

# Legal Protections Accorded to Persons with Disabilities under Ethiopian Law

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## Abstract

*Persons with disabilities are marginalized members of society who do not fully and effectively participate in socio-economic activities on an equal basis with others due to various barriers in the environment. Taking this into account, the United Nations has promulgated the Convention on the Rights of Persons with Disabilities, which complements general human rights instruments and gives particular emphasis to respect and protection of the rights of persons with disabilities. As a member state, Ethiopia ratified the convention and enacted other domestic laws to ensure equality before the law and benefits for persons with disabilities. This article appraises these laws in order to examine the level of protection accorded to persons with disabilities in Ethiopia. For this purpose, the article gives emphasis to the rights to: equality and non-discrimination, access to the environment, information and communication, employment and tertiary education.*

**Key words:** Access, Disability, Environmental Barriers, Equality and Discrimination, Persons with Disabilities, Tertiary Education

## Introduction

Persons with disabilities (PWDs) are defined in various ways. The definition originates from different views or models developed over time. The models are charity, medicine, social values and human rights. The first two models reflect the traditional views that consider PWDs to be object of charity and patients respectively. The others define them based on social and human elements. The latter models

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have been included in the modern and currently applicable legislation of Ethiopia.

The definition of PWDs which is accepted and currently in use is that of UN Convention on the Rights of Persons with Disabilities (CRPD). Accordingly, “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.”

This definition denotes that PWDs are marginalized people who do not fully and effectively participate in a range of social and economic activities due to various barriers in the environments in which they live. They are usually deprived of equal enjoyment of rights because of their disabilities. They are exposed to social and economic problems.

Bearing this in mind, the international community believes that special laws are important to give due consideration to the respect and protection of rights of PWDs. Since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, separate international legal documents have been endorsed in order to protect the rights of PWDs. These legal documents do not provide special rights to PWDs; rather they complement the human rights enshrined in other international legal instruments. They provide the same rights with particular emphasis on PWDs. The main objective of these legal instruments is to ensure equality of PWDs and eliminate all forms of discrimination against them based on their disabilities.

Therefore, the international legal instruments giving particular emphasis to respect and protection of PWDs have been accepted by UN member states. Ethiopia ratified the CRPD through Proclamation No. 676/2008. Furthermore,

it has enacted domestic laws separately and mainstreamed disability issues in various pieces of legislation in order to respect and protect the rights of PWDs. Legislation related to the rights of accessibility, equality and non-discrimination, employment and tertiary education has been given particular attention in this article. The laws have been analyzed in order to assess the level of protection accorded to PWDs under the legal framework of Ethiopia. The analysis in this article does not include the practical problems of PWDs since no empirical research has been conducted in this study.

To address the issues related to legal protection of PWDs, the article has been structured as follows. The first part is dedicated for explaining the notion of PWDs in the context of Ethiopian law, including international legal instruments. The second part addresses the significance of special laws on the rights of PWDs. It discusses why and how the legal regime dealing with the rights of PWDs developed. The third part assesses the relevant international legal documents and domestic laws of Ethiopia in order to show the extent to which the rights to equality and non-discrimination, accessibility

employment and tertiary education are protected under international legal instruments and Ethiopian domestic law.

### **1. Definition and concept of persons with disabilities (PWDs)**

Prior to discussing the rights of PWDS, it is crucial to look at the definitions of the term “persons with disabilities” used in different international legal instruments and domestic laws of Ethiopia. Both international legal instruments and domestic laws provide definitions of the term based on the purpose for which they were enacted. Owing to this, the definition given in the legislation is not always the same, and it is difficult to find a definition which is universally accepted and consistently applied.

Four perspectives on disability have evolved over time. These are charity, medicine, social values and human rights.<sup>1</sup> The charity model considers PWDs to be a dependent and helpless segment of society. They are considered as objects of charity, persons who are unable to fend for themselves, inherently needy and dependent on the charity of others for survival. This is the model related to cultural and religious beliefs and practices.<sup>2</sup>

The second model is related to the principles of medicine. According to this model, PWDs are considered to suffer from medical problems that require medical solutions. Any difficulties are connected to the individual’s

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<sup>1</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 November, 2013].

<sup>2</sup> Ibid.

impairment. Owing to this, PWDs are perceived as patients who need treatment.<sup>3</sup>

The third model is the social model. This model 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 favourable for disabled persons. Therefore society has a responsibility to solve these problems by making PWDs' interaction with society and the environment more convenient and comfortable. To this end, society has a duty to make the environment inclusive, to remove barriers and eliminate discrimination.<sup>4</sup> In short, society must create an environment that can embrace disability as one of many forms of diversity among human beings.

The fourth model is the human rights model. This is 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, buttressing the argument that all human beings are inherently equal and entitled to equal enjoyment of all human rights without distinction of any

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<sup>3</sup> Grant Carson, "The Social Model of Disability", Scottish Accessible Information Forum, 2009, available at: [www.saifscotland.org.uk](http://www.saifscotland.org.uk) [accessed December 2013].

<sup>4</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/](http://www.Ucl.ac.uk/Ic-ccr/center_publications/) working papers.

kind, including disability. This rationale has been used to support PWDs' claims to equal access to services and opportunities.<sup>5</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 CPRD's enactment apply the social and human rights models in combination. For this reason, the definition varies depending on the purpose of international and domestic legislation, as well as its timeframe. To show this, it is important to look at international legal instruments and Ethiopian domestic laws.

The UN General Assembly has promulgated a number of declarations and conventions concerning PWDS since the UDHR. International agreements related to the rights of persons with disabilities (RPWDs) have been drafted with a view to ensuring equality in general and in employment in particular. Some are concerned with particular types of disabilities; others deal more broadly with RPWDs. The details will be discussed in the subsequent sections. These facts are raised here in order to show that the definition may vary accordingly.

The UN Declaration on the Rights of Disabled Persons (1975) provides the following definition for the term "disabled person": "Disabled person means 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

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<sup>5</sup> See *Supra* note 1.

deficiency, congenital or not, in his or her physical, or mental capabilities.”<sup>6</sup> From this provision, it is possible to understand that the definition includes persons with various disabilities since the declaration aims at ensuring all aspects of PWDs’ equality. The provision does not specify any particular disability. Rather, the term “any person” in this provision seems to incorporate those with all types of disabilities. But this does not mean that the definition has no limitations in this regard.

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>7</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 to some extent.

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 which can be caused or aggravated by the economic and

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<sup>6</sup> Declaration on the Rights of Disabled Persons, proclaimed by UN General Assembly Resolution 3447 (XXX) of December 1975, No. 1.

<sup>7</sup> Ibid.

social environment.<sup>8</sup> The incapacity of a person to perform is the key element defining the disabled person here, although this is not stated directly and clearly. 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 disabled person is capable of performing many essential activities. Hence, it is also not free from deficiencies.

