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Articles

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Endris Muhammed

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Reflecting on Disability Rights in Contemporary Ethiopia

Meron Zeleke (PhD)

The World Report on Disability published by the World Bank and World Health Organization (WHO) state that over 15% of the global population live with disabilities. Persons with Disabilities (PWDs) across the globe are often denied their fundamental human rights through systemic discrimination, prejudice, stigma, and abuse. The social model of disability has for long been at the center of academic discussions surrounding the 'problem' of disability as a socially constructed entity, whereby PWDs often face societal barriers. This model has been praised on the ground as a powerful tool for socio-political activism (Oliver 2009);¹ and for igniting discussion on the socio-historic nature of oppression that PWDs face (Longmore 2003).² However, this discourse has been challenged on the due emphasis it gives to societal barriers and its essentialist tone, while undermining other structural factors (Terzi 2004).³ The post 20th century human rights movement has embraced and advocated for the human rights approach to disability. The Convention on the Rights of People with Disabilities creates a substantial global commitment to adopting a human rights framework providing a key source for a Human Right Based approach. Such a human rights perspective means:

viewing people with disabilities as subjects and not as objects. It entails moving toward viewing persons with disabilities as rights holders. Importantly, it means locating any problems outside the person and especially in the manner by which various economic and social processes accommodate the difference of disability or not as the case may be (Quinn and Degener 2002).⁴

Discussions in Disability studies, emphasizes the need to critically examine and challenge the discourse of *ablenationalism*, "the degree to which treating people with disabilities as an exception valorizes able-bodied norms of inclusion as the naturalized qualification of citizenship" by modern States (Snyder and Mitchell 2010).⁵

¹ Oliver, M. 2009. *Understanding Disability: From Theory to Practice*, 2nd ed, Basingtoke: Palgrave Macmillan.

² Longmore, P. 2003. *Why I Burned My Book and Other Essays on Disability*. Philadelphia: Temple University Press.

³ Terzi, L. 2004. 'The Social Model of Disability: A Philosophical Critique'. *Journal of Applied Philosophy* 21(2): 141-57.

⁴ Quinn, G. and Degener, T. 2002. *Human Rights and Disability: The Current Use and Future Ppotential of United Nations Human Rights Instruments in the Context of Disability*. Geneva.

⁵ Snyder, Sharon L. and Mitchell, David T. 2010. 'Introduction: Ablenationalism and the Geo-Politics of Disability.' *Journal of Literary and Cultural Disability Studies*, 4(2): 113-125.

The World Report on Disability published by the World Bank and World Health Organization (WHO) indicates that persons with disabilities in Ethiopia constitute at least 17.6%, albeit the exact data has yet to be substantiated by a disability-inclusive national census. There is scant academic/non-academic literature and consolidated database providing basic information on the lived experiences of persons with disabilities in Ethiopia. As a result, existing accounts on protection and/or violations of the rights of persons with disabilities are by-and-large anecdotal.

Most persons with disabilities in Ethiopia reside in rural areas hit with poverty where basic rehabilitative services are inaccessible and where cultural stereotypes are deep-rooted. The Ethiopian government took a number of legislative and policy measures to advance the rights of persons with disabilities ranging from signing and ratifying international instruments, such as the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), to developing national laws and policies. They often, however, face wide-ranging human rights abuses. Regardless of the magnitude of disability-based violations of rights, there are only few local civil society and international organizations engaged in working towards promoting the rights of persons with disabilities.

This themed issue of EJHR incorporates high quality articles on a wide range of themes including contributions with a critical perspective on legislative and policy landscape, global, regional and national jurisprudence in interpretation and application of the rights of people with disabilities in the Ethiopian context (E.g., contributions by Tamru, Endris, Elizabeth, and Yilikal). Some of the contributions assess the role of organizations of PWDs (OPDs), the civil society, and non-governmental organizations in promoting the right of persons with disabilities in Ethiopia (E.g., see contribution by Tamiru). The discussion raised in this volume underscores the need to pay attention to inclusiveness of services to persons with disability and attending to the hierarchies of the rights of persons with disability i.e., the ways in which some voices remain unheard and certain identities are more protected than others (see contributions by Workneh et.al., Endris, Elizabeth and Yilikal). The contribution by Elisabeth on its part underscores how the internet plays a great role in amplifying the opinion and action of persons with disabilities and critically reflects on issues of internet accessibility and digital inclusion in the context of contested political transition where inclusive policy-making could be a challenge. The insightful contributions included in this volume accentuate that adopting a human rights perspective and an effective monitoring mechanism will play a significant role in protecting and realizing the rights of Persons with Disabilities.

As the Editor, I foresee threefold contribution of this volume. First, it contributes to the existing gap of literature on the subject matter. The

second contribution is the academic contribution it makes to conceptual, theoretical, and methodological discussions on disability research. Third, it has practical implications in the areas of inclusive strategies.

I would like to thank members of the editorial and advisory committee of EJHR, the external reviewers involved in the peer review process and the authors for their valuable contributions and ensuring the quality and reputation of the EJHR.

Meron Zeleke, (PhD)

Editor in Chief of Ethiopian Journal of Human Rights

December 2021

Foreword

Back in 2002 when I joined the Addis Ababa University (AAU), Faculty of Law, I was one of the two students with physical disabilities in a cohort of approximately 120 students. I remember, as if it occurred yesterday, how excruciating it was for me and my classmate with a similar disability as mine to attend our classes every single day by climbing the stairs of the antique, disability-unfriendly, two-floor building where the AAU Faculty of Law was, and still is, housed. I recall how I was not able to use the University's largest library, the John F. Kennedy Memorial, for five solid years until I was just about to graduate, because the library did not have a simple ramp for those of us with mobility limitations and our appeal for the authorities to rectify this remained in vain across those years. Long story short, I barely had pleasant memories of 'college life' as a student with disability due to multi-faceted external barriers that could and should have been alleviated, if not averted altogether.

While the aforementioned and a plethora of other structural, deep-rooted instances of disability-based marginalization we used to grapple with a few decades ago still do exist to a certain extent in our universities, there are nonetheless some visible strides being made too. The publication of this first-ever Special Issue of the Ethiopian Journal of Human Rights (EJHR) within the auspices of the AAU Center for Human Rights focused entirely on *Disability Rights in the Ethiopian Context* is one such indicator of a milestone step in the right direction which would have been unfathomable in the not-so-distant past. As a polio-survivor myself and an alumnus of the AAU Faculty of Law, it a humbling honor for me to have been invited to write a Foreword to this EJHR Special Issue on *Disability Rights in the Ethiopian Context*. I would like to extend a profound thanks and note of congratulations to the Editor-In-Chief for not only envisioning but making a pioneer project of this kind happen against all odds. I can imagine the uneasy labyrinth of coordinating and bringing any academic journal into fruition, let alone one that is fully dedicated to the often sidelined theme of Disability Rights. A word of immense thanks also goes to each author and reviewer who made the time, out of their busy schedules, to contribute outstanding pieces of chapters on six diverse topics analyzing Disability Rights in the Ethiopian legal and policy arena.

Critical Disability Studies, in general, and Disability Rights Studies, in particular, are nascent territories in the global human rights academia. It is in the past decade, especially with the advent of the international binding treaty on Disability Rights, i.e. the Convention on the Rights of Persons with Disabilities (CRPD) which entered into force in 2008, that academic institutions worldwide have realized the evident need to incorporate disability as a subject in their curricula. Some renowned universities in both the global North and South have even gone a step further and launched full-fledged, standalone undergraduate, graduate

and post-graduate courses, programs and journals on Disability Rights. For centuries, disability and persons with disabilities have been deemed objects of charity and/or, at best, a mere medical concern falling within the ambit of public health and rehabilitation studies; not more, not less. It is this erroneous disposition that the CRPD, ratified hitherto by 184 UN Member States, is fundamentally challenging and beginning to uproot. Disability, as per the CRPD and contemporary schools of thoughts, is essentially a social construct that manifests itself when one's impairment (caused by natural or unnatural causes) meets social, environmental and systemic barriers, including discriminatory laws and policies. Disability is much more about structural and societal factors imposed on a person with an impairment or impairments than it is about the individual's limitation *per se*. Accordingly, asserts the CRPD, persons with disabilities are entitled to their inherent dignity, human rights and freedoms on an equal basis with others, irrespective of their disabilities. Ableism – that is, a tacit or explicit prejudice against persons with disabilities – is now in the same category of identity-based discrimination outlawed under international human rights law such as racism, sexism, etc.

Ethiopia has ratified the CRPD in July 2010. The country's current Constitution stipulates, under Article 9(4), that all international treaties ratified by Ethiopia shall *ipso jure* become the laws of the land. Eleven years since the ratification of the CRPD, the inclusion of disability and citizens with disabilities in socio-economic and political agenda in Ethiopia, albeit better than the pre-2010 era, continues to be far from satisfactory. Meanwhile, several sources estimate that persons with disabilities constitute at least 17.6% of the country's total population. The impact that human rights research institutions and notable journals with wide readerships such as EJHR can have in enabling positive systemic changes in this regard, in the interest of creating a better nation for all, cannot therefore be overemphasized. This Special Issue on *Disability Rights in the Ethiopian Context* contains well-articulated pieces on the following wide-array of pertinent topics:

- Exploring Adolescents with Disabilities' access to Education, Social Protection and Employment Opportunities in Ethiopia
- Supported Decision-Making for Persons with Mental and/or Intellectual Disabilities: An examination of Ethiopia's legal and institutional framework in light of the CRPD
- Recognition' Status of Ethiopian Sign Language and the Deaf in Key Legislations on Languages: A Critical Review from Linguistic Human Rights Perspective
- Muted voices online: the role of the internet in amplifying freedom of expression of persons with disabilities in Ethiopia.
- The role of civil society organizations in promoting the rights of persons with disabilities in Ethiopia

- Rights of Persons with Hearing and Speech Disabilities in Criminal Prosecution under the Ethiopian Criminal Justice System

I do not have an iota of doubt that readers will find these chapters practical, useful and richly informative for their works of advocacy, studies and further research on Disability Rights in Ethiopia.

Thank you,

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Exploring Adolescents with Disabilities' Access to Education, Social Protection and Employment Opportunities in Ethiopia

Workneh Yadete⁶, Rebecca Dutton⁷, Nicola Jones⁸, Tassew Woldehanna⁹,
Guday Emirie¹⁰ and Kassahun Tilahun¹¹

Abstract

The importance of providing inclusive services for persons with disabilities has been gaining increasing international attention in line with the 2030 Sustainable Development Agenda and pledges made at the 2018 Global Summit on the Rights of Persons with Disabilities to scale up investments in inclusive education, health and employment services. This trend has been mirrored in Ethiopia as highlighted by the National Action Plan for Persons with Disabilities (2012–2021). This article explores the extent to which adolescents with disabilities in Ethiopia are able to access inclusive services to realise their full capabilities, drawing on longitudinal data collected before and after the onset of the Covid-19 pandemic with a sample of young people with physical, visual or hearing impairments aged 10–19 from Afar, Amhara and Oromia Regions and Dire Dawa City Administration. The findings highlight that while recent investments in special needs education services have made a critical difference to adolescents' access to formal education in Ethiopia, there are significant quality deficits, including inadequate teacher training, a dearth of adapted teaching materials and infrastructure and under-investment in follow-on inclusive education services beyond 4th grade. These challenges are compounded by inadequate social protection to address economic barriers to education service uptake, and a dearth of inclusive youth- and disability-friendly psychosocial support services. The article concludes by reflecting on context-sensitive and cost-effective entry points for strengthening inclusive services in Ethiopia, including case management by social workers, in line with international commitments enshrined in the Convention of the Rights of Persons with Disabilities.

Keywords: *Adolescents, Disabilities, Education, Inclusive Services*

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Introduction

Over the past five years, there has been increasing attention to the importance of providing inclusive services for persons with disabilities. At the international level, key policy commitments include the 2030 Sustainable Development Agenda and its call to “*leave no one behind*”, with a number of targets related to supporting the rights of persons with disabilities to equal access to services and opportunities; and the 2018 Global Disability Summit, held in London, where countries pledged to scale up investments in inclusive services, especially education, health and employment. The policy framework shaping the Government of Ethiopia’s response to these global commitments to services and programming that support the inclusion of persons with disabilities builds upon policies across a range of sectors. The National Youth Policy, for example, has a focus on supporting the psychosocial wellbeing of youth with diverse disabilities (MYSC 2004); the Ministry of Education is committed to inclusive education and provides educational stipends to support students with disabilities (MoE 2012); and the Ministry of Labour and Social Affairs in line with the National Plan of Action has a social assistance programme that targets persons with disabilities (MoLSA 2012).

Unfortunately, however, the global Covid-19 pandemic has brought about unprecedented disruptions to education, employment and other basic services, and there are widespread fears of the significant and potentially lasting consequences for young people, especially the most disadvantaged, including young people with disabilities. One year on from the official declaration of the pandemic, the situation facing countries is highly varied. In many low- and middle-income countries (LMICs), schools remain closed, with an estimated 168 million children experiencing school closure for at least a year (UNICEF 2021). In other contexts, including Ethiopia, although schools have now reopened, there are significant differences compared to pre-pandemic classroom realities, and there are concerns that millions of young people who were enrolled prior to the pandemic will not return, due to heightened poverty, paid work pressures and child marriage.

The global economic impacts of the pandemic have also been far-reaching and are expected to push 71 million people into extreme poverty (Mahler et al. 2020). This has consequences for food security and nutrition, which is particularly critical for adolescents given that the second decade of life is a key window for physical and cognitive development. Although adolescents are generally at a lower mortality risk from Covid-19, the pandemic is having significant negative impacts on young people’s mental health in LMICs, with girls, older adolescents and those with pre-existing vulnerabilities most at risk (Bellerose et al. 2020; Kılınçel et al. 2020; Majeed and Ashraf 2020; Patel 2020; Pinchoff et al. 2020; Zhou et al. 2020). Heightened household stressors as a result of economic and

privacy constraints, especially in contexts of crowded living conditions, are putting girls and young women in particular at greater risk of age- and gender-based violence (Marques et al. 2020; Peterman et al. 2020).

With the endpoint of the 2030 Agenda for Sustainable Development, now less than a decade away, recognition that improving outcomes for children and adolescents is necessary in order to achieve the Sustainable Development Goals (SDGs) is gaining traction. This is especially the case for SDG 1 on access to social protection, SDG 4 on education and learning, SDG 5 on gender equality and the prevention of harmful practices such as child marriage and gender-based violence, and SDG 10 on reducing inequalities. In line with the commitment in Article 11 of the United Nations (UN) Convention on the Rights of Persons with Disabilities for member States to take “*all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk*” (see also Sakellariou et al. 2020), understanding the impact of Covid-19 on the lives of adolescents with disabilities will be critical to inform national post-pandemic response plans.

This paper thus explores the experiences of adolescents with disabilities in rural and urban communities in Ethiopia prior to and after the onset of the Covid-19 pandemic, focusing on their access to education and learning, to economic opportunities and social protection, and to psychosocial wellbeing. It draws on two rounds of survey and qualitative data collected pre-pandemic in late 2019/early 2020 and one year later, from November 2020 to January 2021.

International Context: Multi-dimensional Impacts of Covid-19 Pandemic

The literature on the impacts of Covid-19 on persons with disabilities, and on adolescents and youth with disabilities in particular, is very limited. The literature that does exist highlights challenges in terms of (1) education exclusion, (2) household stressors (with spillover effects on parents’ and young people’s mental health and possible risks around domestic violence), and (3) exacerbated risks in terms of access to disability-responsive social protection.

On education, a growing number of studies highlight the significant impacts of school closures on adolescent education and learning, impacts which are greater for adolescents with disabilities (Engzell et al. 2021; Bayrakdar and Guveli 2020; Coe et al. 2020; Haeck and Lefebvre 2020; Masonbrink and Hurley 2020; Onyema et al. 2020). Key challenges include: limited access to distance education, especially outside of large urban areas, due to connectivity issues (around infrastructure, physical and social access to devices, and costs); limited teacher contact and support in general and lack of in particular support that is tailored to the learning needs of adolescents with disabilities; low parental education

levels, which make it challenging for parents to support their adolescent children with disabilities; and pressures on adolescents to support family domestic and agricultural work (Caarls et al. 2021; Favara 2021; UNESCO 2020).

Moreover, there is also increasing recognition that when schools reopen, very significant challenges will remain in terms of addressing learning loss, particularly among adolescents with disabilities. These challenges are linked to inadequate investments in catch-up classes and very limited outreach efforts to encourage re-enrolment of young people most at risk of dropping out, including those with disabilities (Jones et al. 2021; Global Education Monitoring Report 2020)

In relation to household stressors, a number of studies highlight job losses and poverty, as a result of pandemic-related lockdowns, are exacerbating household stress and mental health issues (Bailey et al. 2021). Further, because of what Bailey et al. (2021) term the “*systemic nature of families*”, increased stress may have an impact on parenting practices, which can in turn lead to behavioural or emotional problems for children (Bailey et al. 2021; Ehrler et al. 2021; Masi et al. 2021), especially for young people with disabilities who often have complex needs.

On social protection, the literature underscores that a reduction in formal and informal support and services for persons with disabilities, including less access to information on Covid-19 prevention measures, is a key challenge (Yap et al. 2020). Many of the health and social services that people with disabilities need (such as rehabilitation, assistive devices, care for chronic conditions, psychiatry, medications and personal assistance) have been disrupted due to the pandemic (Banks et al. 2021).

The literature also highlights inadequate and slow scale-up of social protection, particularly protection that is disability responsive, noting challenges around eligibility criteria, application processes, delivery of benefits, adequacy and relevance (Banks et al. 2021). This is especially problematic for persons with disabilities who are more likely to live in poverty due to stigma, discrimination and weaker social networks (Sakellariou et al. 2021; Banks et al. 2020).

The Ethiopian Context

Over the past two decades, Ethiopia has made a significant progress in formulating policies and strategies to improve the lives of persons with disabilities, and particularly adolescents with disabilities. The 1994 Training and Education Policy aimed to provide “*free education for all*”, focusing on expanding special needs and inclusive education for adolescents with disabilities (MoE 2002, 1994). Ethiopia also ratified and adopted most of the international legal initiatives and frameworks on the rights of persons with disabilities. These include the ratification of the UN

Convention on the Rights of Persons with Disabilities in 2010 (Federal Negarit Gazeta 2010); the proclamation on the duties and powers of the executive organs, which include consideration of the issues of vulnerable members of the society including persons with disabilities (Federal Negarit Gazeta 2018); the higher education proclamation to decide the powers and duties of higher education institutions, which include ensuring transparency, equity and accountability including towards the rights of persons with disabilities in priorities and the governance system (Federal Negarit Gazeta 2019).

The Ministry of Labour and Social Affairs (MoLSA) designed the National Physical Rehabilitation Strategy (2011) to improve physical rehabilitation services for persons with disabilities, having estimated that 95% of persons with disabilities live below the poverty line (MoLSA 2011). The 2012 Special Needs/Inclusive Education Strategy laid the foundations for the expansion of special needs and inclusive education for children and adolescents with disabilities in rural and urban areas (MoE 2012). Ethiopia's current social protection policy (MoLSA 2014) also pays special attention to the provision of social protection to vulnerable populations, including persons with disabilities, who are entitled to "*the direct support modality*".

However, most of these policy documents and legal texts have given limited attention to the condition of adolescents and young people with disabilities. Despite some progress, for example, on expanding special needs schools in some areas, adolescents with disabilities still face strong social stigma and are excluded from their communities and access to services (Mueller 2019; Jones et al. 2018b).

