: A Textbook (Martinus Nijhoff Publishers,( 2001)

European Union Agency for Fundamental Rights, Access to Justice in Europe: An Overview of Challenges and Opportunities, (Luxembourg, Publications Office of the European Union, (2011)

Flynn E.Disabled Justice? Access to Justice and the UN Convention on the Rights of Persons with Disabilities. Routledge, (2015)

Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers ch 7

International Commission Of Jurists, International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, A Practitioners' Guide Series No. 1, 1 (Geneva, 2004)

Janet E.Lord,et al Human Rights yes !Action and Advocacy on the rights of persons with disability,2<sup>nd</sup>Ed,(2012)

Klodjan Skenderaj etal, The right to access to court ,Academic journal of business Administration, law and social sciences, Vol 1 no 1,march (2015)

Legal Defense and Legal Aid, UN Criminal Justice Toolkit, New York,( 2006)



Mizanie Abate et al. 'Clinical Legal Education in Ethiopia: Challenges and Prospects' Ethiopian Journal of Legal Education, (2009)

M. Cappletti and J. Gordley, legal aid: Modern Themes and variation, Stanford Law Review, Vol, 24, No. 2

Shari L. Dworkin, Sample Size Policy for Qualitative Studies Using In-Depth Interviews (2012)

Stephanie Ortoleva, "Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System," 17 ILSA J. Int'l & Comp. L. 281 (2011)

## **II. Legal Authorities**

### **A. International and Regional Laws**

African Charter on Human and people's rights (Banjul), *Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October, (1986)*

Declaration on the Rights of Disabled Persons, proclaimed by UN General Assembly Resolution 3447 (XXX) of December 1975

Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, : adopted in Guatemala City, Guatemala, at the twenty-ninth regular session of the General Assembly of OAS, held on 7 June 1999

International Covenant on Civil and Political Rights, 1966, adopted by the UN General Assembly, Resolution 2200 A (XXI), , New York, 16 December 1966

United Nation Convention on the Rights of Persons with Disability , (2008)

United Nations Principles and guidelines on Access to Legal Aid in Criminal Justice Systems, Resolution adopted by UN General Assembly, June 2013 (Res. No. 67/187)

Universal Declaration of Human Rights, 1948

Viena Declarations and programs of actions ,principle 5,1993.

## **B.Domestic Law**

Criminal Justice Policy of FDRE, No 25/2003

Convention on the Rights of Persons with Disability Rratification Proclamation No. 676/2010

Ethiopian Civil Code of 1960

Ethiopian Building proclamation published on Federal Negarit Gazeta No. 31 6th May, 2009

5. Ethiopian Civil Procedure Code of 1965

Ethiopian National Strategy Draft on free legal aid ,2011

FDRE Constitution 8th day of December, 1994, federal Negarit Gazeta, extraordinary issue',  
proclamation number 1/1995

Federal Attorney general establishment proclamation No 943 Federal Negarit Gazette No. 62,  
2nd May, 2016

Right to Employment of Persons with Disability Proclamation No. 568/ 2008, published on  
Federal Negarit.; Gazeta , No. 20 25th March, 2008

## **III.Reports and Others**

Advocate of human right , Ethiopian compliance with CRPD,2016

Committee against Torture, general comment No. 3,

Committee on the Rights of Persons with Disabilities, General comment No. 2 (2014), 31 March–  
11 April 2014

CRPD concluding observation of the initial report of Ethiopia on implementations of CRPWD  
,Geneva ,17,August,2016

Fina, Cera&Palmisano, The United Nations Convention on the Rights of Persons with Disabilities,  
a Commentary ed, (2017

Human right committee general comment No.32

Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) Initial Report, December 2012, Addis Ababa

Initial Report on Ethiopia implementations of the UN CRPWD, Addis Ababa 2012.