Another international instrument that provides a general definition of the term “disability” is the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Standard Rules). The UN General Assembly adopted this document in 1993. Like the Inter-American Convention, it does not define the disabled person directly. It simply defines the term “disability”. Accordingly, “disability includes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.”<sup>9</sup>

A purpose-specific definition of PWDs has been provided in the International Labour Organization Vocational Rehabilitation and Employment (Disabled Persons) Convention, adopted by the UN General Assembly in 1983. According to Article 1 (1) of this convention, “disabled person means an individual whose prospects of securing, retaining and

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<sup>8</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>9</sup> Standard Rules on the Equalization of Opportunities for Persons with Disabilities, A/RES/48/96, 85<sup>th</sup> plenary meeting, 20 December 1993, No. 17.

advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment.”<sup>10</sup>

This definition encompasses persons whose employment rights cannot be equally exercised due to duly recognized physical or mental impairments. It does not include someone unless his or her opportunity for employment is considerably affected as a result of his or her physical and mental impairment. Hence, this definition has its own limitations.

The UN Convention on the Rights of Persons with Disabilities (CRPD) provides the most recent and best definition yet. This convention says: “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>11</sup>

This definition reflects the latest understanding of the concept of PWDs. Unlike some 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.

However, 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.

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<sup>10</sup> International Labour Organization, Vocational Rehabilitation and Employment (Disabled Persons) Convention 159, 1983.

<sup>11</sup> Convention on the Rights of Persons with Disabilities and Optional Protocol, United Nations, 2006.

The CRPD provides the best definition of PWD to date. This definition has also been incorporated into the national legislation of Ethiopia. But prior to the drafting of this definition, the term “disabled person” was conceptualized in various ways under Ethiopian law, much as it was in international legal instruments.

Before the introduction of this latest understanding of the concept of disability as a notion related to and consistent with the entitlements and obligations of social and human rights, 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>12</sup> Disability was formally defined for the first time in Ethiopia in 1971 under an imperial order issued to establish an agency on disability.<sup>13</sup> Emperor Haile Selassie I gave Order No. 70/1971 to provide for the establishment of the Rehabilitation Agency for the Disabled. This imperial order defines a person with a disability as “any person who, because of limitations of physical or mental health, is unable to earn his livelihood and does not have anyone to support him and shall include any person who is unable to earn his livelihood because of young or old age.”<sup>14</sup>

This definition represents an approach that identifies disability with ill health and the resulting inability to earn a living and absence of support. By virtue of this definition, PWDs were considered to be people with no capacity to make a life, people who require the support of others. Since the definition

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<sup>12</sup> Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) Initial Report, December 2012, Addis Ababa.

<sup>13</sup> An Imperial Order to Provide Establishment of Rehabilitation Agency for Disabled Persons, No. 70/1971.

<sup>14</sup> *Ibid.*

focuses purely on the failure to earn a living, it was extended to cover those who need support due to youth or old age. In addition, it overlooks persons with physical or mental impairments who are able to earn a living nonetheless. By this definition, none of these people are considered to be PWDs.

Disability was defined again in another piece of legislation issued in 1994. This was the Proclamation concerning the Rights of Disabled People to Employment (No. 101/1994). This proclamation slightly modified the traditional definition given under the imperial order of 1971. But again, PWDs were presented in terms of their physical, mental and sensory incapacities, with little association with external barriers. According to the 1994 proclamation, a PWD is “a person who is unable to see, to hear, to speak or suffering from injuries to his limbs or from mental retardation, due to natural or manmade causes; providing however, the term does not include persons, who are alcoholic, drug addicts and those with psychological problems due to socially deviant behaviours.”<sup>15</sup>

The definition of PWDs provided in this proclamation differs from that of the imperial order primarily insofar as it does not rely on inability to earn a living. The definition is given depending on physical and mental incapacity, excluding impairment resulting from alcohol and drug use, or from “deviant behaviour” which may be caused by social or psychological problems.

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<sup>15</sup> A Proclamation concerning the Rights of Disabled People to Employment, No 101/1994, Art 2.

Although the presentation here is slightly different, making the 1994 definition more functional as it makes no reference to the question of ability to support oneself, the definition is still based on the individual model of understanding disability, which focuses simply on impairments or physical features. This approach still does not consider the social or human rights element of the concept of disability.<sup>16</sup>

Imperial Order No. 70/1971 and Proclamation No. 101/1994 have both been repealed. The definition of PWD found in this legislation has been discussed merely to show how the concept has evolved in Ethiopian legal history.

One of the relevant and currently applicable authorities on the definition of disability in Ethiopia is Proclamation No. 568/2008 on the Right to Employment for Persons with Disability. The definition in this proclamation reads: “Person with disability means an individual whose equal employment opportunity is reduced as a result of his physical, mental or sensory impairments in relation with social, economic and cultural discrimination.”<sup>17</sup>

Even in this piece of legislation, we see that the term disability has not been clearly defined. Instead of directly addressing the term “disability”, the legislator seems to have decided to define a person with a disability. This is more or less the approach adopted by the UN CRPD.

The Federal Civil Servants Proclamation No. 515/2007 adopted the same approach in the previous year. Article 13 (4) provides that “[t]he

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<sup>16</sup> *Supra* note 12.

<sup>17</sup> Employment Right Proclamation No. 568/2008, Art 2(1).

definition of disability applicable in the appropriate law relating to disability shall also apply for the purpose of this article”.<sup>18</sup> The difficulty to be noted here may be that Proclamation No. 515/2007 was issued before the employment right proclamation, and so any reference made in the former legislation cannot be interpreted to imply the later proclamation.

The recent and legally valid definition of the concept of disability in the Ethiopian context is that of the UN CRPD, and it has been included in the National Plan of Action of Persons with Disabilities (2012-2021). In this document, the general definition of disability is in conformity with the CRPD: “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>19</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. It should be noted, however, that there is a need to develop contextual and formal definitions of disability in order to address all issues and cases.<sup>20</sup>

## **2. Overview on the international legal instruments concerning RPWDs: Why and how are they introduced?**

Since PWDs are human beings, they are entitled to any right that originates in humanity. The UDHR, the International Covenant on Civil and

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<sup>18</sup> Federal Civil Servants Proclamation No. 515/2007.

<sup>19</sup> See *Supra* note 1, p. 1.

<sup>20</sup> *Supra* note 12.