Because disability has typically been seen as a curse in Ethiopia, children with disabilities have been kept hidden at home to protect the family's reputation. Therefore, there is very little research that has included, much less focused on, the experiences of young people with disabilities (Rohwerder 2018; Tefera 2016). There is some limited evidence that the impacts of stigma and exclusion are wide-ranging. With special needs education being relatively recent, largely confined to urban areas and under-resourced, most children with disabilities are not only more likely to be out of school, but also to have poor learning outcomes even when in school (Tedla and Negassa 2019; Temesgen 2018; Malle, Pirttimaa and Saloviita 2015). This is particularly true at the secondary and tertiary levels, where students are exclusively mainstreamed in classrooms that offer little accommodation (Ibid).

Stigma and exclusion also shape psychosocial wellbeing. Research with blind adolescents in Bahir Dar found that they are less resilient than their sighted peers, with girls disadvantaged compared to boys, and children that have been blind since birth disadvantaged compared to those that have become blind during childhood (Zegeye 2019). These findings are in line with previous research, which has highlighted that discrimination

inside and outside the home and self-blame lead to depression and other socio-emotional problems (Abeshu 2017; Mulat et al. 2015).

More specifically, research in Ethiopia shows that out-of-school adolescents and young people with disabilities have limited access to services, including education, health and legal services (Kassa et al. 2016). They face mobility restrictions due to inaccessible infrastructure and transportation, unaffordable assistive technologies, discriminatory attitudes and safety concerns. Stigma and discrimination, especially among family and community members, are the main challenges for achieving inclusion of adolescents with disabilities (Jones et al. 2018a). They also have extremely limited access to skills training, microfinance and small-scale business support, and employment opportunities that could enable independent future livelihoods. Technical and vocational education and training (TVET) colleges require at least grade 10 completion and are thus out of reach for many adolescents with disabilities, given that most of them are out of school due to limited numbers of special needs schools and the structural and attitudinal barriers to inclusive education (Ibid).

Methods

This report draws on two rounds of mixed-methods research undertaken before the Covid-19 pandemic (from late 2019 to early 2020) and during the pandemic (from November 2020 to January 2021). The research is part of the Gender and Adolescence: Global Evidence (GAGE) longitudinal study, collecting data in rural and urban sites in three regions of Ethiopia (Afar, Amhara and Oromia) and three urban locations, including Dire Dawa City Administration, Batu (formerly known as Ziway) in Oromia Region, and Debre Tabor in Amhara Region. These geographic locations were chosen for their combination of economic and social vulnerabilities (areas with higher levels of food insecurity and high prevalence of child marriage). Their varying distances from the district towns also allowed us to explore the relative importance of distance to services and markets. The three urban settings – Batu/Ziway in East Shewa (Oromia), Debre Tabor in South Gondar (Amhara) and Dire Dawa City Administration – are just as diverse. Differences in their location, cultural and religious diversity, size and migration patterns help to explain the different opportunities, services and threats faced by adolescents with and without disabilities.

The mixed-methods approach contributes to the validity of the study by allowing for triangulation of data and mitigating drawbacks of relying on one method alone. While data collected from these locations may not be generalizable across all of Ethiopia, these six sites are unique and highlight the heterogeneity of cultures in Ethiopia and the varied experiences of adolescents across the country. Adolescents aged 10–12

were initially recruited for participation in the research study in late 2017 and early 2018 using random selection from researcher-generated community household lists. A door-to-door listing that followed a specific protocol was undertaken at each research site and was complemented with purposive sampling. The purposive sampling helped to make certain that the sample was consistently drawn from across sites and to ensure the inclusion of the most disadvantaged adolescents (such as out-of-school adolescents, married adolescents and adolescents with disabilities). This article reports on the second round of pre-Covid-19 quantitative data collected in late 2019 and early 2020. A detailed description of the study design (based on a community listing process) and data collection can be found in Baird et al. (2020a; 2020b) and the surveys and qualitative research instruments are available on the GAGE website.¹²

Quantitative data collection for the pre-Covid-19 survey took place through face-to-face interviews with trained enumerators. During Covid-19, virtual surveys (telephone) were conducted using tablets and computer-assisted telephone interviewing software (SurveyCTO). For both rounds of data collection, survey instruments covered topics on adolescent wellbeing, with separate surveys for the adolescent and their primary female caregiver (PFC) or another knowledgeable household member when the PFC was not available. The survey locations were the same as the pre-Covid sample, but respondents from Afar were not included in the telephone surveys since most households lack phone numbers and connectivity. Questions in the survey covered six capability areas, including education, health, bodily integrity, psychosocial wellbeing, voice and agency, and economic empowerment. Telephone surveys were adapted to limit potentially sensitive topics that adolescents might not have been comfortable to discuss over the phone, and also given the challenges of ensuring privacy for the respondent in phone rather than face-to-face interviews.

For the post-pandemic-onset data, a first round of qualitative telephone interviews was undertaken from April to June 2020 with 86 adolescent girls and 84 boys from four urban sites (Debre Tabor in Amhara region, Batu in Oromia region, and Dire Dawa City Administration) and in six rural communities across South Gondar, Amhara region, East Hararghe, Oromia region and two pastoralist communities in Zone 5 of Afar region. The aim was to capture diversity in the short-term educational response to Covid-19 and related education and learning outcomes. The sample also included a subset of the most marginalized adolescents such as those with physical and visual impairments, out-of-school adolescents, and married adolescents. These findings were triangulated with 27 key

¹² See www.gage.odi.org/publications
<https://www.gage.odi.org/publication/ethiopia-round-2-survey-2019-2020/>
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<https://www.gage.odi.org/publication/gage-baseline-qualitative-research-tools/>.

informant interviews with community leaders, teachers and school principals, and local government officials. A second round of qualitative data was collected in November and December 2020, when the same subset of adolescents and key informants interviewed during the first round were re-interviewed by telephone.

All data collection activities were conducted in the relevant local languages (Afaan Oromo, Amharic or Somali ¹³). Enumerators interviewed respondents of the same sex and were trained to discuss potentially sensitive topics in ways that made the respondent more comfortable. Some questions about violence and sexual activity were not included in the second round as enumerators were not able to ensure that respondents had complete privacy during the phone interviews. Ethical approvals were obtained from the George Washington University Committee on Human Research, Institutional Review Board (071721), the Overseas Development Institute Research Ethics Committee (02438) and the Ethiopian Public Health Institute and regional bureaus of health in Ethiopia. In line with ‘do no harm’ research ethics principles, during the phone survey, local field facilitators were trained in Covid-19 preventative measures so as to ensure that the interviews were carried out safely for both the interviewee and the researcher. These included keeping a safe distance, use of hand sanitizers and face masks. During the interview, the enumerators checked Covid-19 protocols were properly implemented by respondents.

Sample

GAGE’s Ethiopian pre-Covid quantitative sample for this report includes 434 adolescents with identified functional disabilities ¹⁴ and 7,092 adolescents without disabilities as well as their caregivers (see Table 1). The quantitative sample was divided into two cohorts: younger adolescents aged 12–14 and older adolescents aged 15–19. The quantitative sample during Covid includes 207 adolescents with disabilities and 2,859 without. While the data analyzed for this paper is part of the longitudinal sample, a cross-sectional analysis was used to understand the differences between those with disabilities before and during the pandemic.

Qualitative core adolescents were purposefully sub-sampled from the quantitative sample (Table 2). The qualitative sample also purposely included the most marginalized adolescents such as married girls, adolescents with disabilities and out-of-school adolescents.

¹³ Somali was used in interviews in Dire Dawa city administration.

¹⁴ This is the terminology used by the Washington Group questions which are now the global standard for surveys on disability.

Table 1: Quantitative sample

		Overall	Female	Males	Urban	Rural
Before Covid	Adolescents with disabilities	434	242	192	152	282
	Adolescents without disabilities	7,092	4,086	3,005	1,835	5,257
During Covid	Adolescents with disabilities	207	98	109	97	110
	Adolescents without disabilities	2,859	1,585	1,274	1,505	1,354

Table 2: Qualitative sample

	Research type	Site	Girls		Boys		Key informants	Total
			Young	Old	Young	Old		
Before Covid	Midline	Rural	11	6	10	5	19	51
		Urban	2	6	-	5	16	29
	Participatory	Rural	1	-	-	-	-	1
		Urban	-	23	-	24	-	47
After Covid	Participatory	Rural	1	-	2	1	5	9
		Urban	1	11	-	15	21	48
	Total		27	52	20	57	93	249

Data Analysis

The analytic approach uses ordinary least squares (OLS) models to identify differences between adolescents with disabilities and those without identified disabilities for indicators on education, violence, mental health and stress, and livelihood outcomes. The models control for the age of the adolescent and for urban or rural residence. Robust standard errors are clustered at the enumeration area level. Findings show heterogeneity by gender, and differences highlighted in the text are significant at a $p < 0.10$ level. Quantitative analyses were conducted on STATA 15.1.

The quantitative findings were triangulated with the qualitative findings, conducted on translated interview transcripts coded using the qualitative software package MAXQDA and based on a thematic codebook that follows adolescent wellbeing domains. Debriefing sessions to discuss emerging themes from the data collection helped to ensure the codes have captured country-specific issues. During qualitative data analysis, we prioritized themes that resonated across the cohort or specific subgroups of adolescents; the selected quotes are used to illustrate these insights.

Measures

The GAGE survey follows the Washington Group definition to define disability in six core functional domains: seeing, hearing, walking, self-care, cognition and communication (Washington Group on Disability Statistics 2020). We include in our definition adolescents who have a functional difficulty in any of these domains, as well as those that have an assistance device that resolves a functional difficulty for seeing, hearing or walking. In this analysis, adolescents with disabilities were defined by being in the disability group at the time of listing or during the midline data collection before Covid. Analysis was, however, not disaggregated by disability type. For adolescents aged 14 and under, the adult PFC responded to the questions about functioning on their behalf.

Findings

Our findings focus on the experiences of adolescents with disabilities compared to their peers without disabilities, before and following the onset of the pandemic. By comparing these two groups of adolescents, we highlight some of the differences in outcomes that may be influenced by differential access to services. The focus of the comparison is on education and learning, livelihoods and access to social protection, and psychosocial wellbeing, paying particular attention to gender differences.

Association of Disability Status and Education

Pre-Covid Onset

Our pre-Covid findings paint a mixed picture about the educational aspirations of adolescents with disabilities. While the survey findings point to lower likelihood of aspiring to secondary education among girls and boys and their caregivers, the qualitative findings underscore adolescents who have managed to secure support from more inclusive education services are increasingly aspiring to further education and professional careers. However, the findings point to a disconnect between aspirations and education enrolment, with young people with disabilities, especially girls, significantly less likely to be in education than their peers without disabilities prior to the onset of the pandemic.

Table 3: Association of adolescents' disability status and education outcomes, pre-Covid¹⁵

Outcome	Girls			Boys		
	Mean for those w/o disabilities	Coefficient	p-value	Mean for those w/o disabilities	Coefficient	p-value
Enrolled in school during most recent session	0.664	-0.065	0.077	0.783	-0.120	0.001
Highest grade attended (0–15, (KG)=1, Univ=15)	6.196	-1.189	0.000	6.566	-1.514	0.000
Adolescent aspiration for highest grade (0–15)	13.252	-0.489	0.072	13.789	-1.079	0.001
Adolescent aspires to attain at least some secondary school (or higher)	0.891	-0.099	0.001	0.915	-0.147	0.000
PFC aspires for adolescent to attain at least some secondary education	0.962	-0.043	0.135	0.982	-0.049	0.079

Aspirations

Our findings in Table 3 highlight significant differences in educational aspirations among adolescents without disabilities and those with disabilities. Among girls (when controlling for urban or rural location and age of respondent), 89.1% of those without disabilities aspire to attain at least some secondary education, whereas girls with disabilities are 9.9 percentage points less likely to aspire to the same. Among boys with disabilities, the gap is even larger: compared to their peers without disabilities, they are 14.7 percentage points less likely to aspire to attain some secondary school education. In terms of PFC aspirations for their adolescents, we found no statistically significant difference among PFCs of adolescent girls with disabilities compared to PFCs of girls without disabilities. PFCs of boys with disabilities were 4.9 percentage points less likely to aspire to secondary education or higher compared to PFCs of boys without disabilities (98.2%).

Although discrimination at school and in the community were common themes that dampened the educational aspirations of adolescents with disabilities, our qualitative findings highlighted that a significant number of young people who had managed to secure an education aspired to further education and professional careers. As one 16-year-old girl with a disability from Debre Tabor, South Gondar, explained: *“I want to be a civil servant employed in government offices, because I want to live on my own*

¹⁵ Regressions are OLS models with disability status as the independent variable, controlling for the adolescent's age and urban or rural location. Robust standard errors clustered at the enumeration area level.

because I am not different from or inferior to others". In fact, adolescents' own vulnerabilities were often key drivers of their aspirations, leading them to seek careers that could help others facing similar challenges. A 17-year-old girl with a disability from Debre Tabor, South Gondar, noted that she *"needs to be a doctor ... to give support for those who have physical disabilities"*. Similarly, another 17-year-old girl with a disability from Batu, East Shewa, explained that *"I want to become a teacher, since I want to support individuals with a hearing disability"*.

Enrolment

Girls with disabilities were 6.5 percentage points less likely to be enrolled in school than their peers without disabilities, while boys with disabilities were 12 percentage points less likely to be enrolled than boys without disabilities. However, it is important to note that the overall rate of girls who were enrolled was significantly lower than that of boys, 66% compared to 77.6%. In terms of highest grade attended, girls without disabilities had reached a mean grade of 6.2 whereas girls with disabilities had attained, on average, 1.2 grade levels less. Among boys, those without disabilities had attained a mean grade level of 6.6 whereas boys with disabilities had attained 1.5 grade levels less (see Table 3).

Our qualitative findings suggest three reasons for lower enrolment rates among adolescents with disabilities. First, rural schools often cannot accommodate them; infrastructure and curricula are not adapted; and teachers have no training in educating children with special needs. As the mother of a 16-year-old boy with a physical disability in Community A (Zone 5) explained, *"Teachers tried to help him a lot, but he could not stay in the classroom for a long time, and also he couldnot listen and learn attentively like other children"*. Second, many parents, mindful of the stigma that surrounds disability, choose not to send their children to school, in order to keep them safe. *"I advised her that children may hit her and pressure her to stay at home"*, recalled the mother of a 10-year-old deaf girl from Community I (East Hararghe). *"My mother worries a lot... whenever I leave home and go to places"*, added a girl with a physical disability (also aged 10) from Community D (South Gondar). In this respect, parents' fears are not unfounded, as many adolescents with disabilities are bullied in school until they drop out. The mother of a 15-year-old girl with a communication disability from Community D (South Gondar) described her daughter's experience: *"She was going to school. But when her heart was bright, her mouth was tied. When others were reading, and when she was trying to read, she could not read well and others would laugh at her. Then she left school."*

Progress is being made, however, especially in South Gondar. Enrolment figures have increased in recent years, according to research participants, because special needs schools have slowly been expanding from cities

into rural towns. *"I immediately began once the special needs education programme was opened"*, stated a 16-year-old girl with a visual impairment attending fourth grade in Community C (South Gondar). Adolescents attending these schools were largely enthusiastic about their teachers. *"They answer all my questions if they know the answer and if they do not, they ask their friends and get back to me,"* reported a 17-year-old blind girl attending a special needs school in Debre Tabor. Some young people with disabilities felt that they were being transitioned into mainstream classrooms too soon and with too little support. This means that even those who had been learning well were beginning to fall behind, as an 18-year-old boy with a hearing disability in Batu explained: *"Compared to lower grades, the work is getting tough from grade 5 to 6 and from 6 to 7, it keeps getting tough ... I am trying hard to attend school, I am working hard. But since the teachers do not know any sign language, understanding becomes tough for me."* Adolescents with disabilities who had been integrated into mainstream schools emphasized that their learning challenges are exacerbated by their peers, who are often so loud and rowdy that it is difficult for them to hear or even see the teacher. *"Grade 4 was better ... the students do not disturb,"* explained a 14-year-old girl with a hearing disability from Debre Tabor.

Post-Covid onset

In Ethiopia, the challenges of school closures emerged as especially difficult for young people with disabilities. Among adolescents enrolled in any form of education (formal or informal) prior to the pandemic, 15% of those with a disability were using the internet, television (TV) or radio to continue learning, compared to 22% of adolescents without a disability. Among adolescents with disabilities who were previously enrolled in formal school, less than 1% reported using the Ministry of Education's online programming as their primary method to continue learning, compared to the already low 2.5% figure of adolescents overall. Girls with disabilities were significantly less likely to continue learning while school was closed, though for boys there was no difference in this regard between those with disabilities and those without. While 22.1% of girls without disabilities faced challenges in continuing to learn when schools were closed, having a disability was associated with a 15.3 percentage point increase in reporting challenges. This gap is also seen among boys: 34.3% of adolescent boys without disabilities faced challenges continuing to learn during school closures, and having a disability was associated with a 13.1 percentage point increase.

Table 4: Association of adolescents' disability status and education outcomes, post-Covid onset¹⁶

Outcome	Girls			Boys		
	Mean for those w/o disabilities	Coefficient	p-value	Mean for those w/o disabilities	Coefficient	p-value
Returned to school when school reopened (among those enrolled before Covid)	0.926	0.003	0.926	0.939	-0.002	0.947
Currently enrolled in school (among those enrolled before and school is open)	0.798	-0.015	0.753	0.903	0.021	0.495
Doing something to continue learning during school closures (among those enrolled before Covid)	0.777	-0.120	0.031	0.796	-0.003	0.950
Faced challenges to continue learning when schools were closed (among those enrolled before Covid)	0.221	0.153	0.007	0.343	0.131	0.012
Family provided support for formal school during closure (among those enrolled before Covid)	0.532	-0.069	0.226	0.599	-0.119	0.018

More positively, adolescents with a disability who were enrolled in school prior to the pandemic were just as likely as their peers without a disability to receive family support for learning during school closures (58%). There were also no significant differences in the percentage of adolescents who returned to school when schools reopened, with 93% of students with and without disabilities returning, likely underscoring the importance that adolescents with disabilities accord schooling once enrolled. However, it should be noted that the percentage of students enrolled in school before Covid in the telephone sample was higher than in the face-to-face sample and survey before Covid, indicating that adolescents in school were easier to reach by phone and so overall less vulnerable.

Our qualitative research also highlights that adolescents with and without disabilities both faced difficulty in following up their education during school closures. This is particularly problematic in rural areas where uptake of remote learning is more difficult due to lack of access to

¹⁶ Regressions are OLS models with disability status as the independent variable, controlling for the adolescent's age and urban or rural location. Robust standard errors clustered at the enumeration area level.

technological devices and social media. This is illustrated by a comment from a *woreda* (district) education official in East Hararghe, who said:

There is education given by TV, but our students do not have TV since they are living in rural areas. There is also radio education that our students from rural areas cannot access because they do not have it. There are books sent by telegram, but we are not printing and delivering them to students as they are in PDF format. There are a lot of problems... Most students from rural areas do not have a mobile phone. There is no education given online.

Students with disabilities reported feeling somewhat forgotten in relation to online remote learning. As one girl with a visual impairment from South Gondar (Amhara), explained:

It is hard for special needs people like us. It is easier for people with no sight problem—they can copy and read any material they want. For us, it is all about listening to the teacher and trying to remember what he has said. Sometimes we ask other students to read it to us to study for examinations. Now, there are no students to read to us.

Disability Status and Livelihoods: Household and Adolescent-specific

Pre-Covid Onset

Employment

Quantitative findings show that before Covid, across those with and without disabilities, 68.4% of adolescents lived in a household with a parent who was employed as a wage earner, including self-employment such as farming or selling agricultural products at market. There was no significant difference between adolescents with a disability and those without in terms of household participation in paid labour. In regards to adolescent employment, 14.8% of girls without disabilities reported having done paid work in the past year. Having a disability made the likelihood of having done paid work 4.2 percentage points lower. A similar trend is seen for boys, though more boys without disabilities participated in paid work (20.3%) than their female counterparts.