J Beqiraj, L etal , Access to justice for persons with disabilities: From international principles to practice, International Bar Association, October 2017

Kokobe .Jemaneh. Access to justice in Ethiopia towards an inventory issues. Center for human rights published may 2014

Mahider Mulugeta, women with disabilities and access to justice in case of Gender based violence :Ethiopia and Kenya comparative ,Central European University Nov,2015

Muradu Abdo *Disability and Access to Criminal Justice System in Ethiopia* Center for Human Rights, Addis Ababa University,2014

Nations office of the High commissioner for human rights, CPR General comment No.13

National plan of action of persons with disabilities 2012-2021 published by Ministries of labour and social affairs ,April 2012 ,Addis Ababa

Nine Month performance Report of Federal attorney General for the fiscal Year 2020

United Nation Economic and social council, General Comment No 9

United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General No A/HRC/37/25, 26 February–23 March 2019,para, 1 p,3

#### **IV.Cases**

Damell v. United Kingdom (1994) 18 E.H.R.R. 205; Robin v United Kingdom (1998) 26 E.H.R.R. 572; Seudy v Italy (1995)

Esthé Muller v DoJCD and Department of Public Works (Equality Court, Germiston Magistrates' Court 01/03

ECHR, Zehentner v. Austria, No. 20082/02, 16 July 2009, pp, 65 and 78.

ECHR, X and Y v. Croatia, No. 5193/09, 3 November 2011

Etenesh Kasa Vs. Haji Jemal Yimam, Cassation File No.83674, Federal Supreme Court Cassation Decisions, Vol.15

Eyerus Belay v Gedalu Adisu, Lideta FFIC, execution ,civil File No.0021(2010E.C)

Mokonin Shitaye vs Gulale soup factory, Lideta FFIC, Pending, civil File No. 210921

shimalis Musa v Zenebech Musha Lideta FFIC civil File No 60212(/2011E.C

#### **V.Interviews**

Interview made with Mr Abate Dajane visual impaired ,Legal Department head at FSC on ( 13, Feb 2020)

Interview made with Mr Aron Dagol ,Human resource directorate ,at FSC ,(6 Dec, 2019)

Interview made with Darresse Tadese ,physically impaired , Communication officer, at Ethiopian Federation on persons with disabilities at (12 ,Jan, 2020)

Interview made with Mr. Endale Tadesse ,Civil matter coordinators judge at FFIC located at kolfe karaniyo on ( 24,Jan ,2020)

Interview made with Miss Etenesh Bekele ,attorney at Federal court ,(15, Dec 2019)

Interview made with Mr. Fasika Dange ,Judge at Lideta FFIC on ( Dec 3,2019)

Interview made with Mr. Fikadu Asfaw ,Federal attorney directorate director at Addis Ababa ( 25 ,Dec ,2019

Interview made with Mr. Gizachew Belay visual impaired client at lideta FFIC on ( 18 Jan ,2020)

Interview made with Henok Tesfaye, Attorney general directorate director at lideta at (24,may,2019 )

Interview made with Mr Lama Arada who is physically impaired wheelchair user client, in Lideta FFIC on ( Jan,10,2020)

Interview made with Mr Mangesha Kibret Federal general attorney civil matter free legal aid focal persons in Lideta on (Jan 10 ,2020)

Interview made with Mr. Muliken said ,AA University School of law legal aid provider ,AA University , on(10,Dec 2019)

Interview made with Mr Murad Endris physically impaired persons on (Feb 6,2020)

Interview made with Mr Nahom Solomon Assistant judge at Lideta High Court on ( 10 Jan, 2020)

Interview made with Semanyew Menberu , Attorney civil matter free legal aid focal persons at Bole sub city on (Jan 15,2020)

Interview made with Miss Tigist Alamayo hearing impaired executive directorate at Ethiopian hearing impaired associations at (8 Jan,2020)

Interview made with Mr Yilikal Admasu , visual impaired Attorney, at Federal court , (10, Dec 2019)

Interview made with Mr. Shelema Bekele, Judge at Lideta FHC,on (Jan 18 2, 2020)

Interview made with Miss Tigist Alamayo hearing impaired executive directorate at Ethiopian hearing impaired associations at (8 Jan,2020)

Phone Interview made with Wendimageng Tadesse visual impaired law instructor at Haramaya University (April 7,2020)

Interview made with Miss Wesenyelesh Admassu, Head of coordination office for women's, children and Youth Affairs, of attorney general directorate office ,Lideta,Addis Ababa, Ethiopia on (6, Feb 2020)

Interview made with Yadata Tasama , Civil matter coordinator judge at lideta FFIC at ( 25 may ,2019)

## **VI .From Websites**

Access to justice :practice Note, United Nation Development programme,Sep,3,2004,at <http://www.undp.org/governance/doc/> Justice accessed on Feb,6,20