Political Right (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) set out the rights of all human beings. The international human rights instruments that were adopted after the UDHR, ICESCR, and ICCPR clarified the steps that states must take in order to ensure that these rights are respected in particular situations.<sup>21</sup>

If states are taking these steps, it is possible to infer that PWDs may exercise their rights as human beings. The CRPD complements the other international human rights treaties. It does not recognize any new human rights for PWDs, but rather clarifies states' obligations to respect and ensure the equal enjoyment of these human rights by PWDs.<sup>22</sup> Some of the UN's member states raised this point in order to contend that adoption of the CRPD was not important. They argued that the existing international human rights instruments guarantee PWDs the same rights as other members of their societies.<sup>23</sup> Owing to this, member states could not reach a consensus about the significance of the CRPD during the forty-second and forty-fourth regular sessions of the UN General Assembly. The draft outline of convention, prepared by Italy and further elaborated by Sweden, could not be accepted during these sessions.<sup>24</sup>

Although these initial attempts to adopt the convention failed, through the efforts of the UN's Social and Economic Council, the member states eventually reached a consensus regarding the significance of a special law concerning PWDs. The significance relates to the social, economic and legal

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<sup>21</sup> Andrew Byrnes et al, "From Exclusion to Equality: Realizing the Rights of Persons with Disabilities", Handbook for Parliamentarians, No 14-2007, PP 21-22.

<sup>22</sup> Ibid. p.20.

<sup>23</sup> *Supra* note 9.

<sup>24</sup> Ibid.

problems that PWDs encounter in their daily lives. Despite an increasing number of PWDs, they were not benefiting from education and health services on an equal basis with others. In every region and country in the world, PWDs generally live on the margins of society. They have little hope of going to school, getting a job, having their own homes, creating families and raising their children, enjoying a social life or voting. For the vast majority of the world's PWDs, shops, public facilities and transport, health centres, and even information are largely out of reach.<sup>25</sup>

Most PWDs are also poor. They do not have equal opportunities to participate in economic activities. The fact that PWDs are more likely to live in poverty is often the result of ignorance. This problem is reinforced in various governmental development policies and programs that ignore, exclude, or fail to support the right of PWDs to be included in the socio-economic life of their countries.

In contrast, in the few developed and developing countries that have passed comprehensive legislation aimed at promoting and protecting the basic rights of PWDs, they live fulfilling and independent lives as students, workers, family members and citizens. They are able to do so because society has removed the physical and social barriers that had previously hindered their full participation in society.

It is with these advances in mind that the international community united to reaffirm the dignity and worth of every person with a disability, and to

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<sup>25</sup> Andrew, *Supra* note 22, p. 1.

provide states with an effective legal tool to end the injustice, discrimination and violation of rights that confront most PWDs.<sup>26</sup>

The Standard Rules were developed on the basis of the experience gained during the UN Decade of Disabled Persons (1983-1992). The International Bill of Human Rights, comprising the UDHR, the ICESCR and the ICCPR, in addition to the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as well as the World Program of Action concerning Disabled Persons, constitute the political and moral foundation of the Standard rules. Although the Standard Rules were not compulsory, until the CRPD was adopted they were applied by a great number of states with the intention of respecting international law. The Standard Rules imply a state's strong moral and political commitment to taking action for the equalization of opportunities for PWDs. They indicate important principles for responsibility, action and cooperation, and point out areas of decisive importance for PWDs' quality of life and for their achievement of full participation and equality.

The purpose of the Standard Rules is to ensure that girls, boys, women and men with disabilities, as members of their societies, may exercise the same rights and fulfil the same obligations as others. In all societies there remain obstacles preventing PWDs from exercising their rights and freedoms and making it difficult for them to participate fully in various activities. It is the responsibility of states to take appropriate action to mitigate and remove such obstacles.

So as to enable the state parties to achieve this purpose by taking the

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<sup>26</sup> *Ibid.*, p. 2.

necessary measures, the Standard Rules point out the areas, which require state action. Furthermore, the Rules specify the rights of PWDs which cannot be exercised unless states take the appropriate administrative and legal measures. The document contains about 22 rules; twelve of these are concerned with PWDs' substantive rights.

These are:

- Awareness-raising
- Medical care
- Rehabilitation
- Support services
- Accessibility
- Education
- Employment
- Income maintenance and social security
- Family life and personal integrity
- Culture
- Recreation and sports
- Religion

PWDs face various obstacles in order to implement these fundamental rights fully and effectively. Thus they do not always exercise them on an equal basis with others, regardless of government's appropriate interference. For this reason, the document contains some 10 rules regarding implementation procedure. The rules that regulate the implementation of the substantial rights were applied from 1993 until the CRPD was adopted in 2006.

However, the Standard Rules were not effectively implemented during that time because the rules were not legally binding. This fact compelled the stakeholders to move on towards enactment of an international legal instrument. Efforts made during the UN Decade of Disabled Persons were unsuccessful. However, the efforts considerably contributed to the adoption of the CRPD in 2006. The purpose of the convention is similar to that of the Standard Rules. It was enacted with a view towards promoting, protecting and ensuring the full and equal enjoyment of all human rights and fundamental freedoms by all PWDs. It also promotes respect for the inherent dignity of PWDs. These are the two important purposes of the convention, but implementation requires much more state effort.

As history shows, disability is a factor that hinders disabled persons' full and equal enjoyment of all human rights. Human rights are by nature universal, inherent, indispensable, inalienable and inviolable, originating from the nature of human beings.<sup>27</sup> Nevertheless disability has been a basis for discrimination, and even the inherent dignity of PWDs is considerably affected in interactions with the environment in which they live.

Considering this, the UN General Assembly adopted the CRPD with a view to promoting, protecting and ensuring full and equal enjoyment of all human rights in general and respect for the inherent dignity of PWDs in particular. In order to achieve this purpose, the convention sets out the relevant rights anew and provides enforcement mechanisms.

The CRPD has about 50 provisions. These provisions deal with the

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<sup>27</sup> "Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." See the Preamble of the UN Universal Declaration of Human Rights, 1948.

general principle of equal opportunity of PWDs (Articles 1-9); fundamental human rights and freedoms (Articles 10-23); and economic, social and cultural rights (Articles 24-30). The provisions dealing with fundamental human rights and freedoms and economic, social and cultural rights are derived from the ICCPR and the ICESCR. The rationale for incorporating these rights into the CRPD is to give particular emphasis to full and effective participation of PWDs in exercising these rights on an equal basis with others.

The remaining provisions of the CRPD provide the enforcement mechanisms for these rights. These provisions direct state parties to:

- Collect statistics and data (Article 31)
- Create international cooperation (Article 32)
- Design national implementation and monitoring mechanisms (Article 33)
- Establish a Committee on the Rights of Persons with Disabilities (Article 34)
- Submit reports about the implementation within two years from the entrance into force (Article 35)
- Create cooperation among the stakeholders for effective implementation of rights enshrined in the convention.

In general, the convention provides the fundamental rights and lays out the mechanisms by which they may be enforced by state parties.

For more effective enforcement of these rights, the UN has prepared a supplementary “Optional Protocol to the Convention on the Rights of Persons with Disabilities” and submitted it to the state parties for signature. This protocol provides procedural safeguards for the substantial rights of PWDs.