Our qualitative findings similarly underscore that employment opportunities, even in the informal sector, are very limited for adolescents with disabilities, especially those who have not had access to specialist education, and are often only secured through support from neighbours. The following quote from an 18-year-old adolescent girl in South Gondar reflecting on the limited opportunities that a girl with a hearing impairment in her neighbourhood faces illustrates this:

My neighbour [an adolescent girl with a hearing impairment who is an age-mate of the narrator] works alongside the people in the next-door compound ... She told us that she was going to start selling tella [traditional alcohol], by watching what other people were doing. We told her that she would not be able to do it and make herself understood But for 10 birr [the price of a drink in local currency] she shows you her tongue as it is red [the same sound as the word for the price], for five birr she will show you the hand with her five fingers Sometimes for neighbours she also prepares them injera [traditional bread] She does not do this regularly. It is only sometimes, when people ask her, when they are busy with other things.

Similarly, a 19-year-old adolescent boy with a physical disability studying in a special needs education class noted that he buys exercise books in bulk prior to the beginning of the academic year from a local merchant who is supportive of students with disabilities and this helps him to supplement his meagre education stipend:

I sell exercise books each September.... I buy exercise books and sell them to the students.... The shopkeepers sell to us at a discount and we sell them on in the open market ... I saw others doing it and followed suit as there are not many options to generate an income ... It makes an OK profit.

Access to social protection

In Ethiopia, the Productive Safety Net Programme (PSNP) aims to reduce food insecurity among the most vulnerable households. Overall, 25.1% of households in the sample had ever benefited from the PSNP, with no significant difference between households with a boy or girl in the sample. There was also no significant difference between girls with disabilities and those without. For boys, 26.4% without disabilities lived in a household that benefited from PSNP, while having a disability was associated with a 7.7 percentage point increase in living in a household with PSNP (see Table 5).

Table 5: Association of adolescents' disability status and livelihood outcomes, pre-Covid onset¹⁷

Outcome	Girls			Boys		
	Mean for those w/o disabilities	Coefficient	p-value	Mean for those w/o disabilities	Coefficient	p-value
Household (HH) has ever benefited from the PSNP	0.243	0.030	0.346	0.264	0.077	0.047
HH participates in paid labour, including self-employment	0.692	0.006	0.886	0.665	0.032	0.485
Adolescent has done paid work in the past year	0.148	-0.042	0.076	0.203	-0.053	0.034

Our qualitative findings indicate that Ethiopian adolescents with disabilities have extremely limited access to the training and microfinance programmes and employment opportunities that would support independent futures. As stated earlier, TVET courses require 10th grade completion, which is not possible for most young people with disabilities given the limited availability of special needs education. Moreover, due to the stigma surrounding disability, young people with disabilities are not generally encouraged or supported to consider employment. As a special needs teacher in Debre Tabor noted: *“Even their family does not consider them as productive, instead they consider them as dependent.”*

For adolescents with disabilities, access to social protection is also highly limited. Families are not prioritized for PSNP support, even though disability often entails higher costs (for medication, transport, specialized nutrition, education materials and assistive devices, etc.). Also, although some adolescents with visual and hearing impairments receive a stipend to partially offset their cost of living while they are studying at urban special needs schools, the amounts are low (200–350 birr per month, depending on the type of impairment), not available for those with physical disabilities, and can be co-opted by caregivers for general household use.¹⁸

As a result, many adolescents with disabilities are compelled to balance school with work or, in some cases, begging. Parents in rural areas often do not (due to discrimination) or cannot (due to poverty) provide additional support. A 16-year-old girl with a visual impairment from Debre Tabor, who receives a small stipend to attend education, explained that: *“I want to earn some money and put myself through school. I am now living*

¹⁷ Regressions are OLS models with disability status as the independent variable, controlling for the adolescent's age and urban or rural location. Robust standard errors clustered at the enumeration area level.

¹⁸ The stipend is provided by the Ministry of Education from the Amhara regional government

on people, so I want to be independent, I want to work and change my life". Similarly, a 17-year-old boy with a physical disability in Debre Tabor, who runs a poultry business, explained that his family is poor and that "they do not have the capacity to support me, so I support myself".

Post-Covid Onset

Our findings highlight that the economic impacts of the pandemic were significant at both the household and individual adolescent levels, and that stepped-up access to social protection was largely not available. Households with an adolescent with a disability were more likely to report not being able to buy essential items over the past week compared to households with non-disabled adolescents (see Table 6). Although 68.3% of households with girls and 66.3% of households with boys reported being able to buy all essential items, households with girls with disabilities were 9.5 percentage points less likely to be able to buy essential food items, and households with boys with disabilities 13.7 percentage points less likely. The qualitative findings underscored that young people with disabilities who were already very precarious economically are facing additional financial strain during the pandemic. An 18-year-old adolescent boy with a visual impairment from Debre Tabor explained his experience as follows:

Because of the ban on transportation [due to the pandemic-associated lockdowns] the prices of food have gone up; peanuts were 10 birr and now they cost 15 birr. Grain was 20 birr and now it is 25 birr. The impact has been critical, very critical for us [youth with disabilities] ... It is good for the reduction of the spread of the disease but it has a lot of impacts on us.

As for loss of household employment during Covid, at the time of the survey, there were no significant differences between households of adolescents with disabilities and those without, though 24.9% of households reported losing employment temporarily or permanently since the start of the pandemic. While more households with boys (48.8%) reported losing income since Covid began compared to households (37.2%) with girls, there were no significant differences between households with adolescents with disabilities and those without.

For girls and boys alike, there were no differences between those with disabilities and those without disabilities in terms of doing current paid work or reporting having done paid work before Covid. Only 1.8% of the sample reported that the time they spend doing paid work outside of the household had increased since the onset of Covid restrictions in March 2020, likely because there were contracting rather than expanding labour market opportunities.

The qualitative findings, however, suggest that adolescents with disabilities who often rely on self-employment due to lack of other employment options may have been especially negatively affected due to reduced mobility and the closure of street markets. An 18-year-old adolescent boy with a hearing impairment from Ebenat noted:

Since coronavirus there has been a decrease in the number of customers and in demand. It has really interrupted my work ... people are trying to avoid contact with others as that is one of the corona prevention methods My handcrafts were affected a lot Before corona there were many women who took my handcrafts but during that time, they all stopped buying them.

While there are no differences between those with disabilities and adolescents without disabilities living in households that have ever received PSNP for girls, boys with disabilities are 6.6 percentage points more likely to live in a household that has received PSNP compared to those without disabilities. The drop in households that have ever received PSNP from the pre-Covid sample to the post-Covid-onset phone survey sample again indicates a major difference in the level of vulnerability between the two samples.

The qualitative findings revealed that for adolescents attending school, social protection for education programmes were discontinued, leaving adolescents with disabilities highly vulnerable. A 19-year-old boy with a visual impairment from Debre Tabor explained that:

Previously, they [the regional government] were giving us 350 birr per month for attending school but since the closure of schools [in April 2020] the payments were halted We also get the same amount per month from SOS [an NGO] but they also stopped paying in September ... They gave no explanation. It just wasn't in our accounts It is very challenging Some students are going back home to their rural villages as they cannot survive here like this ... but I do not have that option.

Table 6: Association of adolescents' disability status and livelihood outcomes, post-Covid onset¹⁹

Outcome	Girls			Boys		
	Mean for those w/o disabilities	Coefficient	p-value	Mean for those w/o disabilities	Coefficient	p-value
Household (HH) has ever benefited from the PSNP	0.114	0.049	0.198	0.123	0.066	0.094
HH lost employment permanently or temporarily due to Covid	0.274	0.071	0.134	0.210	0.039	0.333
HH lost at least some income due to Covid	0.370	0.068	0.174	0.482	-0.006	0.894
HH able to buy essential food items in past 7 days	0.683	-0.095	0.080	0.663	-0.137	0.012
Adolescent reports paid work before Covid	0.063	-0.029	0.207	0.095	-0.033	0.291
Adolescent has paid work currently	0.045	0.043	0.129	0.109	0.011	0.721
Time spent doing paid work outside the HH has increased since March 2020	0.009	-0.011	0.000	0.027	0.020	0.320

Disability Status and Stress: Household and Adolescent-specific

Pre-Covid

Adolescents with disabilities are at heightened risk of poorer psychosocial wellbeing. For boys and girls in our sample, those with disabilities scored significantly higher on the Patient Health Questionnaire (PHQ) depression scale, which indicates higher levels of depressive symptoms including feeling hopeless or depressed, and little interest or pleasure in doing things (see Table 8). Adolescents with disabilities were also less likely to have a trusted adult or friend, which are measures of resilience and coping. Among girls, 64.5% of those without disabilities have a friend they trust, while this figure is 15.5 percentage points lower for girls with disabilities. These figures are mirrored for boys, with 67.3% of boys without disabilities having a friend they trust, falling by 19 percentage points for boys with disabilities. For girls, there was no significant difference between those with disabilities and those without when it comes to having an adult they trust; for boys, 71.4% of those without disabilities reported having an adult they trust, whereas having a disability was associated with a 13.5 percentage point drop in this measure.

¹⁹ Regressions are OLS models with disability status as the independent variable, controlling for the adolescent's age and urban or rural location. Robust standard errors clustered at the enumeration area level.

Table 7: Association of adolescents' disability status and mental health and stress outcomes, pre-Covid²⁰

Outcome	Girls			Boys		
	Mean for those w/o disabilities	Coefficient	p-value	Mean for those w/o disabilities	Coefficient	p-value
Score on PHQ-8 (0–24, higher score indicates worse mental health)	0.778	1.581	0.000	0.956	0.978	0.002
Has a friend (s)he trusts	0.645	-0.155	0.000	0.673	-0.190	0.000
Has an adult (s)he trusts	0.610	-0.036	0.308	0.714	-0.135	0.000

Our qualitative research findings underscore that these poorer mental health outcomes are probably due to the high levels of stigma, discrimination and social isolation that adolescents with disabilities experience. As one out-of-school, 15-year-old girl who is blind explained, “I do not have friends. I do not tell anyone when I feel sad and have worries. I just keep quiet and sit.” A 17-year-old girl from Debre Tabor (South Gondar, Amhara) with a physical disability emphasized that her anxiety stems from her limited independence and feeling humiliated if she has to ask for help: “I am psychologically depressed because I think I am inferior from my colleagues and I lack something ... Even if people around me support me, the feeling is there. Begging every time for help is very painful.” Parents also recognized the psychological stress on their children and how it impacts their education. The mother of a 15-year-old girl with a communication disorder in South Gondar said:

Last year she had attended education for about three months. Since other students without disabilities laughed at her and teased her, she decided to drop out. The teachers also could not help her to improve her communication with other students. I also did not ask the teachers to do it. She was so frustrated and finally decided to quit it. Now she stays at home doing nothing. She has no choice except sitting idle.

It is important to note that our qualitative findings included cases of positive psychosocial outcomes and strong social connectedness with peers and mentors, especially among those in urban areas where there are more likely to be educational services and other sources of support for adolescents with disabilities. A 16-year-old girl with a visual impairment explained that:

²⁰ Regressions are OLS models with disability status as the independent variable, controlling for the adolescent's age and urban or rural location. Robust standard errors clustered at the enumeration area level.

I was so scared. Everything was blank. I used to cry all the time. But when I see that people in the town live freely, I chased away my fear and stress. I no longer live in fear. I know that I can be just like other people... people who work in the justice bureau, town administration and in a college...

An 18 year old, also with a physical impairment, explained that before, when she lived in the rural village and was out of school, she suffered from social isolation, but going to school and mixing with peers had improved her connectivity to peers: *"No one was accompanying me to play and entertain me. I suffered a lot when I was in the rural area. Since I joined this class, I can play with children and friends that are similar to me. Here, I enjoy life and I feel good because I joined this school..."*

Post-Covid Onset

The qualitative data shows that stigma and discrimination towards adolescents with disabilities has been a widespread phenomenon. This is especially in urban areas, since as a result of social distancing regulations there are more concerns about coming into physical contact with others to assist them to navigate the urban environment. As an older boy with a physical disability from Batu explained:

The spread of the pandemic and the closure of schools have created stress for me. As I spend much of my time at home, I have not attended any educational programme since the closure of schools. Also, other family members want to watch the news when I want to use the TV for education. I am frustrated by this.

The quantitative data indicates that the pandemic may have had a greater negative association with the mental health of adolescents with disabilities compared to their non-disabled peers. As seen before Covid, the PHQ-8 scores of adolescents with disabilities continue to be higher, indicating their higher levels of depressive symptoms. Our findings on mental health after the onset of Covid highlight the disparities between boys and girls with disabilities and their peers without disabilities. Boys with disabilities are more likely to be completely or moderately worried or anxious as well as scared or fearful of Covid-19. Whereas 38.5% of boys without disabilities reported being completely to moderately scared about Covid, having a disability was associated with a 10.5 percentage point increase in being scared or fearful about Covid. Among girls, there was no difference between those with disabilities and those without disabilities on this measure.

For boys, those with disabilities reported receiving less support from their families than those without disabilities. They were also less likely to report receiving more support from their families. Of boys without

disabilities, 17% reported receiving more support during Covid than before, but having a disability was associated with a decrease of 7.8 percentage points on this measure. Fewer girls reported receiving more support than did boys, but among girls there was no significant relationship between those with disabilities and those without.

Table 8: Association of adolescents’ disability status and mental health and stress outcomes, post-Covid onset²¹

Outcome	Girls			Boys		
	Mean for those w/o disabilities	Coefficient	p-value	Mean for those w/o disabilities	Coefficient	p-value
Total score on PHQ-8 (0–24)	0.570	0.811	0.001	0.647	1.068	0.000
Completely or moderately scared/fearful about Covid	0.343	0.012	0.813	0.385	0.105	0.034
Completely or moderately worried/anxious about Covid	0.290	0.035	0.481	0.295	0.134	0.006
Receives less support during Covid	0.096	0.060	0.117	0.089	0.084	0.024

Conclusions and Policy Implications

Our findings from before and after the onset of the Covid-19 pandemic highlight that while recent investments in special needs education services have made a critical difference in terms of access to formal education for adolescents with disabilities, these services are characterized by significant quality deficits, including inadequate teacher training, a dearth of adapted teaching materials and infrastructure, and under-investment in follow-on inclusive education services (grades 5 and beyond). These challenges are compounded by inadequate social protection to address the economic barriers to education service uptake, and a dearth of inclusive adolescent/youth- and disability-friendly psychosocial services.

We conclude by reflecting on context-specific and cost-effective entry points for strengthening inclusive services for adolescents with disabilities in Ethiopia, in line with international commitments enshrined in the UN Convention on the Rights of Persons with Disabilities to “*enjoy all human rights and fundamental freedoms*”. In general, we concur with Sakellariou et al. (2020), who argue that a twin-track approach is required whereby young people with disabilities are considered in mainstream policy responses to the pandemic as well as in disability-specific policy, including with regard to education, psychosocial support, livelihoods

²¹ Regressions are OLS models with disability status as the independent variable, controlling for the adolescent’s age and urban or rural location. Robust standard errors clustered at the enumeration area level.

support, and protection from violence and abuse. The following are priority actions to be undertaken by government stakeholders together with the support of civil society actors and development partners.

- Ensure that adolescents and youth with disabilities who have returned to school receive adequate support through catch-up initiatives, and undertake targeted outreach to make sure that young people who were enrolled prior to the pandemic are able to return.
- Learn lessons from the period of school closures and experience with distance learning to invest in the development of disability-friendly distance learning approaches. Because many young people with disabilities do not have access to a TV or the internet to access online learning programmes, it is important to provide other options. Providing recorded lectures on memory cards that can be used on mobile phones is one example of good practice that could be scaled up (see Emirie et al. 2020).
- Strengthen awareness-raising efforts targeting parents, moving beyond general messaging about the value of education to include more practical ways that parents can support their children with disabilities to access education. This should include messaging about the importance of education for all young people, and provide information and referrals to appropriate education facilities depending on a child's disability type and needs.
- Invest in psychosocial support services (online and in-person), including through social workers and youth volunteers, as part of a broader package of social support. Adolescents and youth with disabilities have been particularly affected by the psychosocial impacts of the pandemic, especially social isolation and trauma related to sexual violence and stigma. Work with families and relatives of young people with disabilities to encourage them to understand the interests and constraints facing those young people. Create opportunities for youth with disabilities to start to reconnect with peers so that they can interact and share experiences, which will help tackle stress and anxiety.
- Rapidly scale up the urban PSNP and ensure that young people with disabilities are targeted, including those who are attending school and who are dependent on educational stipends that are discontinued when schools are closed. Given the high levels of vulnerability experienced by many young people with disabilities during the pandemic, it is critical when scaling up the urban PSNP to give adequate weighting to disability status as an eligibility criterion, especially given heightened mobility challenges during the pandemic. The PSNP should be modified so that it can flexibly adapt to tackle the effects of unexpected shocks, such as Covid, especially as they impact adolescents with disabilities. Additional

support could include an increase in the stipend for adolescents with special needs.

- Establish guidance for service providers, community leaders and families on how to support young people with disabilities in a safe, socially distanced way. Adolescents and youth with disabilities in urban centres where social distancing is enforced are facing challenges in receiving sufficient support to ensure their safe mobility, due to limited awareness among the community, and discrimination and stigma. Such guidance should be included in public health communication around Covid-19 prevention, alongside messaging about tackling stigma against persons with disabilities and other disadvantaged groups. Information in accessible formats, including braille, and TV broadcasts accompanied by sign language interpreters, could also enhance outreach to a wider group of youth with disabilities.

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‘Recognition’ Status of Ethiopian Sign Language and the Deaf in Key Legislations: A Critical Review from Linguistic Human Rights Perspective

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Abstract

The main objective of this study is to explore the status of the Ethiopian Sign Language (EthSL) in key legal and policy documents in a country where the recognition status of the language and its users have been debatable. To identify, in detail, implicit and explicit recognitions granted and/or missed in the documents, interpretive policy analysis is used as a method. Using Linguistic Human Rights (LHRs) approach as a framework, the purposely selected documents were examined critically. It is found from the review, there is no explicit recognition granted for EthSL as a language in its own rights at Federal or Regional constitutions and other policies, including the new FDRE Language Policy. None of these official documents also determined EthSL to be a working language, language of education, Mother Tongue/primary language of Deaf children, or community language. The educational and disability policies and plans recommend using sign language, however not EthSL, in various contexts primarily as an assistive mechanism and communication tool. Further, language rights as a human right issue in the case of the Deaf is not promoted and protected in the documents adequately. Lack of recognizing the linguistic identity of EthSL users and their human rights have a negative effect on their dignified life, which requires attention in future policy formulations.

Keywords: *Ethiopian Sign Language (EthSL), Recognition, Linguistic Human Rights (LHRs), Deaf, Linguistic Identity, Language Policy and Planning*

Introduction

Sign languages (SLs hereafter) are visual-spatial languages primarily used by Deaf²³ people. It has been more than half a century since linguistic studies accepted SLs as ‘full-fledged’ languages with similar

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²³ The common trend of using Deaf (with a capital ‘D’) to refer to the sociolinguistic community whose preferred language is sign language and *deaf* (with small ‘d’) to refer to persons with hearing impairment but not members of the language community is followed in this paper.

complexity, comparable structural features, and function with spoken languages (Stokoe 2005). Yet, the long due misconceptions and doubts to accept it as ‘real’ language persist (Johnston and Schembri 2007). Many do not recognize the difference in SLs across countries or within a country. There is also a wide misconception of SLs as the manual representations of spoken languages, even though they are independent languages in their own rights. Others also assume SL as a communication system full of pantomime and gestures with less expressive potential than spoken languages. Despite these, the number of natural SLs discovered by linguists is growing (Ibid). The known online database on languages of the world, Ethnologue (2021) lists 150 distinctive SLs used by different Deaf communities. World Federation for the Deaf (WFD) also claims the existence of more than 300 SLs used by more than 70 million Deaf people worldwide. Ethiopian Sign Language (EthSL) is one of these natural SLs, primarily used by the Deaf community in Ethiopia (Johnston and Schembri 2007). In a multilingual Ethiopia, with 70 plus languages, EthSL is the only signed language; there is no other natural signed language identified in the country (Eyasu 2015).