Access to justice practice note “paper prepared by the UNDP in March 9, 2004 available at <http://www.undp.org/governance/docs/Justice> Accessed on April 20, 2020

Article 9: Accessibility, information and communication. The UN to use CART at the General meetings during the Convention. What's new with the CRPD? Available at [www.chha-fhohcongress2008.com/.../](http://www.chha-fhohcongress2008.com/.../) UN convention on rights of persons with disabilities. Accessed on Oct, 2019

Bhanushali K., changing face of disability movement; from charity to empowerment, Indian law Journal ,PY - 2007/03/08 10.2139/ssrn.965999

Convention on the Rights of Persons with Disabilities On the fundamental issue of accessibility (Article 9), the Convention requires and ensures that persons with disabilities can access their environment, available at [www.un.org/disabilities/convention](http://www.un.org/disabilities/convention). Accessed on January, 24, 2020

Future Policy.org FuturePolicy.org is the successor of Policy Action on Climate Toolkit - PACT fproject, which was introduced in 2007 'Access to Justice' (UN CRPD Article 13) available at <http://www.futurepolicy.org/5789.html> (accessed on Dec,9,2019)

Grant Carson, "The Social Model of Disability", and Scottish Accessible Information Forum, 2009, available at: [www.saifscotland.org.uk](http://www.saifscotland.org.uk) [accessed Jan, 2020].

Getnet Mitiku ,Access to justice under international human rights framework, <https://www.abssinialaw.com/.../1459> , Jun ,2019, Accessed on Dec,2020

Initial Report, on Ethiopia implementations of the UN CRPWD, Addis Ababa, 2012

Labour and Social Affairs. pp. 4-5, available at: <http://www.molsa.gov.et> . [accessed on February 2019

Ministry of Labour and Social Affairs of the Federal Democratic Republic of Ethiopia, " National Plan of Action of Persons with Disabilities, 2012-2021", Addis Ababa.

MJ Oliver, The Disability Movement and the professions, retrieved on March, 2015, ([http://disability-studies.leeds.ac.uk/files/library/oliver- The Disability movement and the professions.pdf](http://disability-studies.leeds.ac.uk/files/library/oliver-The%20Disability%20movement%20and%20the%20professions.pdf)) Accessed on Dec, 10, 2019)

Universal Declaration of Human Rights, 1948, reprinted in Brownlie, I and Goodwin-Gill, G., (eds.), Basic documents on International Human Rights, 5th ed., Oxford University Press, Oxford, New York, 2006, Pp. 24-28, [here in after- UDHR-], Charter of the United Nations, 1945, at WWW <http://www.un.org/aboutun/charter/> (Accessed on Dec, 2019 )

United Nations ,office of the High commissioner for human rights, General comment No.13:Article 14(Administration of justice)Equality Before the courts and the Rights to a fair and public hearing by independent court Established by law (Apr.13,1984),available at <http://www.uhchr.ch/tbs/doc.nsf/obb722416a295f295f264c12563ed0049>(Accessed on Dec 9,2019)

UNCRPD and Optional Protocol.” Available online: <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> (accessed on Nov,12.2019)

UN Enable Overview of International Legal Frameworks, Persons with disabilities often is excluded from the mainstream of the society. Available at [www.un.org/esa/socdev/enable/disovlf](http://www.un.org/esa/socdev/enable/disovlf) Accessed on February 2019)

What is the legal definition of Disability? Say the word” disability” and people often think of the most obvious types of disability mobility. Available at [www.ucp.org/document](http://www.ucp.org/document). accessed on January 2020



ANNEXES

ለፍርድ ቤቶች የሚቀርቡ ጥያቄዎች

1. በእርሶ መስርያ ቤት ለሁሉም አይነት አካል ጉዳተኞች ምቹ ሁኔታ አለ ወይ? አዎ   
አይደለም  ያብራሩት

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2. የእርሶ መስርያ ቤት ሰራተኞች ስለ አካል ጉዳተኞች ፍትህ የማግኘት መብት በኮንቬንሽኑ ላይ በተቀመጠው መሰረት በቂ ግንዛቤ አላቸው ወይ? አዎ  አይደለም  ያብራሩት

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3. አካል ጉዳተኞችን በተመለከተ ለእርሶ መስርያ ቤት ሰራተኞች የተሰጠ ስልጠና አለ ወይ? አዎ   
 አይደለም  መልሱ አዎ ከሆነ ስንት ጊዜ ለስንት ሰዎች ተሰጥተዋል?