According to Article 1(1) of the protocol, the international committee established via Article 34 of the convention is empowered to “receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State party of the provisions of the convention”. In accordance with this provision, the state parties are obliged to recognize the competence of this committee to examine any allegation as to violations of rights of PWDs. When an examination takes place, the state parties have the duty to cooperate with the committee to facilitate its function as per Article 6 of the optional protocol. Based on the result of the inquiry, the committee may forward its suggestions and recommendations, if any, to the state party concerned and to the petitioner.

The convention and its protocol have been signed and ratified by many state parties, including Ethiopia. Besides this, the House of Peoples’ Representatives ratified it via a ratification proclamation promulgated on 1 June 2010. In effect, the convention has become a part of Ethiopian domestic law. In addition, the proclamation empowers the FDRE Ministry of Labour and Social Affairs to undertake the acts necessary to implement the rights of PWDs enshrined in the convention, and much legislation has been enacted in order to ensure full and effective participation of PWDs on an equal basis with others. The next section will analyze the pertinent legislations in order to assess the legal protection of PWDs in selected areas.

### **3. The rights of PWDs under Ethiopian law**

As previously discussed, the Standard Rules, the CRPD and other international conventions, covenants and declarations adopted by the UN

General Assembly provide for PWDs' fundamental human rights and freedoms, including economic, social and cultural rights. Among these rights, those that are closely connected to the economic and social activities of PWDs will be discussed briefly below.

### **3.1 The right to equality and non-discrimination**

The right to equality and non-discrimination is enshrined in several international legal instruments. These instruments ensure that every person is equally entitled to all human rights. As stated in the UDHR, distinctions such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status shall not be grounds to deny any person rights on an equal basis with others.<sup>28</sup> All human beings must have the opportunity to exercise their legal rights on an equal basis.

The ICESCR and the ICCPR also stipulate that all human beings are entitled to equal enjoyment of all rights. The ICESCR says: "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."<sup>29</sup> The ICCPR provides that "[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction

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<sup>28</sup> See *Supra* note 27, Art 2.

<sup>29</sup> International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, Art 2(2).

of any kind...”<sup>30</sup> These provisions underpin equal enjoyment of all rights. Both covenants plainly intend that all individuals should be able to exercise their rights.

The important point here is the possible discriminatory factors mentioned in the UDHR and the two covenants. These international legal instruments indicate race, colour, sex, religion, language, nationality, social origin, political opinion and other statuses, but disability is not included in the list. Thus some have argued that the provisions do not provide protection to disabled persons. However, it is important to note that “all individuals” as specified in these international legal instruments include disabled persons. Moreover, the list is not exhaustive but rather illustrative. The term “any other status” indicates that other factors not explicitly mentioned in the list, including disability, are also included.

Other international legal instruments demonstrate more explicitly the international community’s concern for the rights of PWDs. The Convention on the Rights of the Child (CRC) states: “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”<sup>31</sup> This provision includes the term disability in the list of discriminatory factors. Pursuant to this provision, disabled children should

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<sup>30</sup> International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, Art 2(1).

<sup>31</sup> Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989, Art 2(1).

not be excluded from equal enjoyment of all rights. They should fully and effectively participate in social, economic and political activities on an equal basis with others.

The CRC expressly imposes an obligation on the state to take appropriate measures to eliminate any form of discrimination against children, including those with disabilities. The relevant provision states: “States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.”<sup>32</sup> This provision is designed to protect children against all forms of discrimination, and recognizes disability as a discriminatory factor that impedes PWDs’ experience of equal rights.

The same holds true for adults. Thus we may infer that the international instruments focusing on general human rights are also applicable to PWDs. Furthermore, having agreed on the significance of special laws to ensure PWDs’ equal enjoyment of rights, the UN General Assembly promulgated various international legal instruments which are specifically intended to promote, protect and ensure the rights of PWDs and enable them to exercise these rights on an equal basis with others.

These instruments are the Declaration on the Rights of Disabled Persons (1975), the Standard Rules (1993), and the UN CRPD (2006). These legal documents aim at achieving equalization of opportunities for PWDs. For this purpose, the Standard Rules define the term “equalization” as follows:

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<sup>32</sup> *Ibid.*, Art 2(2).

“Equalization of opportunities' means the process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly to persons with disabilities.”<sup>33</sup> The principle of equal rights implies that the needs of each and every individual are of equal importance, that those needs must be made the basis for societal planning, and that all resources must be employed in such a way as to ensure that every individual has an equal opportunity for participation.

As the Declaration on the Rights of Disabled Persons says:

*Disabled persons shall enjoy all the rights set forth in this Declaration. These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.*<sup>34</sup>

This provision provides for the PWDs' equal enjoyment of all rights set forth in this declaration. Any distinction among disabled persons cannot be considered as a basis for discrimination in the protection and enjoyment of rights provided in other international legal instruments. Like other people, PWDs are each differently situated in terms of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth, etc. Irrespective of these differences, all individuals with disabilities shall enjoy all rights.

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<sup>33</sup> “Equalization of opportunities' means the process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly to persons with disabilities.” See *Supra* note 9.

<sup>34</sup> See *Supra* note 6.

In equal measure, this protection also applies to the family members of PWDs. The provision quoted above indicates that the family members of disabled persons may also face discrimination on the basis of this status. Hence, the declaration also specifies that the families of disabled persons shall not be subject to discrimination on the basis of their relationship with PWDs. This protection has been enshrined in the CRPD in more detail.

The CRPD imposes an obligation on state parties to recognize the equality of all person under and before the law and their entitlement to the equal protection and benefits of the law. The convention ensures the right to equality for all persons without distinction. No distinction shall be a ground for discrimination. Discrimination on the basis of disability is, hence, prohibited.

In addition to recognizing equality, state parties have a duty to prohibit all discrimination on the basis of disability. State parties shall guarantee PWDs equal and effective legal protection against discrimination on all grounds. Reasonable accommodation should be made to ensure PWDs' full and effective participation in society on an equal basis with others.<sup>35</sup> This means that any factors which may hinder equal enjoyment of all rights on the basis of disability must be eliminated to promote equality. For instance, laws and administrative measures should be employed to require modification of the physical environment in order to ensure accessibility. State parties have a responsibility to create a more conducive atmosphere for PWDs in order to promote equality and eliminate discrimination.

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<sup>35</sup> See supra note 11, Art 5 (1)-(4).

Many nations have become state parties by signing the CRPD. Ethiopia has signed and ratified the convention. Furthermore, Ethiopia has incorporated the provision promoting equality and eliminating all forms of discrimination in its latest constitution.<sup>36</sup> This provision, like that of the international legal instruments which have been discussed above, ensures equal protection and the benefits of law and imposes an obligation on the state to combat all forms of discrimination on the basis of distinction of any kind, including disability, which is incorporated via the phrase “any other status”.<sup>37</sup>

### **3.2 The right to access the physical environment, information and communication**

The right to accessibility is a precondition for proper implementation of the other rights of PWDs. Accessibility to suitable or conducive environments, information and communication is essential for PWDs, as it allows them to live independently and participate fully and effectively in all aspects of life.<sup>38</sup>

Persons with physical, mental, intellectual and sensory impairments have trouble adjusting to and navigating their environments because the environment is full of barriers. For PWDs in both rural and urban locales, the physical environment may be challenging, if not impossible to traverse. Information may be inaccessible, while communication is not always easy or comfortable.<sup>39</sup> These issues keep PWDs from full and effective participation

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<sup>36</sup> Constitution of the Federal Democratic Republic of Ethiopia, 8 December 1994, Art 25.