EthSL users are found interspersed within diverse speech communities. Regardless, except for a few lexical variations, EthSL used by the Deaf community at different corners of the country is mutually intelligible (i.e. users can understand each other) (Eyasu 2015). In terms of the number of speakers (users), EthSL, the *De facto* vernacular language of more than five million Deaf people (WHO 2021),²⁴ can be counted among major languages spoken by millions in the country, such as Afar, Gurage Cluster, and Gamo languages (FDRE CSA 2007), to mention few. Those languages are currently serving as regional or special zone and *woreda* working languages, medium of instruction in primary education, and have official recognition in Federal and/or Regional Constitutions or other legislations at special zone/*woreda*²⁵ levels. On the contrary, EthSL, the *De facto* vernacular language of millions of Deaf people, its *de jure* or official status is still contentious.

Researches indicate SLs are the least recognized minority languages compared to spoken ones in many parts of the world (De Meulder, Murray and McKee 2019). In 2021, World Federation for the Deaf reported only 71 countries acknowledged their national SLs, though in different manners. Cognizant of the purposes official status can serve in legitimizing SLs as true human language and protecting their LR, recognition has been one of the core concerns of the Deaf community internationally (Reagan 2010:157). The details of the demand, priorities, and approaches, however, differ in each country as their specific

²⁴ According to the 2021 WHO Fact Sheet on Deafness and Hearing loss, over 5% of the world’s population has hearing impairment. In Ethiopia, it is estimated more than five million people live with a hearing loss out of 115 million total population.

²⁵ a level of administration lower than zones.

sociolinguistics situation, as well as the existing status of each SLs, differ significantly (De Meulder 2015:498).

Similarly, recognition of EthSL is among the long due concerns of the Deaf community in Ethiopia, though understanding its details and nature requires further examinations. The community has been expressing its demands for recognition in different ways for years. Pieces published on the Magazine of the Ethiopian National Association of the Deaf (ENAD), known as 'Birtat' (means Courage), are among the shreds of evidence.²⁶ The importance of formal recognition of the language, its practical effects on everyday lives of the Deaf people, and related matters have been issues discussed in the magazine. The annual Deaf Week celebrations are other occasions where the community reflects its pressing demands for official recognition. In 2019 Deaf Week celebration, for instance, 'Constitutional recognition for the Right to EthSL' was one of the motos used to show their aspiration. Discussions on social media about recognition also reflect the importance of the issue for the Deaf community in Ethiopia.

On the contrary, it has become common to hear from experts in the area of disability and educational studies and some Deaf people, that EthSL has official recognition in Ethiopia. The growing appearances of sign interpretation in some public domains, including education, is taken as evidence.²⁷ Some also argue EthSL is recognized in the 1995 FDRE Constitution, referring to Article 5 that states "*All Ethiopian languages shall enjoy equal state recognition*", which embraces EthSL too (Pawlos 2017). Eyasu, on the other hand, stating the importance of official recognition and the community's demands, argues the actual status of EthSL is contestable (2015:207).

The arguments on the recognition status of the EthSL therefore need attention and requires critical examination. Thus, this study explored, in detail, officially granted and/or missed recognition for EthSL and its users to resolve the debate and provide direction for future language policy formulation. To that end, it answers the following key research questions: (1) What is stated and/or missed about EthSL and the Deaf, in contrast with other languages and linguistic communities, in the selected legislations? (2) For which functions and domains is EthSL determined? (3) How is EthSL (SL in general) and the Deaf acknowledged? (4) Which LRs are acknowledged officially through the documents and how? (5) What is the implication of the recognition given and/or missed in the LHRs of the Deaf?

²⁶ There are many pieces of stories that deal with demands for official recognition of EthSL and its importance for the Deaf community in Ethiopia in Birtat Magazine published in 2000, 2001, 2003 and 2012 (i.e. till the last edition).

²⁷ Researches indicating the use of SL in various domains including education and media are inadequate, and have several reservations on the inappropriateness of language selection and approaches (Sewalem and Aynie 2016; Eyasu 2015; Elizabeth 2011)

Research Methodology

To scrutinize the actual recognition given for EthSL and its users in detail, a qualitative research approach was employed. Key legal and policy documents on languages in Ethiopia were purposively selected based on a general review conducted on various documents in the area. The selected documents were taken as important because of their significance in language status decisions and practices of the country in the education and disability sectors. Accordingly, the national and regional ²⁸ constitutions were reviewed because they are supreme laws and highly influence decision making on language and related matters. In addition, the exclusive guiding document on language, the FDRE Language Policy (2020), was reviewed in this research. Since education is one of the key issues in LHRs and implicit recognition can be granted in related legislations, FDRE Education and Training Policy (1994) and A Master Plan for Special Needs Education/Inclusive Education (MPSNE/IE) in Ethiopia (2016-2025) was examined. To explore if there is any recognition granted for EthSL and its users in disability-related policies, the National Plan of Actions of Persons with Disabilities (2012-2021) was also scrutinized in the research.

From international human rights instruments, the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) (2006), which Ethiopia ratified in 2010 as part of the law of the land, was selected to compare the national trend with international standards. This legislation was specifically chosen for it is the only binding international law that overtly deals with rights related to SL and language rights of the Deaf, regardless of its disability-orientation, against the paradigm of this study.

Following, Linguistic Human Right (LHRs) is the theoretical framework of the study. It helps put Language Rights (LRs) in the Human Rights (HRs) framework. As Skutnabb-Kangas (2006:273) describes there are LRs that are necessary to attain people's basic needs and live a dignified life. Those language rights should be considered as part of fundamental HRs or taken as LHRs. Unlike other LRs, therefore, no State (or individual or group) is supposed to violate those rights. Most LRs, including rights to exist and be identified as SL users, should be considered as LHRs for the Deaf because it has important implications in their HRs. Trovato also argues the right to SL is the right to have a language, which is fundamental as our thoughts and communication is primarily carried out by our language (2013:410). The importance of SL in access to education, employment, information, and communication are additional reasons that relates with HRs of the Deaf (Haualand and Allen 2009).

²⁸ Currently, the number of Regional States is eleven, following the establishments of, through a referendum, Sidama and Southwest Ethiopia Regional State out of SNNPR. However, the constitutions of these two newly established Regional States are not examined because of lack of accessibility.

Further, the study primarily adopts the Sociocultural Paradigm, which regards Deafness primarily as difference than as deficit or disability. Lane, one of the proponents of this view, states “*Deaf refers to a member of a linguistic and cultural minority with distinctive mores, attitudes, and values and a distinctive physical constitution*” (2008:284). Reagan also argues SL can get a legitimate status to play all functional roles a language can play for its community, beyond means of communication, including shaping their worldview, because it aims at exploring the status of EthSL as a language and LHRs of its users as a language community (2002:51). Following this paradigm, like any sociolinguistic study on languages, this study examined EthSL as a fully-fledged minority language and the Deaf as a linguistic community with distinctive language. It is presumed disability is one aspect of Deaf people’s identity while linguistic identity is among other identities the Deaf community can possess at a time.

Interpretive policy analysis is also preferred as a method of analysis to help uncover hidden meanings and assumptions in the legal and policy statements (Moore and Wiley 2015:154). The interpretation is done considering the sociolinguistic context of EthSL, ideologies about Deafness as well as the general legal, political, economic, and social trends in the country.

Results and Discussions

EthSL in the National and Regional States Constitutions of Ethiopia

Constitutional recognition is one type of explicit legal recognitions for SLs, which is usually considered prestigious and has important symbolic value (Meulder 2015:498). In Ethiopia, the 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution is the supreme law of the country that gives general direction on key issues. Language, as one of the important issues in multilingual Ethiopia, is exclusively discussed under Article 5 of the Constitution. It determines *De jure* status of languages, prescribes functions in key domains, and gives direction on how to manage language use at regional and national levels. Equal State recognition is granted for all Ethiopian languages (FDRE Constitution 1995: Article 5(1)). Amharic is considered as the working languages of the Federal government while Regional States²⁹ determine their respective working languages through their councils.

As explicitly stated in the Constitution, the Federal government acknowledges all Ethiopian languages in equal terms regardless of their minority or majority status. As one of the languages in Ethiopia, EthSL enjoys this recognition, as some argue (Pawlos 2017). However, it is a

²⁹ The Regional States included in this review are Regional State of Afar, Amhara, Benshangul-Gumuz, Gambela, Harari, Oromia, Somali, Southern Nations, Nationalities and People, and Tigray.

common trend to associate the term ‘language’ with spoken languages. Regardless, interpreting the term language in connection with SLs in mainstreamed contexts is rare. What Eyasu (2015) indicates in his research on the sociolinguistics of EthSL substantiates this argument. He explains many people in Ethiopia fail to recognize EthSL as a language. This is also shared by many policymakers (Elizabeth 2011). As a result, EthSL has not mostly been included in language-related discourses and researches.

The generic name ‘language’, in national language surveys, also does not automatically include SL. In the latest National Census report, 70 plus languages are listed as mother tongues of nationals all over the country (CSA 2008:91-92); the list however excluded EthSL. In view of these, it is hard to assume the constitutional article prevails from such pre-eminence and has taken EthSL into consideration in its recognition. On top of that, such covert statements in the Constitution are up for interpretation and hardly promote EthSL vis-à-vis its insecure sociolinguistic status as a language, which comes out of historical discrimination, misconceptions, incorrect attitude, and lack of knowledge.

Cognizant of the widespread assumption on what language means and exclusion of SLs, Article 2 of UNCRPD (2006) states language “*includes spoken and signed languages*”, which legitimizes the inclusion of SLs in language discourses. In the same way, the FDRE Constitution (1995) is supposed to indicate the inclusion of SLs in the term ‘language’ and contextualize the international direction. This may imply continuation of the status quo and exclusion of SLs, which is against the intention of the Constitution to safeguard historically marginalized languages and people.

There are countries that use constitutional recognition to promote their national SLs to challenge the norm. Uganda is one of the few countries in Africa that grant symbolic status for SL and its right to development along with other Ugandan languages (Constitution of the Republic of Uganda 1995:XXIV). Kenya also distinctively recognizes Kenyan Sign Language (KSL) as an official language of the parliament besides Kiswahili and English and symbolically confirms the equality of SL with spoken languages (The Constitution of Kenya 2010: Article 120). The Kenyan government’s responsibility to develop KSL is further declared in the Constitution (Article 54(1)). This makes it a good example of promotion-oriented recognition. In Zimbabwe, SL is one of the 16 official languages, which have high symbolic value (Zimbabwe Constitution 2013: Article 6(1)). All these experiences implicate constitutional recognitions can be granted for SLs in a way that challenges the common trends of exclusion, which is absent in the FDRE Constitution.

Regarding determination of functions, Amharic is the sole working language of the Federal government (FDRE Constitution 1995: Article 5(2)). Accordingly, official communication of the government at the

national level and among regions is carried out in Amharic. At this important statutory language determination statement, a parallel working language with Deaf SL users, who cannot comprehend spoken languages, is not set. Lack of this functional status inhibit access to information and communication for the Deaf in important government activities, besides disregarding the identity attached with EthSL. In contrast to this gap in the Constitution, it is observed, in some government activities, there are attempts to use SL on few occasions. However, as they are not planned and guided, lack of consistency is observed. More importantly, the absence of legislative ground hinders the claim of getting services with own and preferred language officially.

The common counterargument on this constitutional provision is the Deaf can use Amharic for official communication in the same way other non-Amharic language speakers do. The fact that Amharic or any other spoken languages in their primary forms (i.e speech form) can hardly be comprehensible for Deaf people's physiology looks unnoticed. Some also argue they can use written Amharic for communication, overlooking the low literacy rate of the Deaf in Ethiopia because of lack of access to appropriate education (Haualand and Allen 2009). On top of that, writing is not a primary form of language that can fully replace speech or signing. Therefore, it was imperative to select at least one SL that can function as a working language for more than five million Deaf nationals found in Ethiopia.

Lack of clear direction on EthSL at the Federal level further influences the regional Constitutions. While these regional constitutions grant status to certain languages as mandated to make important decisions on languages within their provinces (FDRE Constitution, 1995: Article 5(3)), none of them clearly recognize the existence of EthSL. Based on dominance in the provinces or neutrality to be a common language for various ethnic groups, among other factors, six languages were determined to be working languages in the Regional Constitutions. These are Amharic in Amhara, Gambela, Benishangul-Gumuz and Southern Nations, Nationalities and Peoples Regional State; Afar Af in Afar Regional State; Afan Oromo in Oromia Regional State; Somali in Somali Regional State, Tigregna in Tigray Regional State and Harari along with Afan Oromo in Harari Regional State. Besides, several minority languages are determined to be working languages in special *woredas*. In parallel with the abovementioned languages and others, EthSL or any other SL is not officially defined as a working language, taking no notice of EthSL can function as a working language for Deaf people. This may also imply the doubts regarding the languageness of EthSL still persists.

Accepting SL as a language, recognizing its existence, and promoting its use for official functions, are among the obligations of State parties (UNCRPD 2006: Article 21(b and e)). Accordingly, countries are expected to show a pledge to realize this in national legislations and practices.

Article 30(4) of the Convention also declares the importance of explicitly recognizing the linguistic identity of SL users and the Deaf culture. These articles, however, are not translated to national and regional constitutions. The purpose of legitimizing SLs through official recognition failed to be achieved in the case of EthSL.

One of the collective LHR is the right to recognize and exist as a distinctive community as well as maintain own language (Skutnabb-Kangas 2000). Nonetheless, all the FDRE and Regional States Constitutions do not recognize EthSL as a language and the existence of a signed form of human language in general. EthSL also does not determine to serve in an official function including as working and educational language unambiguously. The working language for the Deaf is also an issue left unsettled in these key documents.

EthSL in the FDRE Language Policy

The FDRE Language Policy (2020) is the first written exclusive policy that gives general direction in language use, development, language rights, and other language-related issues based on the contemporary sociolinguistic context of Ethiopian languages. This policy mentions SL in different sections of the document, unlike the Federal and Regional Constitutions.

Most policies in Ethiopia drive their objectives from the 1995 FDRE Constitution. Despite the absence of direction in the case of EthSL in the Constitution, the Language Policy incorporates an objective on SL. One of its specific objectives indicates preserving, developing, and using languages for development purposes, including sign language (FDRE Language Policy 2020:9). The statement ultimately endorses the existence of a signed form of language in Ethiopia. Despite this remarkable indication, however, there are no tangible activities incorporated in the strategies and implementation plans of the Policy for the achievement of this objective.

As an exclusive document on languages, this policy was supposed to define the term 'language' and what it refers to in the country's context. However, no precise definition is given other than inferring it implicitly in few statements. None of these statements explicitly show that SL is a full-fledged language capable of addressing the common misconceptions. In this regard, De Meulder (2015b:498) suggests granting explicit recognition in language-related legislations to supplement what it missed in other legislations and policies, though this policy hardly serves this purpose.

The policy promoted four additional languages (namely Afan Oromo, Tigrigna, Somaligna and Afar Af), besides Amharic, as official working languages at the federal level (FDRE Language Policy 2020:14); EthSL is

not included again. Consequently, millions of EthSL users are left without explicitly acknowledged working language. The unique sociolinguistic situation of the Deaf community including living in a scattered geographic region and existence of a single sign language across the country should be taken into consideration in this Federal level decision. The statements regarding Regional States' working language are also without direction on EthSL. These are against the international agreement Ethiopia ratified, particularly the UNCRPD (2006 Article 21(b and e), which obliges recognition and promotion of SL use in official settings.

Such omission of EthSL from crucial status determination statements may enrich the argument that EthSL is not actually considered a legitimate language in Ethiopia. Failing to unambiguously determine the only SL in the country, in a Policy that aims at empowering marginalized languages may be seized as confirmation to maintain inequitable language practices regarding EthSL. The constant quest for recognizing EthSL to be a working language accordingly left unanswered, if not ignored. The Ethiopian National Association of the Deaf (ENAD), among other demands, requested the EthSL to be a working language through a letter sent to the House of Federation.³⁰

In a section that dealt with language of education in the Policy, recognition to the right of all nations, nationalities, and people to use their Mother Tongue (MT) or preferred language in education was pronounced (FDRE Language Policy 2020:20-23). In this important section, no policy direction was given regarding EthSL use in education. The framework given is also unlikely to accommodate EthSL as MT of the Deaf since no evidence is found yet to consider the Deaf as a subgroup of nations, nationalities, and people.

Literature indicates the right to MT education is one of the core LHRs, as it is highly linked with the proper linguistic, social, and cognitive development of a Deaf child (Trovato 2013:411; Skutnabb-Kangas 2000:498). To safeguard EthSL as an MT or primary language, explicit enforcing statements are essential in the Policy. Ethiopia has an obligation in this regard as UNCRPD (Article 24(2b)) clearly states the importance of *"facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community"* in the education domain.

On the other hand, the policy mentions SL in relation to mass media and the entertainment industry, as a strategy to maintain multilingualism. It states, *"an appropriate system shall be set up to make the language use of the mass media and the entertainment industries promote multilingualism, including sign language"* (FDRE Language Policy 2020:18). This statement therefore makes an implicit indication of SL as part of the linguistic diversity of the country.

³⁰ An informal conversation with manager of ENAD on March 21, 2021.

However, the doubts reflected about EthSL's position as a language, and the use of the generic term SL rather than EthSL in this statement leads one to believe it is still hardly enclosed as a full-fledged language. Lack of clear direction on how SL shall be incorporated, whether in a form of interpretation or captioning and how to deal with similar topics, reflects there is still a gap in identifying important policy issues related to SL use. These guidelines are critical since SL interpretation have been reported to be poor, and a recent trend in Ethiopia that needs to be addressed (Eyasu 2015). Enforcement and control systems are not indicated, which can address the common problems of lack of maintaining SL interpretation services in the media. As a member State of the UNCRPD, the government has an obligation to make information and communication timely and freely accessible to Deaf citizens via SL (UNCRPD 2006: Article 21).

In the FDRE Language Policy (2020), SL issues are discussed repeatedly in relation to interpretation. Throughout the section dealing with the profession of translation and interpretation (FDRE Language Policy 2020:27), SL got mentioned, though inconsistently as 'Ethiopia's sign language', 'Ethiopian sign language', and 'sign language'. Such inconsistency implies that either no specific SL has been identified in the policy formulation or no language of the Ethiopian Deaf community is assumed. This is among the common pitfalls observed in various policies on language (Wilcox, Krausneker and Armstrong 2012). It is also common to notice that many people and experts in the field are unaware that the proper name of the natural language of Ethiopia's Deaf community is Ethiopian Sign Language; the internationally accepted abbreviation of it is EthSL. Besides, in the statements, more emphasis is placed on the profession and professionals when it comes to translation and interpretation. The importance of providing appropriate training, professional accreditation, and job grading in the civil service are strategies designed to develop the profession. The policy justifies their contribution in knowledge dissemination, language development, and promotion of justice. Though SL gets attention here, important practical concerns such as where, how, for whom, and to what end SL interpretation should be provided are left unaddressed. It should be noted that interpretation is only useful when SL users communicate with non signing interlocutors. It is not, however, always a feasible method of communication, nor is it a perfect substitute to direct SL communication. Interpretation, as indicated in the UNCRPD (Article 9(2e)), primarily ensure accessibility. However, SL serves extra symbolic and identity-related functions for Deaf people, which should be given due consideration (Trovato 2013:410).

The name EthSL appears again in the part dealing with implementation strategies. The need for establishing systems to design programs and measures to train experts who can study and develop the language with modern technologies is stressed in the Language Policy. While this is

noteworthy, there is no explicit mentioning of EthSL on language planning and development.