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4. የእርሶ መስርያ ቤት መዋቅር አካል ጉዳተኞችን ለማገልገል በሚመች ሁኔታ የተዋቀረ ነው ወይ? አዎ   
 አይደለም  መልሱ አዎ ከሆነ የአካል ጉዳተኞችን ጉዳይ ለማየት በተለየ ሁኔታ የተመደበ ሰዓዊ አለ ወይ? አዎ  አይደለም  ያብራሩት

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5. በፍትሃብሄር ጉዳይ አካል ጉዳተኞች በከሳሽነትም ሆነ በተከሳሽነት ወደ እርሶ መስርያ ቤት ሲመጡ የሚያጋትማቸው የህግና የተግባር ተግዳሮቶች ምንድናቸው? ያብራሩት

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**የማህበራት ጥያቄ**

1. የአካል ጉዳተኞች ፍትህ የማግኘት መብት ጋር ተያይዞ በተደጋጋሚ የሚያጋጥማቸው ተግዳሮተኞች ምንምን ናቸው? ያብራሩት

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2. በእርሶ መስርያ ቤት ለሁሉም አይነት አካል ጉዳተኞች ምቹ ሁኔታ አለ ወይ? አዎ  አይደለም  ያብራሩት

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3. በእርሶ አስተያየት የአካል ጉዳተኞች ፍትህ የማግኘት መብትን በተለይም በፍትሃብሄር ጉዳይ ለማስከበር አሁን ያለው ሕግ በቂ ነው ብለው ያስባሉ? አዎ  አይደለም  ያብራሩት

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4. መንግስት የአካል ጉዳተኞች ማህበራትን ለማጠናከር እያደረገ ያለው ድጋፍ ምን ይመስላል?

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5. በፍትሃብሄር ጉዳይ አካል ጉዳተኞች በከሳሽነትም ሆነ በተከሳሽነት ወደ እርሶ መስርያ ቤት ሲመጡ የሚያጋጥሟቸው የህግና የተግባር ተግዳሮቶች ምንድናቸው? ያብራሩት

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6. የአካል ጉዳተኞች መብት አገራችን በአዋጅ ቁጥር 676/2002 ባጸደቀቸው ኮንቬንሽን ላይ በተቀመጠው መሰረት ፊትህ የማግኘት መብት እየተተገበረ ነው ብለው ያስባሉ? አዎ  አይደለም  ያብራሩት

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7. አንድ የአካል ጉዳተኞች ፌዴሬሽን አካል ጉዳተኞች ወደ አረሶ መሰረቤት መብታ ሰጧሰባቸው ለማመልከት የመጡሉ? አዎ  አይደለም  ያብራሩት መልሶት አዎ ከሆነ ብናንተ ምን አገዛ አሌ ?ያብራሩት

**ለጠቅላይ ዓቃቤ-ሕግ**

1. በመስርዖቤታቸው የአካል ጉዳተኞች ፍትህ የማግኘት መብት በተለይም ፍትሃብሄር ጉዳዮችን በተመለከተ ነጻ የህግ ደጋፍ አገልግሎት አሰጣጥ አተገባበር ምን ይመስላል?

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2. ከቦታ ተደራሽነት አንጻር መስርዖ ቤቱ ስንት ቅርንጫፎች አሉት፤ የትስ ይገኛሉ(ለአካል ጉዳተኞች ምቹነት አንጻር አንዴት ይታያል)

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3. ከአገልግሎት ዘርፎች አይነት ስፋት ተደራሽነት አንጻር በእናንተ መ/ቤት የሚሰጡ አገልግሎት አይነቶች ምንምን ናቸው?በምን አይነት ሁኔታ ሰነድ የሚሰጠው?