<sup>37</sup> Ibid.

<sup>38</sup> See *supra* note 9, Art5 sub. 1.

<sup>39</sup> See *Supra* note 11, Art 1.

in society. In his book entitled *From Exclusion to Equality: Realizing the rights of persons with disabilities*, Andrew Byrnes highlights the following:

*The principle of accessibility aims to dismantle the barriers that hinder the enjoyment of rights by persons with disabilities. The issue concerns not just physical access to places, but also access to information, technologies, such as the Internet, communication, and economic and social life. The provision of ramps, sufficiently large and unblocked corridors and doors, the placement of door handles, the availability of information in Braille and easy-to-read formats, the use of sign interpretation/interpreters, and the availability of assistance and support can ensure that a person with a disability has access to a workplace, a place of entertainment, a voting booth, transport, a court of law, etc.*<sup>40</sup>

Without access to information or the ability to move freely, other rights are also restricted. The identification and elimination of obstacles and barriers to accessibility requires government attention in order to facilitate PWDs' full and effective participation in all aspects of life. Thus the international legal instruments recognize PWDs' right of access in order to enable them to participate on an equal basis with others. The Standard Rules states: "States should recognize the overall importance of accessibility in the process of the equalization of opportunities in all spheres of society. For persons with disabilities of any kind, States should introduce programs of action to make the physical environment accessible, and undertake measures to provide access to information and communication."<sup>41</sup> This quotation denotes that the physical environment, information and communication should be accessible

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<sup>40</sup> "Thus, the principle of accessibility aims to dismantle the barriers that hinder the enjoyment of rights by persons with disabilities. The issue concerns not just physical access to places, but also access to information, technologies, such as the Internet, communication, and economic and social life." See *Supra* note 22, p. 17.

<sup>41</sup> See *Supra* note 9, Rule 5.

and suitable for physically challenged persons, and stipulates that state parties have a responsibility to take appropriate steps to remove hindrances.

The UN's CRPD also includes a provision dealing with the accessibility of the physical environment, information and communication.<sup>42</sup> It too explicitly states that state parties must take appropriate measures to ensure the right to accessibility for PWDs.

This provision of the CRPD has specified this right in order to enable PWDs to live independently and participate fully in all aspects of life on an equal basis with others. This approach may be effective only if the appropriate measures are taken. Thus state parties shall take measures:

- To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- To provide training for stakeholders on accessibility issues facing persons with disabilities;
- To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

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<sup>42</sup> See supra note 11, Art9.

- To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.<sup>43</sup>

These international legal instruments impose obligations on state parties to take the above mentioned measures to ensure PWDs' right of access to the physical environment, information and communication. Governments are obliged to enact laws in conformity with these obligations, and to take the other steps indicated in the convention. As a state party to the convention, Ethiopia has put such legislation in place.

One of the laws enacted with a view to achieving this purpose is the FDRE Building Proclamation No. 624/2009. This proclamation states:

- 1. Any public building shall have a means of access suitable for use by physically impaired persons, including those who are obliged to use wheelchairs and those who are able to walk but unable to negotiate steps.*
- 2. Where toilet facilities are required in any building, an adequate number of such facilities shall be made suitable for use by physically impaired persons and shall be accessible to them.*<sup>44</sup>

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<sup>43</sup> See supra note 11, Art9 sub. 2, A-H.

<sup>44</sup> Federal Democratic Republic of Ethiopia Building Proclamation no 624/2009, Art36 sub. 1 and 2.

According to this provision, any building constructed in Ethiopia shall have facilities which may be used by physically impaired persons. Persons who are compelled to use a wheelchair or crutches to move about must have alternatives to stairs. Even persons who are able to walk must have alternative access to public buildings in case they are unable to negotiate steps.

Public building also must provide PWDs access to sanitation facilities. PWDs must be able to use sanitation facilities without any distinctions. For this reason, the sanitation facilities in every public building must be suitable for persons who are physically impaired.

The law seems to have imposed such obligations only on the states. It says that public buildings shall have facilities for PWDs. The term “public”<sup>45</sup> is here used to limit these requirements to buildings that belong to the state. It excludes private buildings. Those who want to enter private buildings do not have a legal right to access the services rendered in such buildings. And so this law does not make PWDs’ right of access complete. If, for example, a public authority rents an office in a private building, persons who are unable to move without any extraneous assistance (a wheelchair or crutches) and those who are able to walk but incapable of negotiating steps may not be able to access those public services. For this reason, this issue requires further attention.

The Ethiopian government has provided additional specific legislation in a further attempt to address the issue of accessibility. Regulations and directives support proper implementation of the right enshrined in this proclamation. To be more specific, let us have a look at the directive. The

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<sup>45</sup> Ibid.

directive of the Ministry of Urban Industry and Development stipulates that steps, ramps, lifts, gates, doors, toilets, parking lots and other areas shall be suitably constructed for PWDs.<sup>46</sup>

As a state party to the CRPD, Ethiopia has taken appropriate legal measures to ensure the right to access of PWDs. Public institutions such as universities are responsible for making all of their buildings—classrooms, libraries, dormitories and offices—accessible. Article 40(3) of Higher Education Institutions Proclamation No. 650/2009 strengthens this idea. It clearly states that “building designs, campus physical landscape, computers and other infrastructures of institutions shall take into account the interests of physically challenged students.” According to this provision, campus buildings must be designed to accommodate the interests of PWDs before construction begins. Unless the design includes the necessary facilities and accommodations for PWDs, the building cannot be constructed. The campus landscape and other infrastructure should be accessible and suitable for physically challenged persons. Otherwise, PWDs may be prevented from enjoying various services in the institution on an equal basis with others. The computers that are available in the institution should also accommodate PWDs. They should be user-friendly and accessible for physically challenged persons. The Building Proclamation previously quoted makes Ethiopian higher education institutions responsible for making sure that their buildings; campus landscape, computers and other infrastructure are all suitable and

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<sup>46</sup> Directive of the Ministry of Urban Industry and Development No. 5/2011, Art 33.

accessible for PWDs. This ensures that PWDs can realize their right to access the physical environment, information and communication.

### **3.3. The right to employment of persons with disabilities**

The international instruments we have discussed in the foregoing sections contain provisions dealing with the right to employment.