In general, the FDRE Language Policy (2020), which mentions SL numerous times, is more proactive than the Constitutions. Despite the drawbacks, the implicit indication of SLs can serve as a foundation for better policy formation. The recognition in the existing legislation hardly addresses its dubious status as a language and the misconceptions. Explicit recognition and promotion-oriented legislations are essential for effective protection. Unambiguous determination of the language as official working language and language of education (as MT) are the other important declarations expected from such policies to safeguard LHRs of the Deaf in Ethiopia.

The Status of EthSL in Education and Disability-Related Policies

Granting implicit recognition for SLs in disability and education-related legislation is among the common trends (Muelder 2015). Accordingly, this research examined key policy documents known as FDRE Education and Training Policy (1994), A Master Plan for Special Needs Education/Inclusive Education (MPSNE/IE) in Ethiopia 2016-2025 (2016) and Ethiopia National Plan of Action of Persons with Disabilities (2012-2021), to learn about the status granted and missed for EthSL.

The FDRE Education and Training Policy (1994), the leading policy document in the education sector, is one of the documents expected to recognize EthSL use in the education sector. Yet, the Policy does not indicate SL use in the section that exclusively deals with the language of education (Article 3.5) as well as in the section on students with special needs (Article 3.2.9). Recognizing and promoting EthSL as MT of Deaf children and its value in their education does not receive the same level of attention as it does for other minority languages. In this critical domain, nothing is said about SL use or distinctive linguistic demands of Deaf learners or promotion of their linguistic identity. Obligation Ethiopia agreed to in the UNCRPD (Article 24), which includes using appropriate language in the education of Deaf learners, facilitating SL learning, promoting the linguistic identity of the Deaf, and training appropriate teachers qualified in SL, are not translated to the Ethiopian context in the Education and Training Policy.

Though The FDRE Education and Training Policy provides no national policy guidance, there are few documents that suggest SL employment in the education sector, albeit with weak enforcement. One of those documents is the Master Plan for Special Needs Education/Inclusive Education (MPSNE/IE) in Ethiopia 2016-2025. The Master Plan is an important guiding document that focuses on how to handle the education of learners with various types of special needs, including the Deaf, in order to create an inclusive educational environment. Most

statements mentioning SL indicate that it is a support mechanism to ensure educational access for the 'hearing impaired', rather than a full-fledged language with diverse functionalities (MPSNE/IE 2016:45-48). As a result, no specific SL (such as EthSL) is determined, and the linguistic identity of the users is not recognized (since they are described in terms of hearing impairment rather than users of a language). Furthermore, EthSL is not included in MT education provisions (MPSNE/IE 2016:56). As key document in the domain, it was intended to clarify this issue, though no pronouncement made to protect the LHRs of Deaf children to receive MT education. As a matter of fact, the author has not yet come across any legal or policy document in Ethiopia that explicitly recognizes MT of Deaf children in Ethiopia and related right.

Statements regarding providing access to quality education for all learners bolster the preceding argument (MPSNE/IE 2016:57). They promote the use of undefined SL as a medium of teaching to make education more accessible to 'hearing impaired' students who are classified as learners with special needs due to their preference for SL over spoken language. Except for the Deaf, no other language speakers are recognized as learners with special needs due to linguistic differences and are required to be put in a class alongside speakers of other languages under the guise of Inclusive Education. Of course, the Deaf, like any other student, may have special educational demands that are not related to language. Despite this, treating SL usage as 'special' may imply policymakers' doubts over EthSL as a full-fledged language and disregard for the linguistic identity of the Deaf, whilst other linguistic communities are regarded 'normal'. This is one of the arguments used by opponents of the Sociocultural concept of Deafness to criticize such policies.

The assertion of the Sociocultural Paradigm in this regard is that the norm reference that places Deafness outside of 'normal' cannot be acceptable in this multicultural world since it goes against the norms and values of the Deaf community (Lane 2008). This is a violation of language and cultural rights, as well as LHR (Skutnabb-Kangas 2006) and is frequently observed among many experts who participated in formulating this and other policies.³¹

The Master Plan was intended to provide better policy direction and recognition on EthSL use in Deaf education as a document prepared following the ratification of the UNCPRD and lessons learned from previous strategies in the area. However, it not only lack recognition of EthSL, but also disregards it by implying that there is no distinctive SL in Ethiopia and that the Deaf lack a distinct linguistic and cultural identity.

³¹ This is a regular occurrence to observe; many SNE specialists in Ethiopia express their serious doubts about the languageness of EthSL, for the simple reason that its structure has not been thoroughly studied. However, the fact that it has not been researched has no bearing on its genuine languageness.

Its determination as a language of education is likewise incomplete, as seen by the general tendency of letting the decision without stating when, where, when, and how SL should be used (Hult and Compton 2012). Such approach can lead to inappropriate treatment of the language and negatively affects its employment in education. The orientation of the document can also lead to overlooking the linguistic element, which requires professional interventions, including training of EthSL teachers who have the linguistic knowledge and SL teaching methodologies (i.e. different from Special Needs Education (SNE) teachers) and teaching materials required such as EthSL textbooks (not EthSL Dictionary as it is indicated in the Master Plan).

The Ethiopia National Plan of Action for Persons with Disabilities (2012-2021) is another key document on disability that is formulated as an implementation guide that contextualizes the UNCRPD by the FDRE Ministry of Labor and Social Affairs, a government agency that is legally responsible for implementing the UNCRPD.³² There are certain statements in the Plan that use the term SL, but it is difficult to interpret them as neither explicit nor implicit acknowledgment. Most of the statements with the term SL focuses on determining functions in various domains.

One of the domains associated with SL use is health. Based on the UNCRPD (Article 25 and 26), the Ethiopia National Plan of Action for Persons with Disabilities prescribes employing SL mainly as a rehabilitation and assistive mechanism. SL use accordingly have been contrasted with physical therapy, mobility orientation, other medical treatment, and rehabilitation services. In relation to ensuring access to HIV/AIDS information (Article 23 and 24) as well as for cultural and recreation opportunities (Article 43) for the 'hearing impaired', SL is cited in the document, but not as a language. In the provision related to education and training, again, the use of SL is cited. However, in this important domain, the provisions are unparalleled with Article 24 of the UNCRPD. Its use as a medium of education and promoting the linguistic and cultural identity of the Deaf are core issues in the UNCRPD, while nothing is proclaimed in the Plan, except dissemination of an official dictionary of EthSL and expand special schools for the 'deaf or hearing impaired'. Making SL interpretation and sub-titling are other related statements.

In all statements of the Plan that mention SL, no explicit intent of recognizing EthSL is evidenced, except acknowledging the existence of a sign form of communication. This hardly can endorse and promote EthSL as a legitimate language. Its determination for the functions focuses on ensuring accessibility and accommodating persons with 'hearing

³² UNCRPD Ratification Proclamation No. 676/2010

impairment', not acknowledging the language as a full-fledged language, and promoting the collective linguistic and cultural identity of the Deaf.

Language Rights of EthSL Users

Language Rights (LRs) have emerged as one of the most significant factors in current nation-state language policymaking (Spolsky 2004). Countries can grant either collective or individual rights in their legislations to use, develop, and maintain own language, based on their distinct political settings. While western countries, for example, prioritize individual rights, African countries prioritize collective rights (Skutnabb-Kangas 2006:284).

Most language-related rights granted in Ethiopia are collective rights that can be exercised mainly within a certain territorial area known as Territorial LRs/LHRs (i.e. LRs that are protected within certain territory or within the regions) (Skutnabb-Kangas 2006). Those rights are incorporated as part of democratic rights of the people. The FDRE Constitution (1995:39(2)) explicitly states *"every Nation, Nationality and People in Ethiopia has the right to **speak** [emphasis added], to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history"*. In this statement, there is a tacit notion that language is spoken, as the term 'speak' implies. Consequently, the rights granted are hardly inclusive of EthSL users as they are not speakers of certain spoken languages. On the contrary, the Deaf can be and should be considered, in such provisions, as they fulfill most of the criteria in the definition of the nation, nationality, and people indicated in the FDRE Constitution (1995: Article 39(5)),³³ except not living in a predominantly contiguous territory. As anecdotal evidence and literature prove, the Deaf in Ethiopia has shared language, culture, history, and group solidarity like other nation, nationality, and people (Pawlos 2014:21-55). Accordingly, legislations formulated with a similar view can help to properly address their key issues, as they are mostly related to EthSL. Scholars, in line with this, suggest SL rights and related issues such as its planning and development should be accommodated properly in linguistic studies, then in disability (Hult and Compton 2012:611; Jokinen 2000:210). Therefore, framing the Deaf as a language community can help to better promote their right. In most of the legal documents in Ethiopia, including the Constitution, however, there is no evidence that can confirm they are considered as a language community and their LRs is protected accordingly.

³³ "A "Nation, Nationality or People" for the purpose of this Constitution, is a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory" (FDRE Constitution 1995: Article 39(5)).

The Regional States Constitutions similarly do not grant any proper collective LR that can incorporate EthSL users in their provinces. Some even contain articles that can lead to more discrimination in various domains. For instance, the Amhara and Benishangul-Gumuz Regional State Constitutions (Article 33 and 34 respectively) oblige residents to understand the working language of the Regions to obtain government positions and jobs. This means, since EthSL is not determined as a working language and the Deaf can hardly use Amharic as their primary language, they can be devoid of employment rights in government offices.

The FDRE and Regional States Constitutions also grant indirect individual LR, as a part of safeguarding a person's human rights in certain areas. Article 19 (1 and 2), 20(7), 25 and 38 of the FDRE Constitution and corresponding articles of the Regional States Constitutions promote the rights of nationals to be informed in a language one can understand through interpreters during arrest and in court, to be protected from uneven treatments before the law, and enjoy equal right to vote and to be elected. Subsequently, Deaf persons are protected from discrimination that results from their preference of SL over spoken languages. However, since protection in these articles is not adequate, clear directions with proper interpretation are required to show this declaration subsumes EthSL users.

The FDRE Language Policy under the section that deals with LR, states the following about the rights of 'hearing impaired' nationals under 'other related rights':

Nationals with **hearing impairment** *[emphasis added]* have the right, in their place of habitation, to use the Ethiopian sign language, develop it, communicate and receive information in it from the government, become beneficiaries of appropriate technology for the language, and become entitled to special support from the government to exercise this right (FDRE Language Policy 2021:12).

The good point in the Policy is that it acknowledges the rights to use and develop SL and access information through it from the government. But EthSL users are not granted the right as language community but as persons or people with disabilities. This is a disregard for their collective linguistic identity. The right to SL is also designated as 'other related rights' in parallel with the right to use Braille by the blind. This is influenced by the paradigm, which considers the Deaf primarily as PWDs. The basic problem with LR granted with this orientation is that it cannot support LR's claims properly, as Skutnabb-Kangas (2006) argues. Protection of their LR in a way that can address their particular concerns is still a problem. However, the attempts observed to recognize

their rights in the recent Language Policy (2021) are remarkable, despite its orientation.

Implications of the Status of EthSL in LHRs of the Deaf

Linguistic human rights (LHRs) are a combination of Language Rights (LRs) with human rights (HRs). LR that are considered as LHRs are those rights necessary to fulfill one's basic needs and live a dignified life (Skutnabb-Kangas 2006:273). Not all LR are LHRs. In the case of Deaf (Sign Language Users), however, most LR should be seen as HRs or LHRs. Trovato (2013), Ladd, Gulliver and Batterbury (2003) and others argue the Deaf can get proper protection as a linguistic community when their right to SL is enforced as LHRs. This is because SL is a central element in Deaf people's collective identity and it is the only language Deaf people can acquire easily with their physiological condition or hearing status. As Trovato puts in plain words, *"the right to sign language is not about the right to USE one's language. It is about the right to HAVE one's language, one's first language"* (2013:410). The decision regarding EthSL as MT or primary language in the legislation consequently is a decision on basic LHRs of the Deaf to have and learn their main language or let them without a language.

Unlike hearing children, *"because of their biological differences, Deaf communities do not have the luxury of replacing their own visuo-gestural languages by auditory-based ones. These can only be learned effectively as second, written languages"* (Ladd, Gulliver and Batterbury 2003:14). In relative terms, other minority language speakers have a chance to replace their language (even MT) with another spoken language, unlike the Deaf. Particularly pre-lingual Deaf persons, who become deaf before acquiring a language, can hardly shift from sign to spoken languages. Researchers confirm without sign language acquisition, most Deaf are obliged to live without a language, which has destructive consequences in their life and HRs (Ladd, Gulliver and Batterbury 2003:15). Empirical research (Trovato 2013:411) also indicate that delay or absence of first language acquisition may negatively affect language-related skill developments. Since having a language is crucial for having normal linguistic, social, and cognitive progress, those who are left without it are left from all those. The effect, consequently, is not only on the personal development and HRs of the individual but also on society as a whole. Accordingly, the absence of policies and legal documents, that determine EthSL as MT or primary language of the Deaf can have the consequences mentioned above, though further research is required.

One of the LHRs' concerns is being identified as a linguistic community and accepted positively with that identity (Skutnabb-Kangas 2000:498). The majority of identifications are deficit-oriented and fail to recognize their unique language and cultural identities of the Deaf in Ethiopia.

Hearing impaired, deaf, or Persons with Disabilities are terms used in official documents. Because more focus is given for the impairment than the different linguistic identity, LRs have received little consideration. Lack of such protection may therefore lead to forced linguistic assimilation, which is in violation of their LHRs (Skutnabb-Kangas 2000:498). This can also be a breach of their collective right to exist as a separate linguistic group. For instance, a born Deaf child may be forced to attend a school that does not employ EthSL, unless the child is identified as an EthSL user in the first place. Similar incidents are common and demonstrate practices against LHRs of Deaf children to get access to MT education and maintain their language and distinctive linguistic identity.

Conclusions

EthSL, a vernacular language of the Deaf in Ethiopia, does not get explicit recognition in key official legislations and policies, namely FDRE Constitution (1995), the Regional States Constitutions, and FDRE Language Policy (2020). The policies on education and disability that can grant implicit recognition to EthSL, also do not acknowledge it as a full-fledged language, except for partially bringing SL into policy attention. SL is predominantly considered as a support mechanism that can secure accessibility, not as a distinct language. Accordingly, the legislations fail to serve the purpose of legitimizing EthSL as a true language and addresses problems related to language, which is expected from such documents. Despite the growing concern on the issue, the manner it is referred with the generic term SL, rather than its proper name EthSL, particularly in recent policies, further demonstrates the persisting misconception on its true languageness and its distinctiveness. Lack of clarity and influential official recognition also lead existing trends to continue.

In terms of domain and function determination, lack of statements that can properly enforce EthSL use in key areas, such as MT education, make the legislations insufficient for LHRs protection. Most documents, with disability orientation, focus on, promoting accessibility through signing. These disregards EthSL and its users as a language and language community, respectively. Lack of such recognition, in turn, negatively affects the use of the language in various domains. HR violations Deaf people face partly could be connected to such gaps in the legislations. Though there are issues of the Deaf that should be treated from a disability point of view, it is also useful to prioritize language-related needs of the Deaf for better protection of their HRs through LRs.

Recommendations

Though many people thought that EthSL was officially recognized in Ethiopia, a comprehensive review of major regulations shows otherwise. Lack of understanding the gap between what is assumed and what is occurring at the ground may lead to continuing exclusion of the language and its users from future policy decisions. Thus, putting forward sufficient attention to EthSL and incorporating language specialists in policy formulations is critical. Based on the inadequacies identified, the author suggests, as a vital first step, granting explicit, promotion-oriented recognition of EthSL as a full-fledged language and the Deaf as a linguistic community in all official documents, including the Constitution(s). Protection as a linguistic community is believed to have a better effect in protecting HRs of the Deaf than as PWDs. Besides, devising effective strategies to promote and protect LHRs of the Deaf is the other vital step.

Keeping in mind EthSL and its user's sociolinguistic condition, the sort of recognition required should have the strength and clarity to correct existing concerns and misconceptions, as well as a strong effect on the language practices. As a result, a language policy enforced by binding laws and explicit guidance and determination on where, when, how, and for what domain SL should be used will be important. Certain LHRs, such as the use of EthSL in MT education, should also be prioritized in order to disrupt the current statusquo.

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Muted Online Voices: The Role of the Internet in Amplifying Freedom of Expression of Persons with Disabilities in Ethiopia

Elsabet Samuel³⁴

Abstract

Little is known about the role of the Internet in facilitating the rights of persons with disabilities to express themselves in Ethiopia. The objective of this article is thus to provide insights into the role of the Internet in amplifying the opinion and action of persons with disabilities by scrutinizing Internet accessibility and digital inclusion to exercise their freedom of expression where inclusive policy-making could be a challenge. The article acknowledges access to the Internet in Ethiopia is minimal and the digital divide for persons with disabilities is visible, potentially excluding them from accessing official information, expressing their interests, and fighting against stereotypes they face. This article refers to data from the literature, unstructured interviews with purposively identified persons with disabilities, and an overview of the online engagement of people with disabilities and their associations. It also draws information from a research validation conference in which participants voiced the challenges and prospects for freedom of expression and information of persons with disabilities. The paper argues that the Internet can serve as an effective communication sphere and mode of expression to facilitate meaningful participation of people with disabilities in Ethiopia. The paper further suggests the proposed draft Access to Information proclamation to the Council of Ministers in mid-2021 and Digital Ethiopia Strategy 2025 must recognize the importance of digital technologies to respond to the information and expression needs of people with disabilities.

Keywords: *Freedom of Expression, People with Disabilities, Internet, Digital Divide, Digital Inclusion*

Introduction

With the advent of civil rights protection of persons with disabilities and changes in public policy, the definition of disability moved away from medical to social emphasizing on people being disabled by society rather than by their bodies. Following this definition, disability is a dynamic

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interaction between the medical conditions of an individual and other contextual factors, i.e., physical, social, cultural and legislative. Another approach to disability is in relation to rights. People with disabilities can be recognized as marginalized social groups whose communication needs and rights are dominated by the larger group in the society (Fertsch and Simcox 2016). Combining the two approaches, the social conditions concept emphasizes the stereotypical representation and underrepresentation of persons with disabilities in the media as a major challenge for hindering them from enjoying equal treatment and the right to communication (Fertsch and Simcox 2016; Francise and Silvers 2016).

Underrepresentation in the media, among other social factors, is as a result of the modes of communication used by people with disabilities, which is not the mainstream language in a society, i.e., sign language and Braille (McLeod 2018). This can best be explained through the 'Muted Group Theory', developed by Shirley and Edwin Ardener to explain language as a "*dominant mode of expression*" in societies where there is a "*dominant structure within it*" (Wall and Gannon-Leary 1999:22). The Muted Group Theory notes that individuals must use the dominant mode of expression to communicate with the larger society to gain voice. The concept of 'muted' in this theory, emphasizes on the inability to express one's opinion regardless of time, place and modes of expression (Wall and Gannon-Leary 1999).

Adopting the Muted Group Theory, this article considers people with all types of disabilities as a muted group. Bearing in mind that communication is a fundamental characteristic of humanity, this article attempts to discuss the role of the Internet in protecting the rights of people with all types of disabilities to receive, produce, store and share information (Waltz and Schippers 2020; McLeod 2018; Madans et al. 2011). The Internet potentially amplifies freedom of expression of people with disabilities by creating a real-time communication platform and digital language to be shared with the dominant group. The arrival of digital communication tools and software have contributed to promote the rights of people with disabilities to access information and express themselves efficiently and effectively.

Nevertheless, there is a digital divide observed on patterns of usage and skills of basic access to digital communication technologies, Internet connectivity and other communication devices (Vincent and Lopez 2010). There are challenges in the prospects of the Internet and emerging digital technologies in promoting disability inclusion and the exercise of freedom of expression. The Internet pushed people with disabilities into the "*second-class citizens of the information society*" (McLeod 2018; Scholz et al. 2017; Lazar and Jaeger 2011; Castells 2009). The primary reason for excluding people with disabilities from enjoying the opportunities digital technology provides is the nature of the Internet and its accessibility defined by socio-demographic and technological factors (Scholz et al.