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4. ለአካል ጉዳተኞች ነጻ የህግ ደጋፍ አገልግሎት ለመስጠት ለብቻ የተደራጀ መዋቅር አለ? የአካል ጉዳተኞችን ጉዳይ ለማየት በተለየ ሁኔታ ስለጉዳይ ስልጠና ወስዶ የተመደበ ሰዉስ አለ ወይ? አዎ  አይደለም  ያብራሩት

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5. የአገልግሎቱን ተጠቃሚ አካል ጉዳተኞች መለያ መስፈርቶች ምንምን ናቸው?

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6. በእርሶ መስርያ ቤት ለሁሉም አይነት አካል ጉዳተኞች ምቹ ሁኔታ አለ ወይ? አዎ   
አይደለም  ያብራሩት

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7. የእርሶ መስርያ ቤት ሰራተኞች ስለ አካል ጉዳተኞች መብት በኮንሼንሽኑ ላይ በተቀመጠው መሰረት በቂ ግንዛቤ አላቸው ወይ? አዎ  አይደለም  ያብራሩት

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8. አካል ጉዳተኞችን በተመለከተ ለእርሶ መስርያ ቤት ሰራተኞች የተሰጠ ስልጠና አለ ወይ? አዎ  አይደለም  መልሱ አዎ ከሆነ ስንት ጊዜ ለስንት ሰዎች ተሰጥቶል?

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9. በፍትሃብሄር ጉዳይ አካል ጉዳተኞች በከሳሽነትም ሆነ በተከሳሽነት ወደ እርሶ መስርያ ቤት ሲመጡ የሚያጋጥማቸው የህግና የተግባር ተግዳሮቶች ምንድናቸው? ያብራሩት

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10. ከፍርድ ቤቶች ባሻገር በሌሎች የአስተዳደር እና ፍርድ ቤት ነክ ጉዳዮች አገልግሎት ሰጪ ተቆማት ውስጥ በእናንተ መ/ቤት ለአካል ጉዳተኞች የሚሰጡ ነጻ የህግ ድጋፍ አገልግሎት አለ ወይ? አዎ  አይደለም  ያብራሩት

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11. ማህበረሰቡ በተለይም አካል ጉዳተኞች ስለ አገልግሎቱ ምንነትና ጥቅም፣ በማን እና የት እንደሚሰጥ በቂግንዛቤ እንዲኖራቸው ምንምን ስራዎች ይሰራሉ ?

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12. ለአካል ጉዳተኞች ፍትሃብሄራዊ ነፃ የሕግ ድጋፍ አገልግሎትን ተደራሽ፣ ውጤታማ እና ዘላቂነት ያለው እንዲሆን ከሌሎች ባለድርሻ አካላት ጋር ያላቸው ትብብርና ቅንጂት በምን ይገለጻል?

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13. በእረሶ አስተያየት የአካል ጉዳተኞች ፍትህ የማግኘት መብትን በተለይም በፍትሃብሄር ጉዳይ ለማስከበር አሁን ያለው ሕግ በቂ ነው ብለው ያስባሉ? አዎ  አይደለም  መልሱ አይደለም ከሆነ አሁን ያለው ህግ ምንምን ችግሮች ይታዩበታል፤ በአዋጅ ቁጥር 943/2008 በተሰጣቸው ተግባርና ስልጣን መሰረት የህጉን ክፍተት ለሞምላት እየተሰራ ያለው ስራ ያብራሩት

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14. የአካል ጉዳተኞች መብት አገራችን በአዋጅ ቁጥር 676/2002 ባጸደቀችው ኮንቪንሽን ላይ በተቀመጠው መሰረት እየተተገበረ ነው ብለው ያስባሉ? አዎ  አይደለም  መልሱ አይደለም ከሆነ በአዋጅ ቁጥር 943/2008 በተሰጣቸው ተግባርና ስልጣን መሰረት ችግሩን ለመቅረፍ እየተሰራ ያለው ስራ ያብራሩት

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15. በፍትሃብሄር ጉዳይ ላይ በእናንተ መ/ቤት ለአካል ጉዳተኞች የሚሰጠው ነጻ የህግ ድጋፍ አገልግሎት ለከሳሽ ብቻ ነው ወይስ ለተከሳሽ አካልጉዳተኞችም ጭምር ነው?

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16. በግል ጠበቆች በኩል ለአካል ጉዳተኞች የሚሰጠውን ነጻ የህግ ድጋፍ አገልግሎትን( probono service ) በተመለከተ አካልጉዳተኛውን እንዲወክል ለጠበቃው የሚሰጠው ውክልና ምን መስፈርትን መሰረት ያደረገ ነው?