The Standard Rules and the CRPD memorialize this right in Articles 7 and 27, respectively. According to these provisions, PWDs are entitled to equal enjoyment of the right to employment. This includes the opportunity to be employed or accepted in the labour market and to work in an open, inclusive and accessible work environment.<sup>47</sup> For a start, PWDs must be given opportunities to obtain employment. They should not be excluded from recruitment or employment. After employment, the environment in which PWDs work must be suitable for them. It should be equipped with appropriate facilities and free from physical barriers which hinder their full and effective participating in the work. Otherwise, the work environment cannot be deemed inclusive.

State parties to the UN convention are responsible for effective implementation of this right. They must safeguard and promote realization of the right to work of PWDs. State parties are required to take the appropriate steps to ensure the equal enjoyment of this right.<sup>48</sup>

One of the most important measures that the state parties should take is prohibiting all forms of discrimination against PWDs. Discrimination on the basis of disability pertaining to all forms of employment must be

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<sup>47</sup> *Supra* note 11, Art 27 (1).

<sup>48</sup> *Ibid.*

eliminated. The conditions of recruitment, hiring and employment, continuance of employment, career advancement and other related matters are to be free from any kind of discrimination on the basis of disability. The state has an obligation to create safe and healthy working conditions for all workers, including PWDs.<sup>49</sup>

The state is also responsible for protecting PWDs' right to just and favourable work conditions. According to this provision, state parties are responsible for ensuring equal opportunities and equal remuneration for work of equal value, as well as safe and healthy working conditions. State parties are also responsible for redressing grievances. Ethiopia recognizes these rights and has enacted legislation for their more effective realization from 1994 onwards. The FDRE constitution provides the right to employment to every citizen. When the CRPD is read in conjunction with Article 41 (5) of the constitution, it becomes clearer that PWDs are entitled to this right.

In addition to this, much legislation has been enacted regarding PWDs' right to employment. To show this, it is sufficient to look at the two currently applicable laws in the area. These are the Federal Civil Servants Proclamation No. 515/2007 and the Right to Employment of Persons with Disabilities Proclamation No. 568/2008. The Civil Servants Proclamation provides not only recognition of this right but also gives priority to employment of PWDs so long as the person who applies for the vacancy meets the minimum requirements set for the job.<sup>50</sup> Despite the fact that the

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<sup>49</sup> Ibid.

<sup>50</sup> See Supra note 18, Art13 sub. 3.

minimum requirement standard is not elucidated, the provision strongly encourages employers to give priority to applicants with disabilities.

Since this is insufficient to protect the right to employment of PWDs, a separate proclamation on the Right to Employment of Persons with Disabilities is scheduled to be promulgated in the coming year (2008 E.C.). This proclamation gives particular emphasis to the implementation and protection of this right to employment, because it has been noted that many people are not convinced of PWDs' capacity to work. This view was reflected in earlier laws on PWDs' right to employment. Proclamation No. 101/1994, for instance, did not create equal opportunities for the employment of PWDs. Rather it restricted their employment by deeming them objects of charity.<sup>51</sup> This proclamation and Imperial Order No. 70/1971 did not adequately protect the rights of PWDs. The legislation currently in force repealed Proclamation No. 101/1994 and aimed to enhance equal employment opportunities and eliminate all forms of discrimination against PWDs.

The new proclamation provides not only equal employment opportunities but also an enforcement mechanism. Various entities are responsible for the implementation of this right, while administrative responsibility has been shared by a council of ministers from the Ministry of Civil Service, the Ministry of Labour and Social Affairs and other governmental and non-governmental organizations, including the Association of Persons with Disabilities.<sup>52</sup>

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<sup>51</sup> See *supra* note 15, Preamble.

<sup>52</sup> See *supra* note 17, Art9.

The courts will also have a key role in implementing this right. Any violation of this right can be submitted to court in the form of an action. When the person with a disability whose right to employment has been violated brings an action to court, he or she has no duty to prove the allegation.<sup>53</sup> The burden of proof has been shifted to the employer who is being sued for violation of this right. Instituting an action presupposes the fact that the defendant has the responsibility to defend the case. If he or she is incapable of defending him- or herself against the charge, the decision should be passed in favour of the plaintiff (person with disability).

Furthermore, the courts have a responsibility to ensure speedy trials. They are required to decide cases filed regarding the right to employment of PWDs within 60 days.<sup>54</sup>

In sum, both administrative and judicial organs are responsible for taking the appropriate measures for proper implementation of this right. One of the hopes is that respecting and protecting this right will encourage students with disabilities in higher education institutions to exert maximum effort for academic achievement.

#### **3.4. Legal protection for the right to education of students with disabilities in the higher education institutions of Ethiopia**

In this section, we will assess the international legal instruments that Ethiopia has ratified and other domestic legislation, including the Senate legislation of selected universities, in order to evaluate the extent to which PWDs' right to education has been included. Both international and national

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<sup>53</sup> Ibid., Art 7.

<sup>54</sup> Ibid., Art 10 sub. 2.

laws reveal the fact that education is a very important tool of human development. Development can be achieved through educated manpower. It contributes to the protection of and respect for human rights and freedoms.

Education helps to nurture tolerance among individuals and diverse groups. It creates mutual understanding, friendship and goodwill. Considering this, the UDHR and the ICESCR recognize the right to education under Articles 26 and 13 respectively. These documents recognize the importance of education for the development of character, respect for human rights and freedoms, tolerance, understanding and maintenance of peace. The UDHR states: “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.”<sup>55</sup>

This provision explicitly indicates that education is of great use for a peaceful and harmonized society. Different nations, racial and religious groups can live together so long as they are able to understand, respect and tolerate to each other. This can be achieved through education. This proposition is also found in the ICESCR. Article 13 of this covenant states:

*Education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and*

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<sup>55</sup> See *Supra* note 27, Art 26 sub. 2.

*further the activities of the United Nations for the maintenance of peace.*<sup>56</sup>

This provision, like that of the UDHR, affirms that education is advantageous for individuals and for society as a whole.

These documents recognize that all human beings have a right to education in order to achieve the purposes discussed above. Both the UDHR and the ICESCR state that everyone has the right to education and state parties of the covenants have agreed to recognize it. Accordingly, education shall be available for all. Particularly, primary education shall be free and compulsory for all citizens. Secondary and tertiary education should also be provided to all citizens without distinction and on an equal basis, although these are not free or compulsory. Education at the tertiary level must be based on merit or capacity. Those who are competent to engage in higher education must have access to it.<sup>57</sup>

The right to education enshrined in these international legal instruments has been formulated so as to include every person. Everyone shall be entitled to education without any distinction. However, the UN General Assembly has promulgated other legal instruments on the rights of PWDs in order to give particular emphasis. The transition to higher education and success in tertiary education is not easy for students with disabilities as there are a significant number of new challenges to overcome in order to fully and effectively participate in academic activities at this level on an equal basis with other students.