2017; Lazar and Jaeger 2011). Most Internet-based technologies are created inaccessible by persons with differing disabilities (Lazar and Jaeger 2011). For instance, many websites are inaccessible to persons with visual impairment as they lack software applications with speech-output screen readers, while people with hearing impairment are restricted to participate in virtual meetings when it lacks captioning (Lazar and Jaeger 2011). Regardless of the limitations observed in the technological design of the Internet, equal access to the available digital communication platform should be seen as a fundamental component to protect the rights of persons with disabilities to access, produce, store and disseminate information.

This article therefore examines the rights of online freedom of expression for persons with disabilities in Ethiopia whose rights have been thwarted by societal perceptions, lack of access to communication technologies and gaps in laws and policies (Abebe 2019; McLeod 2018). The study argues that digital communication technologies, including the Internet, can provide a sphere of inclusion for persons with disabilities if a conducive legal and policy environment is created, aspiring to build a digital economy. This study utilized unstructured interviews with purposively selected individuals with physical, visual and hearing impairments to understand their experience of using the Internet. The informants were identified based on their active role in promoting the rights of people with disabilities on the Internet. The unstructured interview helped establish rapport with interviewees and obtain information about their personal experiences that inform the analysis in this study.

The article aims to understand the role of the Internet in facilitating freedom of expression and access to information by analyzing existing works of literature and a quick overview of online engagement of people with disabilities. Facebook pages of four disability associations³⁵ were selected for review to support the argument the Internet can serve people with disabilities as a platform to exercise their freedom of expression. Online user-generated data, comments and shares on any issue of interest to people with disabilities were collected from Facebook and Twitter. These platforms are primarily used in Ethiopia³⁶ and have features that help to share website and YouTube links in an interrelated manner. Reflections from persons with disabilities and researchers were gathered from a workshop on the inclusion of blind and deaf students in Addis Ababa University.³⁷ Extracted individual social media posts and

³⁵ These are Ethiopian National Association of the Blind, Ethiopian National Association of Persons with Physical Disabilities, Federation of Ethiopian Association with Disabilities, and Ethiopian National Association of The Deaf.

³⁶ Currently, about 6% of Ethiopians use Facebook ([Facebook users in Ethiopia - January 2021 | NapoleonCat](#))

³⁷ Research validation conference focused on the inclusion of deaf and blind students at Addis Ababa University, organized on July 28, 2021 by the Center for Human Rights.

comments used in this study were edited to protect the identity of speakers.

The Digital Divide in Ethiopia

Accessing credible and up-to-date data about disabilities in Ethiopia is challenging and at times absent. The national census and statistics are outdated, and other national surveys do not include information on disability in general and on access and availability of the Internet and related digital communication devices for people with disabilities in particular.³⁸ Recent data from Central Statistics Authority estimated that about 8 million people in Ethiopia live with some form of disability, among which around 2.2 million people have severe disabilities (CSA 2018). The 2011 World Report on Disabilities puts the number of persons with disabilities in Ethiopia at 15 million,³⁹ 17.6% of the entire population, which makes it the largest minority group in the country (World Bank and WHO 2011).

Based on data obtained on January 2021, 23.5 million Ethiopians use the Internet.⁴⁰ Smartphone ownership rate in Ethiopia is also low; only 4% of the population (Freedom House 2020). Among these are persons with disabilities, who use the Internet and other technological gadgets. However, there are no specific data available about the level of use and challenges they face to enjoy the rights and privileges of using the digital technology (Kumar, Tiwari and Zymbler 2019; World Report on Disability 2011). There is also a digital divide that creates information and knowledge inequalities. Unlike others, there are complex barriers for persons with disabilities to access the Internet and other supporting gadgets such as smartphones.⁴¹ In many developing countries, including Ethiopia, people with disabilities may be unable to have essential products such as mobile phones and Internet connectivity largely due to economic reasons and, to some extent, because of cultural and social factors that create the digital divide between societies (World Report on Disability 2011). The digital divide intensifies for persons with disabilities when countries put in place policies on Internet accessibility, but do not ensure its implementations (Ibid).

³⁸ Ethiopia conducted the third and last population and housing census in 2007. The census report does not contain data about access to the Internet. Other national survey reports do not include data about the digital divide between persons with disabilities and the broader population in particular (statsethiopia.gov.et).

³⁹ Acknowledging that the number of people with disabilities may have increased throughout the last decade, this article chose to establish its analysis on the World Report on Disabilities' data.

⁴⁰ <https://www.ethiotelecom.et/ethio-telecom-2013-efy-2020-21-first-half-business-performance-summary-report>.

⁴¹ Interview with Y.A. on April 26, 2021. Her initials are coined as she prefers to stay anonymous in this research.

Persons with disabilities in Ethiopia lack access to information in formats that are suitable to their needs. According to an informant from the Ethiopian National Association of Persons with Physical Disability, it is often the needs of people with impaired hearing, that has been given some degree of recognition by the government, which encouraged few media organizations to add sign language in newscasting (International Media Support 2020). However, even when there are efforts to provide sign language services, it lacks continuity and visible screen positioning to its viewership (Ibid). Informants with visual impairments pointed out that television programs are becoming heavily video reliant, forgetting that blind people are also part of their audience and need narration. Such shortcomings of the traditional media continue to be reflected on the Internet and other digital communication gadgets (Scholz et al. 2017; Lazar and Jaeger 2011).

Furthermore, there are challenges in physically accessing infrastructures that provide such services. The personal experience of Y.A. reflects the appropriation of the needs of people with disabilities to access the Internet. Y.A. remembered when she used to go to a building that does not comply with accessibility requirements for the physically disabled to use wheelchairs and crutches simply to check on her email. Y.A. highlighted that although the Internet seems accessible and affordable for her, it was not convenient due to her physical disability that made her decide to run a small Internet café. According to Y.A., the Internet café opens up opportunities for her such as online shopping, communicating with her friends and extending her congratulatory messages and condolences via social media. Further, many of her clients are people who are visually impaired and physically challenged. Y.A's Internet café is friendly for people who use wheelchairs, but lacks to provide a comprehensive service to others with different disabilities. The café does not have computers with screen reader software that translates screen contents into synthetic speech. Availing adaptive hardware device that allows Braille characters to be generated is also high-priced. However, the café is becoming a place for people with disabilities to exchange information about how to use the computer, access the Internet and web-enabled devices, and share free mobile applications.

The Ethiopian National Association of the Blind has also resumed its free broadband and Wi-Fi Internet service recently.⁴² Efforts to provide visually impaired Ethiopians with digital literacy and access to the Internet started in June 2000 when the Adaptive Technology Center for the Blind (ATCB) was established. Since 2003, the Centre has trained 20 to 30 visually impaired persons with basic computer skills through the support of the International Telecommunication Union and UNESCO and ran an Internet Café in Addis Ababa. With such services, majority of young people with visual impairments are enthusiastic about digital

⁴²Social media post by the Ethiopian National Association of the Blind. March 17, 2021. www.facebook.com/1268113696676816/posts/1914291348725711/.

technologies. According to an unpublished reflection paper by Kassahun Yibeltal, the emergence and fast prevalence of digital communication technologies made Braille irrelevant to the current needs of people with visual impairments in Ethiopia.

The effort of individuals and disability associations to ensure Internet accessibility supports the argument that the Internet is perceived as a more accessible alternative that serves people with all types of disabilities as a source of information and a platform to express their opinions and interests. The Internet provides people with disabilities a tool to express themselves and develop friendships with others (Chadwick et al. 2013; Pilling, Barrett and Floyd 2004). Therefore, access to the Internet can no longer be considered as a luxury rather a 'survival tool' that can make life more enjoyable and all-inclusive as it empowers members of all segments of society (Pilling et al. 2004).

Providing access to the Internet in Ethiopia, however, seems to be considered secondary concerning people with disabilities. As elucidated by a visually impaired participant,⁴³ availing access to the Internet for people with disabilities requires a political will such as promoting digital inclusion as public policy from the Ethiopian government. Like other Internet-based businesses, the ATCB project faced regulatory challenges related to telecommunication regulation, political restriction on the exercise of freedom of expression, and the anti-terrorism proclamation that discouraged the use of technology to access information and express one's opinion (World Connected 2021). Lack of digital literacy and Internet access also remains a major challenge for people with disabilities, forcing inclusion activists to depend on traditional modes of communication to provide service and access to information.

Fiyori Tewolde is a trained journalist who introduced Ethiopia's first-ever Braille newspaper, "Fetel", in September 2020 for people who are deaf-blind and with visual impairments. The newspaper publishes news and job vacancies to keep the visually impaired informed about current affairs and help expand their access to equal employment opportunities in society. According to Fiyori, most visually impaired people prefer Braille print due to inadequate training on assistive computer technologies and limited access to the Internet in the country. For Fiyori, lack of access to media content by people with visual impairment made her consider producing the Braille newspaper and her desire to voice the needs and concerns of people who are deaf-blind. Reading about Fiyori's initiative, an anonymous philanthropist developed a website for Fetel.⁴⁴ The website incorporated contents that are accessible to the visually impaired with audio that provides access to the textual version of the newspaper's content.

⁴³ Reflection by female participant at a research validation conference focused on the inclusion of deaf and blind students at Addis Ababa University, July 28, 2021, Center for Human Rights.

⁴⁴ <https://fetel.org>

Content and medium availability on its own could not be a sufficient condition to respond to the rights of people with disabilities to express themselves. Emerging technologies, such as the Internet of Things and Artificial Intelligence, can enhance accessibility (Kumar et al. 2019). In a country like Ethiopia, where technology incubators are fast-growing, practical advocacy work is expected from disability inclusion advocates and associations to ensure that tech startups and government-supported digital technology programs add appropriate markup, i.e., descriptive text for graphics, forms and links. It should also be noted that digital inclusion does not involve advanced coding and additional expertise, rather an awareness and willingness to consider providing equal access to the Internet.

Eliminating Stereotypes in Practice: Enhancing the Online Voices of Persons with Disabilities

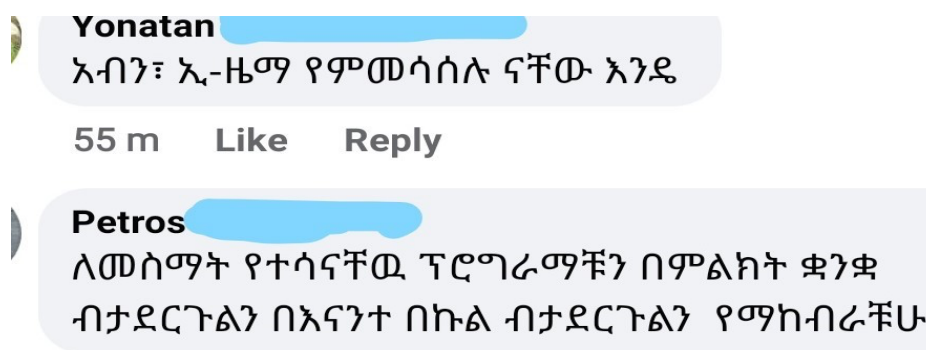
The nature of societal prejudice against people with disabilities in Ethiopia is similar, while the nature of discrimination varies between different types of disabilities (Tewodros 2019). Often disability is associated with physical disabilities such as visual impairment, hearing impairment, and physical disability, while individuals' cognitive and psychiatric functional losses are repeatedly neglected from policy debates, reinforced by societal stereotypes and media reporting (Barnes 1988).

Societal stereotyping hinders people with disabilities from participating in public life (Tewodros 2019; Tirusew 2005). Social attitudes and stereotypes often come into play in creating an environment where the opinions of people with disabilities are not welcome, and their ideas are accepted as worthy of consideration on an equal basis with nondisabled people (Tewodros 2019; Dagnachew 2011; Tirusew 2005). Persons with disabilities are stereotypically represented in the communities and the media as weak and lacking their own opinion.

The primary role of the media is therefore to raise awareness, countering stigma and misinformation about persons with disabilities. Nevertheless, the Ethiopian media, online and offline, lack to be inclusive of persons with disabilities in the content making, allotting airtime, and hiring them in the media workforce (International Media Support 2020). This situation attests to how social conditions contribute to discrimination and underrepresentation of persons with disabilities in the media (Fertsch and Simcox 2016; Francise and Silvers 2016). Negative stereotyping is also practiced by government officials who supposedly are expected to promote and protect the rights of persons with disabilities. In a recently televised political debate, a representative of the ruling party said that *“turning the blind eye on the changes that have been taking place ever since the*

*government change is denial; even those who are blind can tell the change”.*⁴⁵ Such demeaning assertions negatively impacts the political participation and freedom of expression of people with disabilities. Leaders of opposition parties running for the 2021 national elections have reflected on their inclusive policies of disability. Some of them avowed to have strategies to including persons with disabilities in their party structure and ensure equal participation of citizens without discrimination in social, political and economic matters when they assume power.⁴⁶ During the 2021 national election campaign, there were no people with disabilities who attended and featured as speakers at any major political party debates televised and posted online regardless of the attempt made by the National Electoral Board of Ethiopia that established the Ethiopian Center for Disability and Development Association to host political parties and candidates’ media debates.⁴⁷

Regardless, there is a growing demand from people with disabilities to engage in such debates as is shown in the following extract from Walta TV facebook page, a comment made regarding a televised debate between political parties.



The above screenshot translates: “I would appreciate it if you could put an effort to translate your programs in sign languages.”

The steady growth of Internet use among individuals influences public opinion and how citizens access political information, storage, retrieval, interpretation, and dissemination in Ethiopia. The technological change seems to involve persons with disabilities to utilize the online platform for political activism. People with disabilities who were asked to reflect their opinion for this piece have a positive attitude towards using the Internet to amplify their voices and spread messages. They find access to the Internet essential to interact with the general population and form online interest groups among like-minded individuals regardless of their

⁴⁵ A statement made by the representative of Prosperity Party, Dr Seyum Mesfin, in Political Parties Debate on Wlata TV on April 14, 2021: 9:10pm

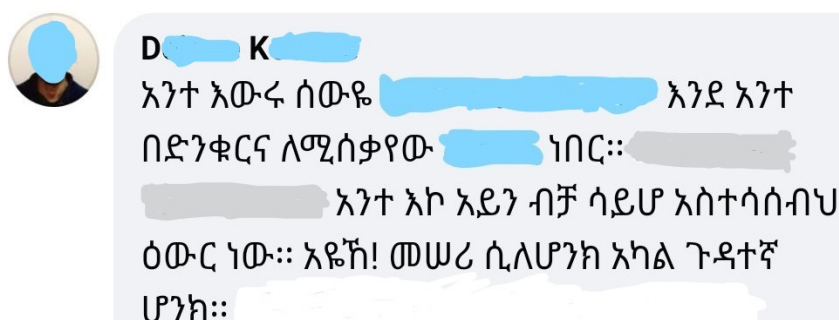
⁴⁶ A claim made by representatives from EPRP, Hibir Ethiopia, Ethiopians for Equality and Freedom, and Ethiopian Citizens for Social Justice (Ezema) in “Tenager Bekenfre Tekemet Bewenber”, a radio show on Sheger FM 102.1 on April 22, 2021: 2:30-3:00pm

⁴⁷ Tameru Regasa. Ethiopia: “NEBE names Media Organizations to Election Debate”. The Ethiopian Herald March 19, 2021.

different abilities. One of the informants mentioned that “*creating Facebook, Telegram and WhatsApp groups to share ideas and experiences are becoming ‘the new tradition’ among people with disabilities*”.

Nonetheless, cyberbullying and hate speech against people with disabilities are often observed, specifically when voicing their political opinions. Stereotypical representation of people with disabilities on the Internet as victim, hero and villain (Scholz et al. 2017; Chadwick et al. 2013). They are depicted as a helpless subject of misfortune and empathy or a hero character who proves to overcome challenges that resulted from their disability. It is also common to see people with disabilities represented as evil or depravity (Scholz et al. 2017). Key informants interviewed in this study were asked to identify people with disabilities that they know are active on Facebook in order to purposively target a subpopulation to understand how people with disabilities are portrayed online. A quick overview of purposively selected Facebook pages owned by people with disabilities in Ethiopia shows that people with disabilities are frequently portrayed as villains on the Internet, specifically when they amplify their political opinion in the context of contested political transition.

As Y.A. highlighted, the rise of “*irresponsible social media activism*” in recent times makes persons with disabilities shy away from expressing their opinions on the Internet. Irresponsible use of social media is an online activity that often results in violence, child pornography and social depravity against minority groups and people with disabilities. The screenshot below from the Facebook page of a well-known visually impaired political activist contains derogatory language that dehumanize disability in general.



The screenshot translates: “*you the blind, you are also suffering from ignorance... you lost not only your eye sights but insights. See! Because you are wicked, you are disabled*”.

This clip demonstrates that the Internet may not necessarily provide a safe platform for people with disabilities to express their opinions, as

online hate speech⁴⁸ and negative portrayal of people with disabilities are becoming alarming. It is also an example that societal prejudice that depicts persons with disabilities as villains continues to be practiced on the Internet.

Conversely, a personal Facebook page run by a renowned disability inclusion and rights advocate, Yetnebersh Nigussie, has nearly three hundred ninety thousand followers. Yetnebersh is a visually impaired lawyer utilizing social media platforms such as Facebook and Twitter (with nearly three thousand followers) to advocate for the rights of people with disabilities. Among other issues, she promotes inclusive communication of public and private organizations to make their websites accessible to persons with disabilities. Biresaw who has a physical disability also actively engage on social media, known for advocating political and social issues using a nickname to avoid cyberbullying. For Biresaw, the Internet is a means necessary to access information and interact with the world and voice his concerns:

I grew up in early 2000, at a time the Internet was not popular in Ethiopia. For me, the world has changed for the better when I start to use the Internet. I used to wait for some days to get a response from pen pals with whom I frequently share my opinions and feelings through letters... the Internet provides me with the opportunity to interact with others in real-time without leaving my wheelchair and to impart my opinion, be it on politics or social issues.

Online activists such as Biresaw advocate for an inclusive policy environment for people with disabilities. However, online activism on disability inclusion and the fundamental rights of people with disabilities lacks consistency as the issue does not attract the broader rights activists' attention potentially mired by the existing social exclusion.⁴⁹ D is a disability rights activist and legal practitioner who feels online activism makes it possible to voice the concerns of his communities:

*We have been demanding social inclusion and fighting stereotypical discrimination. As to me, I am tired of screaming for justice and cannot start a new campaign to advocate for freedom of expression when decision-makers are turning their backs to our demands for fair treatment.*⁵⁰

According to D, the existing social prejudice against people with disabilities made it difficult to promote freedom of expression and

⁴⁸ The Proclamation defined 'hate speech' as a speech that deliberately promotes hatred, discrimination and attack against persons or groups based on their identity, including disability.

⁴⁹ Interview with Biresaw B., April 24, 2021. Addis Ababa.

⁵⁰ Informal Discussion with a board member of one of the disability associations, who prefers to be called as D in this article, April 29, 2021. Addis Ababa.

access to the Internet. A quick overview of social media posts of selected disability associations in Ethiopia shows limited efforts to promote and protect the freedom of expression and opinion of people with disabilities online and offline. There are posts about access to information and adaptive technologies to promote the right to education for people with hearing and visual impairments. Nonetheless, freedom of expression and access to digital communication technologies seems to be neglected by disability associations as part of their online activism. Looking into the social media pages of disability associations in Ethiopia, one can observe the change in the scope of their activism since the 2018 political transformation from demanding social action to political participation of persons with all types of disabilities.⁵¹ Policy alternatives to ensure disability inclusion in relation to the 2021 elections were also discussed online.⁵²

Disability and Freedom of Expression Online: Laws and Policies in Ethiopia

The universal human rights and the enactment of the international bills of rights hold governments responsible for ensuring equal enjoyment of all human rights by all, including people with disabilities. Ethiopia has ratified and adopted international human rights instruments and incorporated them as part and parcel of its Constitution.⁵³ This includes the International Convention on Civil and Political Rights (ICCPR), the International Convention on Economic, Social and Cultural Rights (ICESCR), the African Charter on Human and Peoples' Rights (ACHPR), and the Convention on the Rights of Persons with Disabilities (CRPD).