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**ለ አ.አ ዩኒቨርሲቲነጻ የህግ ድጋፍ አገልግሎት ጥያቄዎች**

1. በመስርዖቤታቸው የአካል ጉዳተኞች ፍትህ የማግኘት መብት በተለይም ፍትሃብሄር ጉዳዮችን በተመለከተ ነጻ የህግ ድጋፍ አገልግሎት አሰጣጥ አተገባበር ምን ይመስላል?

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2. ከቦታ ተደራሽነት አንጻር መስርቶ ቤቱ ስንት ቅርንጫፎች አሉት፤ የትስ ይገኛሉ(ለአካል ጉዳተኞች ምቹነት አንጻር አንዴት ይታያል)

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3. ከአገልግሎት ዘርፎች አይነት ስፋት ተደራሽነት አንጻር በእናንተ መ/ቤት የሚሰጡ አገልግሎት አይነቶች ምንምን ናቸው? በምን አይነት ሁኔታ ሰነድ የሚሰጡ?

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4. ለአካል ጉዳተኞች ነጻ የህግ ድጋፍ አገልግሎት ለመስጠት ለብቻ የተደራጀ መዋቅር አለ? የአካል ጉዳተኞችን ጉዳይ ለማየት በተለየ ሁኔታ ስለጉዳዩ ስልጠና ወስዶ የተመደበ ሰው አለ ወይ? አዎ  አይደለም  ያብራሩት

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5. የአገልግሎቱን ተጠቃሚ አካል ጉዳተኞች መለያ መስፈርቶች ምንምን ናቸው?

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6. በእርሶ መስርቶ ቤት ለሁሉም አይነት አካል ጉዳተኞች ምቹ ሁኔታ አለ ወይ? አዎ  አይደለም  ያብራሩት



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7. የእርሶ መስርያ ቤት ሰራተኞች ስለ አካል ጉዳተኞች መብት በኮንሼንሽኑ ላይ በተቀመጠው መሰረት በቂ ግንዛቤ አላቸው ወይ? አዎ  አይደለም  ያብራሩት

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8. አካል ጉዳተኞችን በተመለከተ ለእርሶ መስርያ ቤት ሰራተኞች የተሰጠ ስልጠና አለ ወይ? አዎ  አይደለም  መልሱ አዎ ከሆነ ስንት ጊዜ ለስንት ሰዎች ተሰጥተዋል?

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9. በፍትሃብሄር ጉዳይ አካል ጉዳተኞች በከሰሽነትም ሆነ በተከሰሽነት ወደ እርሶ መስርያ ቤት ሲመጡ የሚያጋጥማቸው የህግና የተግባር ተግዳሮቶች ምንድናቸው? ያብራሩት

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10. ከፍርድ ቤቶች ባሻገር በሌሎች የአስተዳደር እና ፍርድ ቤት ነክ ጉዳዮች አገልግሎት ሰጪ ተቆማት ውስጥ በእናንተ መ/ቤት ለአካል ጉዳተኞች የሚሰጡ ነጻ የህግ ድጋፍ አገልግሎት አለ ወይ? አዎ  አይደለም  ያብራሩት

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11. ማህበረሰቡ በተለይም አካል ጉዳተኞች ስለ አገልግሎቱ ምንነትና ጥቅም፣ በማን እና የት እንደሚሰጥ በቁጥጥር እንዲኖራቸው ምንምን ስራዎች ይሰራሉ ?

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12. ለአካል ጉዳተኞች ፍትሃብሄራዊ ነፃ የሕግ ድጋፍ አገልግሎትን ተደራሽ፣ ውጤታማ እና ዘላቂነት ያለው እንዲሆን ከሌሎች ባለድርሻ አካላት ጋር ያላቸው ትብብርና ቅንጂት በምን ይገለጻል?

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**ለግል ጠበቆች ኢትዮጵያ የህግ ባለሙያ ሴቶች ማህበር የሚቀርብ ጥያቄዎች**

1. በእርሶ መስርያ ቤት ለሁሉም አይነት አካል ጉዳተኞች ምቹ ሁኔታ አለ ወይ? አዎ  አይደለም  ያብራሩት

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2. ከአገልግሎት ዘርፎች አይነት ስፋት ተደራሽነት አንጻር በእርሶ መ/ቤት የሚሰጡ አገልግሎት አይነቶች ምንምን ናቸው? በምን አይነት ሁኔታ ስንደረግ የሚሰጡ?