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<sup>56</sup> See *supra* note 29.

<sup>57</sup> See *Supra* note 27, Art 26 (1) and *Supra* note 29, Art 13 (2) (A)-(E).

Despite the progress made, students with disabilities generally have a bumpier transition to tertiary education than other students. Those with sensory, motor or mental impairments or psychological problems face particular challenges. Their pathways to tertiary education are also less straightforward and there may be breaks or forced changes of direction along the way.

Students with disabilities are also less likely than their non-disabled peers to complete their upper secondary studies successfully. This happens particularly when students have a specific learning difficulty, behavioural difficulties or psychological problems. Transition policies have significantly expanded opportunities for access to, and success in, tertiary education for students with disabilities. But these policies do not address all of the obstacles that students face, and they do not do enough to facilitate a continuous and coherent pathway to tertiary education.

Successful transition still depends too much on the resources and the resourcefulness of the individuals concerned and their families. Students with sensory or mental impairments and those from less fortunate socio-economic backgrounds may be more vulnerable as a result. Successfully completing tertiary studies is a further challenge for disabled students who may encounter additional obstacles during their studies. Moreover, the additional resources allocated to institutions and to students with disabilities are not sufficiently linked to preparing these students for future social and professional inclusion.

As a result, students with disabilities may remain unemployed or underemployed in spite of easier access to higher education.<sup>58</sup>

For all of these reasons, the CRPD expresses particular concern for the right to education of PWDs. Article 24 sub 1 of this convention provides that PWDs are entitled to the right of education. In order to realize these rights, state parties must ensure an inclusive education system at all levels. Inclusive education must be directed towards:

- The full development of human potential, sense of dignity and self-worth;
- The strengthening of respect for human rights, fundamental freedoms and human diversity;
- The development by persons with disabilities of their personality, talents and creativity, mental and physical abilities, to the fullest potential of persons with disabilities; and
- Enabling persons with disabilities to participate effectively in a free society.<sup>59</sup>

To achieve these results, the system of education shall fulfil the following important requirements, which are required of state parties to the convention. They must design the education system in such a way that PWDs are treated on an equal basis with other members of the community.<sup>60</sup> PWDs shall not be excluded from the general education system on the basis of disability. They

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<sup>58</sup> OECD (2011), Inclusion of Students with Disabilities in Tertiary Education and Employment, Education and Training Policy, OECD Publishing, available at: <http://dx.doi.org/10.1787/9789264097650-en>.

<sup>59</sup> See *Supra* note 11, Art 24 (1) (A)-(C).

<sup>60</sup> *Ibid*.

must have an equal opportunity to enjoy free and compulsory primary and secondary education.

The general education system is expected to provide PWDs with inclusive, free, high-quality primary and secondary education on an equal basis with others in their community. To ensure inclusiveness and quality of education, the system must reasonably accommodate the special needs of PWDs. The support required within the general education system to facilitate effective education must be provided. This support must be delivered in order to maximize the academic and social development of PWDs, consistent with the goal of full inclusion.<sup>61</sup>

The support must enable PWDs to learn life and social development skills. This helps to facilitate full and equal participation in the general education system. To ensure that these obligations are being met, state parties are obliged to take appropriate measures, such as:

- Facilitating learning of Braille, alternative script, other modes and means of communications, mobility skills, and other supports;
- Facilitating learning of sign language and promotion of linguistic identity in the deaf community; and
- Ensuring the education of persons who are blind, deaf, or deaf-blind by facilitating the most appropriate language, modes and means of communications which maximize academic and social development.<sup>62</sup>

The availability and accessibility of the above mentioned services shall not be taken as sufficient and final measures for full and effective

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<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

participation of PWDs in education. In addition to this, the nations that adopted this convention must be careful in appointment of professionals, and particularly teachers. Appropriate measures must be taken when teachers are appointed and assigned. They must be trained in sign language and Braille. The training should include disability awareness and use of appropriate augmentative and alternative means and modes of communication.<sup>63</sup>

The provision also states that teachers with disabilities should be involved in the education system. Teachers with disabilities make a great contribution to effective implementation of inclusive education. They may be capable of using Braille, sign language and other means and modes of communication as their own disability requires. They are also aware of the limitations of PWDs. Therefore, involving teachers with disabilities in the education system may contribute to its full inclusion and effectiveness.<sup>64</sup>

As previously indicated the UN CRPD provides for PWDs' right to education and specifies particular measures which should be taken by state parties in order to enable disabled persons to participate in the education system fully and effectively on an equal basis with others. States parties are obliged to take appropriate measures for PWDs' full and effective participation in all aspects of life.

To ensure that PWDs can exercise their rights, Ethiopia has legislated in conformity with the UN convention. Legislation has been enacted in the education sphere. This legislation has mainstreamed the right to tertiary education for PWDs. Higher Education Proclamation No. 650/2009 addresses

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<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

this right, announcing that the higher education system should be inclusive and must provide the necessary facilities. It stipulates that higher education institutions shall make their facilities and programs amenable to physically challenged students.<sup>65</sup> These institutions should create suitable facilities and develop academic programs to accommodate the special needs of students with disabilities.

The Higher Education Proclamation requires that tertiary education be made accessible and suitable for students with disabilities, and it indicates the measures that higher education institutions should take in order to enable students with disabilities to participate fully and effectively in tertiary education on an equal basis with others. These measures include: relocating classes, developing alternative testing procedures, and providing auxiliary educational aids for students with physical challenges.<sup>66</sup> They must also consider building design, campus physical landscape, and computers suitable for the use of PWDs.<sup>67</sup> Academic assistance, including tutorial sessions, exam time extensions and deadline extensions should be provided so as to permit physically challenged pupils to compete with others.<sup>68</sup> These are the measures that the higher education institutions of Ethiopia must take in order to ensure the right to tertiary education of physically challenged students in this country.

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<sup>65</sup> Higher Education Proclamation No 650/2009, Art 40 (1).

<sup>66</sup> *Ibid.*, sub. Art 2.

<sup>67</sup> *Ibid.*, sub. Art 3.

<sup>68</sup> *Ibid.*, sub. Art 4.

But, the measures are general contingent on the institution's circumstances, which may vary depending on school resources and other factors.<sup>69</sup> Hence, more targeted legislation is needed to further clarify the measures particular institutions may take for protection of disabled students' right to tertiary education.

Select university Senate legislation reflects the interests of students with disabilities. Here, the Senate legislation of Addis Ababa, Gondar and Bahir Dar Universities are taken as examples. The Senate legislation of AAU establishes a structure called the Office for Diversity and Equal Opportunity, providing a mechanism for the systematic treatment of PWDs.<sup>70</sup> This office is tasked with ensuring the equality of disadvantaged groups including disabled persons. With regard to PWDs, the office combats discrimination. Disability should not be a discriminatory factor in the university.