The CRPD guarantees the right to freedom of expression to all people and demands states to ensure that people with all types of disabilities fully enjoy their human rights, including freedom of expression. The CRPD is a comprehensive, legally binding international document hailed for reflecting liberal and humanist ideals enshrined in the Universal Declarations of Human Rights and is the first human rights convention to be open for signature by regional integration organizations.⁵⁴ Considering the challenges of people with disabilities to make their voice heard in conventional communication mediums, the CRPD examines specific issues impacting the ability of persons with disabilities to enjoy the freedom of expression on an equal basis with others. The CRPD places great emphasis on the need for information to be available in accessible

⁵¹ www.facebook.com/1268113696676816/posts/1928653557289490/

⁵² www.facebook.com/491583560931081/posts/4127345967354804/

⁵³ FDRE Article 13(2)

⁵⁴ UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106. Use UNTS format to cite international treaties

formats and technologies, whether distributed by the mass media or by public or private actors (CRPD 2007: Article 21). The media, including the Internet, are also responsible for providing information relevant to people with disabilities in a manner that is also easily accessible to them as enshrined in the CRPD (CRPD 2007: 9 1b and 2g).

Moreover, the General Comment on the CRPD emphasizes that access to information and communication is emphasized as a foundation for freedom of expression.⁵⁵ Under Article 21, the CPRD calls for States to accept sign language, Braille, and other means and modes of communication that persons with disabilities choose to use whenever they have “*official interactions*”. It further stipulates the media to portray people with disabilities in a manner consistent with respect for human rights and raise awareness to combat stereotypes about persons with disabilities (CRPD 2007: Article 8). Although the CRPD is criticized for not addressing the parameters of freedom of expression and opinion in the same detail as the ICCPR, it enacts the Internet as an effective communication platform that promotes the rights of people with disabilities (McLeod 2018). Article 19 of the ICCPR protected freedom of expression. The ICCPR can also be applied to the Internet, as it was drafted with the prudence to accommodate future technological advancements that help individuals enjoy their freedom of expression.⁵⁶

It shall be recalled that the UN Human Rights Council adopted a landmark resolution in 2012 affirming “*the same rights that people have offline must also be protected online*” (OHCHR 2012: para 1). The Internet is being explained as one means to further human rights in the digital age and is considered as a derivative right.⁵⁷ The former UN Special Rapporteur Frank La Rue explained that States have a positive obligation to promote and protect the means necessary to enjoy the freedom of expression and that such means include creating a conducive environment to access the Internet by all people. Article 19(2) of the ICCPR indicates that, regardless of ability, using the Internet as a means to send and receive information is protected (Mulcair et al. 2018). The ICCPR recognizes freedom of expression and information broadly, including academic freedom, artistic freedom and political speech. It also protects ‘all kinds of’ information regardless of their perceived value and impact (ICCPR 1993: Article 19(2)). The ICCPR, which Ethiopia ratified on 11 June 1993, imposes obligations on State parties to respect its provisions and permits no restrictions whatsoever on the “*right to hold opinions without interference*” (ICCPR 1993: Article 19(1)). It does, however, allow restrictions on freedom of expression and information. But such

⁵⁵ Committee on the Rights of Persons with Disabilities Eleventh session 31 March–11 April 2014. General Comment No. 2 (2014) on CRPD Article 9: Accessibility. Paragraph 1, 21, 31

⁵⁶ Frank La Rue, Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, August 2011 La Rue Report, *supra* note 8.

⁵⁷ <http://latimesblogs.latimes.com/technology/2011/06/united-nations-reportinternet-access-is-a-human-right.html>

restrictions are permissible on specific conditions and for limited purposes such as for the respect of the rights or reputation of others and for the protection of national security and public order (Ibid: Article 19 (3a and 3b)).

The Ethiopian Constitution grants freedom of expression in accordance with the international human rights instruments. Article 29 of the Constitution is applicable to the use of any media assisted with new technologies, including the Internet in the exercise of freedom of expression (Yohannes 2020; Gedion 2010). The Constitution (Article 41(5)) stipulates the government's responsibility to ensure necessary support and services for persons with disabilities, while the proclamation concerning the rights to employment for persons with disabilities declares to eliminate discriminatory situations that hinder equal employment opportunities for persons with disabilities.⁵⁸ Therefore, the central point is the recognition of the right to technology rather than online content moderation to prohibit hate and discriminatory speeches against people with disabilities on the Internet.

Ethiopia seems to be keen to advance digital technology to provide online access to all through laws and policies and encourage digital entrepreneurship. Recently, Ethiopia ratified the Marrakesh Treaty in February 2020.⁵⁹ The Marrakesh Treaty is an international convention that helps people with visual impairments access published works in formats such as braille and audio. The treaty stipulates that harmful stereotype against persons with visual impairments limit their freedom of expression on an equal basis with others, and this must be combated by promoting all forms of communication of their choice. The ratification of the Marrakesh Treaty protects the rights of the visually impaired to obtain information in an accessible format. The government has enacted and implemented policies that acknowledge the rights of people with disabilities. Among the new legal developments is the enactment of the Media Proclamation, which broadens the means of broadcasting service by recognizing Internet-based information dissemination with the aim to promote information diversity and inclusion of people with disabilities.⁶⁰ The Proclamation requires any media to "*broadcast programs with content specially adapted for persons with disabilities*" unless it is licensed to report on a specific issue (Ibid: Article 55(n)). The law further prohibits inciting contents that promote hate on the grounds of age, mental or physical disability (Ibid: Article 68(e)).

⁵⁸ Proclamation concerning the Rights to Employment for Persons with Disabilities, No. 568/2008

⁵⁹ The Marrakesh Treaty was adopted in 2013 by the World Intellectual Property Organization (WIPO)

⁶⁰ Proclamation No. 1238/2021. Page 13122 (35).

Other laws also protect the equal rights of persons with disabilities and prohibit discrimination against their conditions.⁶¹ When it comes to policies, the National Plan of Action of Persons with Disabilities (2012-2021) promised to make Ethiopia an inclusive society by addressing the needs for full participation of persons with disabilities. The 10-year perspective plan of economic and social development, which is called Pathway to Prosperity (2021-2030), replaced the previous Growth and Development Plan II and prioritizes inclusive social and economic development in which technology plays a role to create a digital economy.⁶² The Council of Ministers has also approved the Digital Ethiopia Strategy 2025 that is thought to support the country's objective to ensure *"more efficient and inclusive interactions between citizens, government and businesses, thereby catalyzing its progress towards its national priorities"*.⁶³ The issue of people with disabilities is mentioned only when the strategy document discusses attracting Impact Sourcing Service Providers (ISSPs) that are targeting workers from underprivileged communities through their non-profit or semi-profit social business approach. However, the short term projects of the Digital Ethiopia Strategy 2025 aims to ensure accessibility and affordability of digital infrastructures for all guided by the notion of the *"legal identity for all"* to accelerate the achievement of the Sustainable Development Goals and the Agenda 2063.

Such policy frameworks put forward by the government of Ethiopia, as part of its general obligations, to support the realization of the rights of persons with disabilities can ensure Internet access by all if supported with relevant directives (CRPD 2007: Article 4 (1-5)). Such policy measures can unmute the voice of people with disabilities within the society and on the Internet. General Comment No. 2 on the CRPD encourages private entities that provides service to the general public, both online and offline, to provide accessible information, services and media content to people with disabilities.⁶⁴

The importance of the Internet in Ethiopia however goes beyond providing information and enabling freedom of expression. The Internet has created a loophole for the State, individuals, non-state actors, and

⁶¹ The Federal Civil Servant Proclamation No. 515/2007; Labor Proclamation, No. 377/2003, amended by Labor Proclamation No. 494/2006; Proclamation on Definition of Powers of Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, No. 691/2010; Building Proclamation, No. 624/2009; Proclamation No. 676/2010 on the Ratification of the "UN Convention on the Rights of Persons with Disabilities" (UN CRPD) by Ethiopia.

⁶² Development Assistance Group Ethiopia. Phase V- Development Partners Support to the Implementation of GTP II and SDGs. Second Quarter Report (April-June 2020.)

⁶³ [Digital Ethiopia - capital Newspaper \(capitalethiopia.com\)](http://capitalethiopia.com)

⁶⁴ Committee on the Rights of Persons with Disabilities Eleventh session 31 March–11 April 2014. General Comment No. 2 (2014) on CRPD Article 9: Accessibility. Paragraphs 14, 21, and 48.

intermediaries,⁶⁵ to interfere with people's access to the Internet to attain freedom of expression and information in this digital world (Hick et al. 2000).

Privacy is a common challenge to people with and without disabilities when using the Internet (Scholz et al. 2017; Vincent and Lopez 2010). In Ethiopia, persons with disabilities often do not live independently due to preemptive societal structure and cultural barriers where caregivers and others living with them may not sufficiently respect their privacy. Habtamu Addise lost his hands due to a bomb blast when he was a child.⁶⁶ He taught himself to use his legs to perform daily tasks except for typing on a computer keyboard and smartphones:

I know our experience with the Internet varies by type of disability. For me, using smartphones or any computer keyboard to join social media is unthinkable because my hands are amputated. I can use my legs to eat, wear my clothes, write, and do carpentry. But, if I want to post on Facebook, I must seek support from friends and family to type it down for me, which makes me feel restrained from saying whatever is in my mind.

Today, people with limited use of their hands like Habtamu benefit from assistive technologies to use computers and smartphones. There are speech generating and voice recognition devices that can help people with physical disabilities who cannot use computers and touch screens to command data and the computer system. Ethiopia is recognized among the few African countries that utilize the Artificial Intelligence (AI) solutions at scale (Abebe 2019; Kumar et al. 2019). Following the growing interest and growth in the AI market, the Ethiopian government established Artificial Intelligence Center with a mission to "*fostering the development of a nationally recognized AI ecosystem to empower and inspire a nation for peace and prosperity with the most trusted analytics*".⁶⁷ The country thus needs to consider the importance of enhancing access to the Internet, broadband connectivity and cloud computing to support the flourishing AI market in the country (Abebe 2019; Kumar et al. 2019).

AI initiatives ought to respond to the development of assistive devices and software applications that can support persons with disabilities to interact with their surroundings. The invention of the humanoid robot 'Sofia', to which an Ethiopian AI-focused company⁶⁸ was involved in developing its software parts, is the best example to argue that an inclusive technological advancement and effective AI intervention to

⁶⁵ In Ethiopia's case, the State owned Ethio Telecom, and its outsourcing local private companies engaged in selling fixed-line Internet services can be considered as Internet intermediaries.

⁶⁶ Interview with Habtamu Addise. April 28, 2021. Addis Ababa.

⁶⁷ [vision and Mission - AIC](#)

⁶⁸ [Feature: Robot Sophia inspires young Ethiopian AI enthusiasts - Xinhua | English.news.cn \(xinhuanet.com\)](#)

improve the lives of people with disabilities is possible in Ethiopia (Abebe 2019). Even though AI helps build an inclusive and interactive society, it can also affect individuals' privacy and data protection unless regulated under international human rights standards (Abebe 2019; Lazar and Jaeger 2011). For technology startups in Ethiopia to benefit the underprivileged, existing laws and policies should therefore be implemented to fully protect the rights and freedom of people with disabilities to participate in public life.⁶⁹

Conclusion

This article showed that the society understands disability through a medical model approach that suggests integrating a person into the society's norms, rather than creating a conducive legal, social and cultural environment in which a person with disability can fully participate and enjoy her/his rights to freedom of expression in the community. The article explained the Internet as a technological tool that can play a role to create a safe communication sphere and mode of expression and facilitate equal participation of people with disabilities in society. There appears to be no comprehensive study about the role of the Internet in amplifying the voices of people with disabilities in Ethiopia. There is no disaggregated data to present the digital divide in terms of disability, which could be taken as a future research area. The absence of statistical data could also negatively impact the efficacy of the Internet and AI systems initiatives that aspire to build a digital economy in Ethiopia. This article reflected how the Internet could be utilized to mute or unmute the voice of people with disabilities to exercise their freedom of expression online and offline. The study also reflects on the role of the Internet in the freedom of expression of persons with disabilities through examining stereotypical perceptions and portrayals of people with disabilities online and offline, inaccessibility of communication technologies, and gaps in policy and practice.

The right to freedom of expression and opinion is essential for persons with disabilities to develop their skills and participate in societies on an equal basis. However, full enjoyment of freedom of speech remains elusive for persons with disabilities as long as access, societal attitude, and policy barriers exist. Friendly access to digital technologies supported by policies to enhance such services is crucial to ensure disability inclusion in the right to free speech. Most importantly, the stereotyping of people with disabilities that can potentially interfere with the practice of designing and producing local technological solutions must be addressed.

⁶⁹ Human Rights Commission Comment no.61, paragraph 7.

The draft proposed Access to Information Proclamation to the Council of Ministers in mid-2021 must recognize the importance of information and communication technologies to expand opportunities for people with disabilities to access official information. As such, it should serve as a legal document to enforce the web accessibility of government institutions for all and special consideration for the needs of people with disabilities to ensure citizens' rights to access official information and participate in policy matters. The Pathway to Prosperity and the Digital Ethiopia Strategy 2025 must also be revisited to devise approaches and directives to ensure disability inclusion by removing socioeconomic barriers for people with disabilities to benefit from the digital economy.

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The Role of Civil Society Organizations in Promoting the Rights of Persons with Disabilities in Ethiopia

Tamru Kedir⁷⁰

Abstract

Recognition of human rights of persons with disabilities (PWDs) by the Convention on the Rights of Persons with disabilities (CRPD), which Ethiopia has ratified, can be considered a beacon of hope for the realization of equality and dignity of PWDs. There are few legislations in Ethiopia concerning PWDs and disability related provisions. Ministries and Agencies have begun to mainstream disability in their various undertakings and mandates. However, the issue of civil society organizations (CSOs) in connection to the rights of PWDs in Ethiopia is under-explored and less researched. Taking this fact in to account, the purpose of this article is to explore how CSOs, particularly Disabled Persons' Organizations (DPOs), contribute to the foundation of human rights promotion by analyzing their roles and practices in the monitoring and implementation of laws and policies related to PWDs. To this end, selected provisions of the CRPD, regional human rights instruments, national laws and academic literatures were analyzed. Having discussed existing laws and practices, this article concludes that despite considerable capacity and resource constraints, in order to advance human rights of PWDs in Ethiopia, more is expected from CSOs, especially related to collaboration with government and partnership organizations.

Keywords: *Roles of CSOs, Human Rights Promotion, DPOs, Rights of PWDs*

Introduction

CSOs are considered to be active human rights promoters, which contribute in building norms of dignity in advocating for victims and vulnerable groups who are denied access to justice (Abril 2008). Before the introduction of restrictive laws regulating CSOs in the country, most CSOs in Ethiopia operated in the field of service delivery, which has its roots in humanitarian assistance (Jalale 2019).

According to 2011 report of the WHO and World Bank, 17.6% of the Ethiopian population, more than 14.4 million Ethiopians, live with disability. Experts believe that this figure is underestimated due to,

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among others, inadequate definition of what constitutes disability, misconception of terms, omission of certain types of disabilities and unwillingness of parents to disclose disability within their household (ILO 2012).

Regardless of lack of accurate statistics on the number of PWDs, it is mentioned, large number of PWDs in Ethiopia struggle with poverty, lack of income and access to basic services such as health and education due to stigma and discrimination. They are also often denied fundamental human rights such as the right to employment, right to independent living, legal capacity (mainly in banking and contractual services) and are subjected to disparaging terminologies in the Civil Code and other legislations (Ibid).

Ethiopia has ratified different international human rights instruments essential to PWDs to protect their rights such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Convention on the Rights of the Child (CRC), to mention few. Above all, the ratification of the CRPD in 2010 provided a good momentum to foster its implementation among CSOs that previously advocated for its adoption and protection of human rights of PWDs. CSOs working on disabilities provide social services to their beneficiaries and carry out advocacy work as well as capacity building services through joint programmes with international organizations and other local CSOs in the form of networks and federations.

However, around the same time, the Ethiopian government enacted the Charities and Societies Proclamation no. 621/2009 (CSP), which negatively impacted CSOs working on human rights including those working on disability rights. Nonetheless, the amendment of the CSP as part of a major government reform effort in 2018, which will be discussed later in this article, created an enabling environment for the implementation of the CRPD. As Quinn (2006) stated, ensuring the implementation of CRPD can be primarily done through persuasion and socialization at the domestic rather than international level. CSOs thus can play a great role in this regard.

Defining and Understanding Key Concepts

What are Civil Society Organizations?

The term CSOs has been defined differently by scholars, institutions and legislative bodies. The African Development Bank (AFDB) defines CSOs as voluntary expression of the interest and aspirations of citizens organized and united by common interest, goals, values or traditions and mobilized into collective actions (AFDB 2012). For various reasons, CSOs

embrace multitude of actors that assume responsibilities around shared interests, which could be for the promotion and protection of human rights. Such actors may include PWDs and their representative organizations, coalition or networks advocating for the rights of women, children, community-based groups (indigenous people, minorities), human rights organizations (Non-governmental Organizations (NGOs), associations, victim groups) faith-based groups, human rights defenders, unions, social movement groups and professionals contributing directly to the enjoyment of human rights (humanitarian workers, lawyers, doctors and medical workers) (United Nations Human Rights Program 2008). Accordingly, the actors are individuals who voluntarily organized themselves with a wide range of purposes, constituencies, structures, degrees of organization, functions, size, resource levels, cultural contexts, ideologies, membership, geographical coverage, strategies and approaches (World Economic Forum 2013).

In this globalization era, CSOs (national, regional or international) are recognized with different names, which may include charities, NGOs, public benefit organizations (PBOs) and associations. These organizations involve in development projects and provide services such as education and healthcare. They also facilitate opportunities to bring communities together for advocacy, mobilize society to articulate demands and voice concerns at local, national, regional and international levels (Kelly 2019).

Definition of CSOs is however changing from time to time and they are now recognized as encompassing far more than a mere 'sector'. Today CSOs include an ever wider and more vibrant range of organized and unorganized groups, as new CSO actors blur the boundaries and experiment with new organizational forms, both online and offline (World Economic Forum 2013).

In Ethiopia, Charities and Societies Proclamation 1113/2019 defines 'Organizations of Civil Societies' as:

a Non-Governmental, Non-partisan, not for profit entity established at least by two or more persons on voluntary basis and registered to carry out any lawful purpose, and includes Non-Government Organizations, Professional Associations, Mass based Societies and Consortiums.

This definition of CSOs is drafted in general terms and each term specified in the proclamation require clarity by considering the overall principles of human rights into account. Nonetheless, for the purpose of this article, CSOs include disabled persons organizations (DPOs) that embrace organizations of PWDs and cross-disability organizations.

The Concept and Understanding of Persons with Disabilities

There are many different ways of understanding and defining the term disability. Disability is not a subjective condition of people, but depends on environmental, social and individual factors. Nevertheless, this article considers definitions that stem from both theoretical models and legal instruments. Hence, the following four models of disability are presented to conceptualize the term. The first one, the *Medical Model*, perceives disability as a problem located in the individual, and assumes working on the particular medical condition ('fixing' the impairment) of the individual is the mere solution (Dagnachew 2020). The second model, the *Charity Model*, tends to view PWDs as victims of impairment dwelling in tragic conditions or suffering, hence sees them as objects of charity (Ibid). The third, the *Social Model*, argues disability lies in society's response to the individual and his/her impairment and in the physical environment, which is mainly designed by non-disabled people thus failing to meet the actual needs of PWDs (Ibid). Last but not least, the *Human Rights-Based Model*, which this article is based on, focuses upon the inherent and inalienable rights of PWDs and recognizes disability as an identity or dimension of human diversity with all entitlements (Ibid). Focusing on participation, empowerment and accountability, this model emphasizes on the fulfillment of all human rights and on the responsibilities to be exerted by society in removing existing barriers (Quinn et al. 2002).