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3. በፍትሃብሄር ጉዳይ አካል ጉዳተኞች በከሳሽነትም ሆነ በተከሳሽነት ወደ እርሶ መስርያ ቤት ሲመጡ የሚያጋጥሟቸው የህግና የተግባር ተግዳሮቶች ምንድናቸው? ያብራሩት

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4. ለአካል ጉዳተኞች ፍትሃብሄራዊ ነፃ የሕግ ድጋፍ አገልግሎትን ተደራሽ፣ ውጤታማ እና ዘላቂነት ያለው እንዲሆን ከሌሎች ባለድርሻ አካላት ጋር ያላቸው ትብብርና ቅንጅት በምን ይገለጻል?

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5. በእርሶ አስተያየት የአካል ጉዳተኞች ፍትህ የማግኘት መብትን በተለይም በፍትሃብሄር ጉዳይ ለማስከበር አሁን ያለው ሕግ በቂ ነው ብለው ያስባሉ? አዎ  አይደለም  መልሱ አይደለም ከሆነ አሁን ያለው ህግ ምንምን ችግሮች ይታዩበታል?

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**ለመሰማት የተሳናቸው የማህበራት ጥያቄ**

1. የአካል ጉዳተኞች ፍትህ የማግኘት መብት ጋር ተያይዞ በተደጋጋሚ የሚያጋጥሟቸው ተግዳሮተኞች ምንምን ናቸው በተለይም ለመሰማት የተሳናቸው ? ያብራሩት

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2. በእረሶ አስተያየት የአካል ጉዳተኞች ፍትህ የማግኘት መብትን በተለይም በፍትሃብሄር ጉዳይ ለማስከበር አሁን ያለው ሕግ በቂ ነው ብለው ያስባሉ? አዎ  አይደለም  ያብራሩት

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3. መንግስት የአካል ጉዳተኞች ማህበራትን ለማጠናከር እያደረገ ያለው ድጋፍ ምን ይመስላል?

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4. በፍትሃብሄር ጉዳይ አካል ጉዳተኞች በተለይም መሰማት የተሰናዩ በከሰሽነትም ሆነ በተከሰሽነት ወደ እረሶ መስርያ ቤት ሲመጡ የሚያጋጥማቸው የህግና የተግባር ተግዳሮቶች ምንድናቸው? ያብራሩት

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5. የአካል ጉዳተኞች መብት አገራችን በአዋጅ ቁጥር 676/2002 ባደቀቸው ኮንሼንሽን ላይ በተቀመጠው መሰረት ፊትህ የማግኘት መብት እየተተገበረ ነው ብለው ያስባሉ? አዎ  አይደለም  ያብራሩት

## Interview questions for PWD

Name\_\_\_\_\_

Address\_\_\_\_\_

1. Do you think you have the ability to know when your rights are violated and what you have to do to seek redress

- Yes
- No

Elaborate\_\_\_\_\_

\_\_\_\_\_

2. How often do you face legal issues?

- Often
- Sometimes
- Rarely

In what capacity?

- Accuser
- Accused

3. How often do you resort to court when you face a legal issue

- Often
- Sometimes
- Rarely

Why?\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. What kind of issues does your court litigation/justiciable cases frequently are about

- Divorce
- Succession
- Rape
- Domestic violence
- Other\_\_\_\_\_

5. How do you perceive court decisions made on your case?

- Fair
- Discriminatory
- It could have been better

Elaborate \_\_\_\_\_ your  
answer\_\_\_\_\_

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6. do you know you have the right to benefit from legal aid service when you cannot afford a lawyer and miscarriage of justice would result?

- Yes
- No

How often do you benefit from this right?

- Often
- Sometimes
- Rarely

Elaborate \_\_\_\_\_ why?

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7. What are the hindrances that you face when you want to have access to justice or bring your case to court in order of priority?

1<sup>st</sup> \_\_\_\_\_

2<sup>nd</sup> \_\_\_\_\_

3<sup>rd</sup> \_\_\_\_\_