To combat this problem, the office makes sure that fair treatment of PWDs is enshrined in the policies and rules of the university. It is responsible for following up on the implementation of these policies and rules, taking affirmative action and establishing a resource centre for PWDs. The office generally manages all matters pertaining to diversity, gender, disability and affirmative action.<sup>71</sup> For this reason, AAU's Senate legislation protects the right to tertiary education of PWDs relatively well, although not sufficiently.

The harmonized Senate legislation of Gondar University also includes a provision dealing with the issue of PWDs in conjunction with other forms of

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<sup>69</sup> *Ibid.*, sub. Art 1.

<sup>70</sup> Senate Legislation of Addis Ababa University, 2007, Art 157 (7).

<sup>71</sup> *Ibid.*, Art157 (3), (5) and (10).

diversity. Article 154 provides the functions of the office of gender, HIV/AIDS and special needs.<sup>72</sup> The office is responsible for protecting the rights of marginalized groups of society in the university. It combats “discrimination and violations of the human rights of women, persons with disability and members of marginalized groups”.<sup>73</sup> This provision states that the university establishes an office responsible for protecting the special needs of PWDs, women, persons living with HIV/AIDS and others. It does not separately discuss disability issues. It simply indicates that protecting the special needs of PWDs is one of the office’s functions. Furthermore, the specific functions that the office must carry out in order to protect the rights of PWDs are not specified. The words “discrimination and violation of human rights” in the above quotation are too general and insufficient to indicate what the office should do to protect the rights of PWDs. Therefore, it is difficult to conclude that Gondar University’s Senate legislation gives due concern to the rights of PWDs.

The 2005 Senate Legislation of Bahir Dar University does not contain any provision regarding disability issues. Even the 2011 draft legislation of the university fails to mention the rights of PWDs. Of course, Article 130 (1) of the draft Senate legislation provides for affirmative action in the special admission of female students, disabled students and other disadvantaged groups. However, this does not mean that the rights of PWDs are memorialized. The rights of PWDs beyond admission are not addressed. Thus, the author believes that the Senate legislation’s amendment process

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<sup>72</sup> Senate Legislation of Gondar University, 2013.

<sup>73</sup> *Ibid.*, Art154 (2), no 2.

presents a good opportunity to discuss this problem and point out the gap to the drafters and concerned decision makers.

#### **4. Findings and recommendations**

This article has assessed the international legal instruments and domestic laws of Ethiopia with regard to the level of legal protection accorded to PWDs to ensure their effective and full participation in social and economic activities on an equal basis with others.

In this legal analysis, it is possible to understand that international human rights instruments such as the UDHR, ICCPR, ICESCR and others recognize inherent human rights to which all human beings are entitled. The UN has promulgated additional international legal instruments concerning PWDs in order to complement these general human rights instruments and give particular emphasis to the respect and protection of their rights. The CRPD and its optional protocol are among these international legal instruments. They have recently been adopted and are now valid law.

Many member states have accepted these international legal instruments and committed to the enforcement of the rights enshrined therein. As a member state, Ethiopia has accepted and ratified the CRPD with its optional protocol via proclamation No. 676/2010. Consequently, Ethiopia is taking measures to enhance the protection of the rights of PWDs. As part of this effort, Ethiopia has been enacting various domestic laws. Separate legislation deals with particular rights, such as the right to employment.

Ethiopia is also attempting to mainstream disability issues in domestic laws. The laws that include PWDs' right to equality and non-discrimination,

accessibility, employment and tertiary education have been discussed in the foregoing sections. The Civil Servants Proclamation includes the right to employment of PWDs and indicates that PWDs should benefit from affirmative action in employment opportunities. Two proclamations ensure that PWDs are entitled to priority right of employment so long as they meet the minimum standards required for the post. However, this legislation does not specify how minimum standards should be assessed, and it is still unclear whether these standards must be met or merely approximated.

FDRE Building Proclamation No. 624/2009 also mainstreams the rights of PWDs. As discussed previously, this proclamation deals with the standards and quality of public buildings. It advances the provision addressing PWDs' right to accessibility. Article 36 of this proclamation stipulates that public buildings and their facilities should be accessible and conducive to use by PWDs. The directive which was issued to implement the proclamation further elaborates on how the buildings and their facilities should be designed and constructed. However, the author hesitates to argue that the right to accessibility has been addressed well in the spirit expressed in the CRPD. This is because the proclamation applies only to public buildings. In addition, to the best of the author's knowledge, there is no specific legislation addressing disabled persons' right to accessibility of information and communication.

The FDRE Higher Education Proclamation No. 650/2009 also considers the disability issue. Article 40 of the proclamation addresses various issues related to the right to tertiary education of physically challenged students. This provision stipulates that the programs, buildings and facilities,

campus landscape, computers and other aspects of the institution should be conducive to their use and accessible. Moreover, it specifies the forms of academic assistance that should be provided to disabled students. But, the provision is too general and conditional. Institutions' capacities to implement the general mandate may be limited by their resources and context. For these reasons, the ways in which different universities support their disabled students varies. The Senate legislations of Addis Ababa and Gondar Universities, unlike that of Bahir Dar University, address disability issues, but these provisions are not specific and sufficient. In fact, Article 40 of the Higher Education Proclamation is more specific and clear than the provisions of the universities' own Senate legislation.

In sum, although mainstreaming disability issues in domestic law is a good approach, it is difficult to find provisions dealing specifically with disability issues. This is because they are dispersed in different laws, and much more effort is required to locate the relevant provisions. But the provisions' scattered placement is not the sole shortcoming here. The provisions are also insufficiently formulated, simply touching upon disability issues without going much further. They may serve as a guide but they are not sufficient to fully and effectively protect the rights of PWDs.

By way of recommendations, the author suggests the following possible solutions. Specific and detailed laws are required to fill the gaps in the areas assessed in this study. Regulations and directives should be issued in order to avoid ambiguity and vagueness in the FDRE Civil Servant Proclamation No.

515/2007 and Proclamation No. 568/2008 on the Right to Employment of PWDs.

- ❖ Additional laws are required to ensure the right to access of the physical environment, information, and communication since FDRE Building Proclamation No. 624/2009 limits the obligation to make buildings conducive and accessible to public building only.
- ❖ Senate legislation and other directives play a pivotal role in ensuring full protection of PWDs' right to tertiary education, as enshrined in Article 40 of the FDRE Higher Education Proclamation No. 624/2009. Therefore the Ministry of Education should take the initiative to develop a uniformly applicable directive concerning the support of disabled students in Ethiopia's higher education institutions.
- ❖ Finally, the author believes that mainstreaming disability issues haphazardly in various pieces of legislation makes the applicable laws inaccessible and legal protection inadequate. Comprehensive legislation which specifically and separately deals with disability issues should be enacted in addition to the general provisions that may be mainstreamed in other legislation. This will contribute considerably to better legal protection for PWDs and accessibility of the relevant laws.