CRPD's definition, which advocates for the human rights-based model, which is also employed as a working definition in this article, emphasizes that:

Disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others (CRPD 2006: Article 1).

As the preceding definitions imply, the discourses on disability focus on around three major themes. These are:

- (1) How disability is best *defined* or *conceptualized*?
- (2) What impact does disability (however defined) have on persons with disabilities, particularly in terms of their 'quality of life'? and
- (3) How ought we to *respond* to disability, either at the individual or social level (questions of public policy and social justice)? (Ralston and Ho 2010)

The meaning of disability under Ethiopia's national law can be inferred from Proclamation No. 568/2008 on the Right to Employment of Persons

with Disability. According to Article 2(1) of the Proclamation, PWDs is defined as, *“a person with disability is 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 discriminations”*.

Human Rights Obligations of States towards PWDS

International human rights instruments impose different types of obligations upon States such as the duty to protect, which is built on valuing the dignity of each person, the duty to promote and the duty to fulfil. By nature, human rights are inherent entitlements that are acquired only by virtue of being a human (Sastry 2012). However, human rights laws place obligations on States to take the necessary steps to exercise these rights and prohibits them from taking part in violation of any right.

It is based on these accepted international norms that the CRPD imposes different kinds of obligations on States. There are core principles to be considered while engaging in the protection of the rights of PWDs among which are dignity, autonomy, equality and inclusion (Quinn et al. 2002). Similar to ICCPR and ICESCR, the CRPD set out a specific provision that addresses the obligations of States towards the rights of PWDs. For instance, Article 4 of the CRPD stipulates general obligations to be considered by State parties to ensure and promote the full realization of all human rights and fundamental freedoms for all PWDs without any kind of discrimination (CRPD 2006).

The CRPD, under Article 4(a), further stipulates that States shall take measures to adopt all appropriate legislative, administrative and other measures for the implementation of the rights. Article 4(h) also urges State parties to provide accessible information to PWDs about mobility aids, devices and assistive technologies, including new technologies, and other forms of assistance, and support services and facilities. In addition, State parties are required to promote the training of professionals working with PWDs in the rights recognized under the CRPD so as to provide better assistance and services (CRPD 2006: Article 4(i)). This article read together the general obligation expressed under Article 4 of the CRPD with other general provisions of the same law to better implement specific rights detailed out on the CRPD itself.

To substantiate this argument, Article 1 of the CRPD deals with the purpose of the law, which is *“to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”*. Furthermore, Article 5 of the CRPD deals with equality and non-discrimination clause by calling State parties for the implementation of all rights by taking *“all appropriate steps to ensure that reasonable accommodation is provided”*.

With regard to CSOs, the CRPD urges collaboration between States in the development and implementation of legislation and policies and their implementation. To participate in decision-making processes concerning issues related to PWDs, it requires State parties to closely consult with and actively involve PWDs, including children with disabilities, through their representative organizations. Article 4(3) of the CRPD, which we have discussed above, has specified couple of elements that are also elaborated under General Comment 7 of the CRPD. The first element deals with “*concerning issues relating to persons with disabilities*”. This phrase is to be construed in its broader sense to take legislative, administrative and other measures that may directly or indirectly affect PWDs; take into account the protection and promotion of human rights of PWDs; and refrain from engaging in any act or practice, be it deliberate or otherwise, that is inconsistent with the CRPD (CRPD 2018: para. 18).

The other element specified under Article 4(3) is referred as “*to closely consult and actively involve*”. This phrase implies the inclusion of PWDs through their representative organizations; their consultation and involvement in the development and implementation of legislation and policies to implement the Convention; and involvement in other decision-making processes as a full-fledged strong obligation under the international human rights law. This includes the right of organizations of PWDs to be timely consulted, with guarantees of accessibility to all relevant information, and reasonable accommodation when required (CRPD 2018: para. 21).

Ethiopia’s obligations to work collaboratively with CSOs to promote Human Rights are also stipulated under Article 13 of the Vienna Declaration and Program of Action, endorsed by the UN General Assembly in 1993, which states that:

There is a need for States and International Organizations, in cooperation with NGO, to create favorable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights. States should eliminate all violations of human rights and their causes, as well as obstacles to the enjoyment of these rights.

Article 9(4) of the FDRE Constitution incorporates international agreements ratified by Ethiopia as an integral part of the law of the land. Article 13(2) of the Constitution also allows for the interpretation of fundamental rights and freedoms specified in accordance to the principles of the UDHR, international covenants on human rights and international instruments adopted by Ethiopia. Hence, the State, in as much as it is to uphold the domestic laws of the land, should also observe, protect and promote international fundamental human rights and freedoms.

Roles and Importance of Civil Society Organizations

United Nations Development Program (UNDP) expresses the roles of CSOs in broader terms as a *“third sector existing alongside and interacting with the state and private industry and recognizes that, in practice, civil society is an arena of both collaboration and contention”* (UNDP 2005).

In many parts of the world, CSOs play critical roles in alleviating the poor from dire poverty through service provision (health care and education), advocacy (campaigning, lobbying, legal assistance to individuals, awareness-raising and being a voice to the marginalized), monitoring funding to other organizations in support of democratic governance initiatives, formulation of policies, and provision of technical assistance including consultancy support and hands-on assistance in knowledge transfer (Cooper 2018). CSOs therefore play influential role in setting and implementing development agendas across the globe. The Asian Development Bank (ADB) for instance outlines five major roles for CSOs in advancing the sustainable development goals (SDGs). These are:

- Complement government poverty alleviation programs with community-based tailored assistance using evidence-based, innovative and sustained solutions;
- Localizing the SDGs and monitoring progress;
- Promote citizen-centric, collaborative governance (many CSOs in Asia’s developing countries operate at grassroots level and have active engagement with local actors and citizens) and co-production (whereby citizens produce or improve existing services without relying too much on public agencies);
- Advocating for the poor, including lobbying government; and
- Empowering women for climate action (ADB 2019)

Despite their contributions, CSOs face multitudes of challenges. Due to the existing tension to demarcate between politics and CSOs in human rights advocacy work, autocratic governments in some countries are placing heavy legal restrictions on acquisition of funds by CSOs for human rights related activities (Divjak and Forbici 2017). If CSOs are no longer allowed to lobby for human rights, democracy, and the rule of law, not only are they losing their advocacy role, but society is losing campaigners who can stand for the rights of PWDs, women, children and other groups of the society (Ibid).

Freedom of Association and Civil Society Organizations in Ethiopia

The Federal Democratic Republic of Ethiopia (FDRE) Constitution adequately gives protection to human rights of all individuals and groups; one-third of the provisions are dedicated to human rights and democratic rights. Article 31 of the FDRE Constitution provides that:

Every person has the right to freedom of association for any cause or purpose. Organizations formed in violation of appropriate laws, or to illegally subvert the constitutional order, or which promote such activities are prohibited.

Further, Ethiopia adopted and ratified various human rights instruments that recognize freedom of association for all persons. Article 22(2) of the ICCPR provides “*everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of interests*”. In addition to the ICCPR, Article 2 of the Declaration of Human Rights states that “*each state should protect, promote and implement all human rights and fundamental freedoms*”, which includes creating conducive social, economic, political and legal frameworks that enable other stakeholders such as CSOs to promote these fundamental freedoms and rights. As a result, Ethiopia has an obligation to enable CSOs to function and carry out work that promotes human rights.

The Civil Society Proclamation No. 1113/2019

CSO is a recent phenomenon in Ethiopia compared to traditional groups, such as *Idir* and *Iqub*, and other self-help associations such as *Mahiber*, which focus mainly on the social lives of the people and are still the dominant forms of voluntarism (Desalegn 2002).

Charities and Societies Proclamation (CSP) No. 621/2009, as stated on the preamble, was developed with the major objectives of ensuring the realization of citizens’ right to association enshrined in the FDRE Constitution; and to aid and facilitate the role of Charities and Societies in the overall development of Ethiopian people. However, it was considered to be restrictive over sources of funds and its engagement particularly on human rights and governance. It puts limitation on funds obtained from international donors for human rights-related activities in the country. As a result, there had been a decline in donor funding of local partners, partly because of the restrictive government regulation, but also partly due to internal regulatory mechanism of donors.⁷¹

After a decade of its application, the restrictive CSP has been amended to the Organizations of Civil Societies Proclamation No. 1113/2019 (The Proclamation). The Proclamation amended the category of CSOs into local and foreign organizations. Moreover, it liberalized the restrictive fund administration and allocation of their engagements. It sets out, as its objective, enhancing the role of CSOs in the development and democratization of the country; and regulating them to ensure accountability and maximum public benefit from the sector cognizant of

⁷¹ <https://www.norway.no/globalassets/2-world/ethiopia/civil-society/summary-from-presentations-in-nepal-and-ethiopia-pdf.pdf>

the importance of nurturing the culture of philanthropy and volunteerism in a society. The Proclamation, however, does not apply to religious and traditional institutions and organizations formed under other laws.

The Proclamation has provided working freedom in the operational role of CSOs. Article 62(2) of the Proclamation laid down that *“an organization shall have the liberty to engage in any sectors and area of operation without restriction and limitation of whatsoever so long as an activities and objective it aimed to achieve is legal, moral and pro-culture, social values and norms”*.

The Proclamation, under Article 62(3), expressly permits foreign organizations to work in partnership with local organizations by providing financial, technical and capacity building support to ensure that their activities help to bring sustainable development, contribute to the democratization process, promote the rights and interests of their members or enhance the profession they are engaged in.

Article 63(1b and 1C) of the Proclamation also lifted restrictions on sources of funds from foreign sources so long as the sources are legal. The previous legislation, under Article 2(2), states the Ethiopian CSOs should not generate more than 10% of their funds from foreign sources rather should come from local sources. As a result of the previous restrictive provisions of the CSP, CSOs were not at liberty to use foreign funds for human rights, justice and advocacy work. For instance, the bank accounts of Ethiopian Human Rights Council (EHRCO, now HRCO) and the Ethiopian Women Lawyers Association (EWLA) had been frozen (Amnesty International 2012). However, the new Proclamation enabled organizations to choose their source of funding and respective area of engagement.

Under the new Proclamation No. 1113, CSOs can engage in promoting the rights of PWDs. The Agency Board of CSOs is now more representative; its members comprise of representatives from government bodies (three in number), CSOs (three), National Federation of Disability Associations (two), Women and Youth Associations (two) and one Expert (Article 8(1)(d)).

Normative Standards for the Promotion of the Rights of PWDs in Ethiopia

The FDRE Constitution

Ethiopia does not have an all-encompassing national disability legislation to regulate the enforcement of disability rights and specific needs of PWDs. Several provisions of the FDRE Constitution, under Chapter 3, protect human rights out of which few provisions specifically address PWDs. Article 41, which addresses economic, social and cultural rights, mentions disability under sub-article 5 and provides *“the State shall within*

available means, allocate resources to provide rehabilitation and assistance for the physically and mentally disabled, the aged, and children who are left without parents or guardian". However, the phrase "*within available means*" is controversial, because the economic rights of PWDs are often not implemented due to prejudice and/or misunderstandings of their basic needs, attaching it solely to lack of resources. Article 41 of the Constitution also tries to guarantee support in the form of allocating resources to provide rehabilitation and assistance. Hence, Article 41(5) of the FDRE Constitution narrows down the rights of PWDs to rehabilitation and assistance, by allocating resource within available means.

ICESCR, which is also ratified by Ethiopia, imposes an obligation on States to fulfill the economic needs of its peoples in general terms by utilizing all appropriate means to the maximum of its available resources. Article 2 of the ICESCR states that:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

From the above provision, ICESCR urges member States to take measures to realize all economic, social and cultural rights through individual or international cooperation applying to the maximum of its available resources. Thus, the FDRE Constitution could have been drafted in line with the wordings and intents of Article 2 of the ICESCR, considering the phrase "*to the maximum of its available resources*", in order to promote equality of PWDs in a dignified way rather than using "*within the available means*".

Article 24 of the Constitution recognizes dignity of all human beings that undoubtedly apply to PWDs. It further states "*everyone has the right to recognition everywhere as a person*". Similar to most bills of human rights, the Constitution, under Article 25, stipulates the principles of equality and non-discrimination clause in general terms. It recognizes equality before the law and prohibits discrimination on any grounds. In this respect, the law guarantees, to all persons, an equal and effective protection without discrimination on grounds of race, nation, nationality, social origin, color, sex, language, religion, political or other opinion, property, birth or other status. Although the provision does not specifically mention disability under its list of grounds of discrimination, the phrase "*other status*" shall apply to prohibit any kind of discrimination on the basis of disability.

Other National Legislations Relevant to PWDs in Ethiopia

The Proclamation on the Right to Employment of Persons with Disability (Proclamation No. 568/2008) clearly noted in its preamble that deeply-rooted negative perceptions of disability affected the rights of PWDs to employment. Previous legislation on the right to employment (the Right of Disabled Persons to Employment Proclamation No. 101/1994), which was repealed by the current proclamation, had created a distorted image of PWDs' capability of performing jobs based on merit, thus failing to guarantee their right to reasonable accommodation and proper protection.

Contrary to the previous Proclamation, the current Proclamation provides an elucidation for "*prohibition of discrimination*", "*reasonable accommodation*" and "*undue burden*". It prohibits discrimination against PWDs in employment and imposes concomitant responsibilities on employers, including taking measures to provide appropriate working and training conditions and materials for PWDs; taking into account all reasonable accommodation and measures of affirmative action to women with disability; considering the multiple burdens that arise from their sex/gender and disability; and assigning assistants to enable PWDs to perform their work or follow their training. Significantly, employers are obliged to protect women with disabilities from sexual violence that might occur in work places (FDRE Proclamation No. 568/2008: Articles 2-6).

The Federal Civil Servants Proclamation no. 1064/2017, under Article 13(2), further provides non-discrimination principle on recruitment and selection of workers to fill vacancies that expressly prohibits discrimination on the ground of disability. Another significant law, which gives due attention for the protection of PWDs in Ethiopia, is the Building Proclamation No. 624/2009. Article 36 of the Proclamation provides "*any public building shall have a means of access suitable for use to physically impaired persons including those who are obliged to use wheelchairs and those who are able to walk but unable to negotiate steps*". Where toilet facilities are required in any building, adequate number of such facilities shall be made suitable for use and shall be accessible by physically impaired persons.

Another national law that explicitly recognizes the rights of PWDs is the Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation No. 1162/2019. Article 21 of the Proclamation stipulates that "*eligible voters who are frail or blind can register in person with the assistance of their aid*". The Proclamation protects PWDs' political rights under Articles 31, 32 and 51 guarantees assistance to PWDs who require to exercise their voting rights.

Despite these domestic laws, Ethiopia has also ratified several human rights instruments including the African Charter on Human and Peoples'

Rights (ACHPR) and the African Charter on the Rights and Welfare of the Child (ACRWC), both of which protect socioeconomic as well as civil and political rights of PWDs. However, Ethiopia has not yet signed and ratified the Protocol to the African Charter on Human and Peoples' Rights (ACHPR), one of the vital human rights instruments for PWDs, on the Rights of Persons with Disabilities.

Despite these initiatives under the aforementioned domestic laws, the commitment made by the country has not yet sufficiently translated into action. There are still legislative and policy gaps that affect rights of PWDs. Several domestic laws have to be harmonized with the CRPD, as required by Article 4 of the treaty (Kasahun 2013).

Roles of Civil Society Organizations Working on the Rights of PWDs in Ethiopia

General Overview of Disabled Persons Organizations in Ethiopia

Although few in number, DPOs, CSOs working on disability-related issues, promote the rights of and support PWDs in different parts of Ethiopia. Among the support DPOs offer are advocacy and empowerment services, supporting livelihoods, educational and health services, counseling, skills training, awareness raising on human rights, conducting evidence-based research, performing accountability duties and capacity building activities. Some DPOs have been engaged in activities designed to enable PWDs to become productive citizens through educational support and income generating activities (Gebre et al. 2013). PWDs are not yet adequately empowered to support themselves and their families. Hence, it is important to ensure that they continue to receive livelihood assistance and medical attention while pursuing the right-based approach, which require concerted awareness raising work over extended period of time (Ibid).

DPOs in Ethiopia are established at a national or regional level while some of them are organized at *woreda*⁷² and subcity levels. The Federation of Ethiopian Associations of Persons with Disabilities (FEAPD) is an umbrella organization where various associations of PWDs are members. FEAPD is registered pursuant to the new CSO proclamation no. 1113/2019. The Federation has recently broadened its organizational structure and has twenty-one member associations including associations of PWDs from Regional States. With the expansion of its organizational structure, FEAPD's members now constitute professional associations established by PWDs, national and regional associations of PWDs, and other associations established by PWDs to address specific challenges.

⁷² *woreda* is the lower administrative structure in the country, above the *kebele* government structure.

FEAPD's main objectives are promoting human rights of PWDs; assisting them to ensure their well-being; developing their self-confidence and attaining equality of opportunities for disabled persons. It aims to voice the rights of PWDs all over the country both to the government and the society (FEAPD 2021).

As one of the few DPOs, the Ethiopian National Association of the Blind (ENAB), the first association to work on the rights of PWDs in Ethiopia, was established with the objectives of advancing universal human rights, equal opportunities and full participation of visually impaired Ethiopians. Among these are provision of education and assistance to the blind person in furthering their integration into the society, raising awareness on the situation of people with visual impairment, and promotion of employment opportunities for visually impaired persons.⁷³

Another association worth mentioning is the Ethiopian National Association of the Physically Disabled (ENAPD), which focuses on attitudinal change towards persons with physical disability by running awareness-raising campaigns and advocacy activities. It provides for basic education courses and vocational rehabilitation in the areas of tailoring, agriculture, leather work and carpentry (ILO 2004).

In addition to the above mentioned DPOs, there are other associations working strongly on the rights of PWDs such as the Ethiopian National Association of Persons Affected by Leprosy (ENAPAL), Ethiopian National Association on Intellectual Disability (ENAIID), the Ethiopian National Association of the Deaf (ENAD) and the Ethiopian National Association of the Deaf-Blind (ENDB). All these associations discharge their roles in different ways such as awareness raising, advocacy and economic empowerment in order to realize the rights of their members to tackle discrimination and poverty (Ibid). However, DPOs which are the principal stakeholders in the implementation and enhancement of disability laws and policies in the country continue to face considerable capacity and resource constraints especially in human power, expertise and finance. According to Gizachew Birhanu, a project coordinator at FEAPD, CSOs do not seem to be equipped with professionally trained personnel to advocate and ensure the rights of PWDs. As a result, there is a wide gap towards the implementation of the rights of PWDs.⁷⁴

The Roles of Civil Society Organizations in Monitoring the Human Rights Promotion of PWDs in Ethiopia

Civil society and academics have often used international human rights conventions to judge States' conducts. This can take place through

⁷³ <https://ethionab.org>

⁷⁴ Informal phone interview and mail communication with Gizachew Birhanu. A project coordinator at Federation of Ethiopian Association of Persons with disabilities. September 2021.

monitoring mechanisms such as periodic state reporting, shadow reports, and other means of State communications (Harpur 2011). It is a fact that monitoring fosters accountability and, over the long term, strengthens the capacity of parties to protect, promote the rights of PWDs and fulfill their commitments and obligations. Monitoring comprises a range of steps, including collection of information, legal and information analysis, documentation and reporting, corrective action and follow-up, and evaluation. These activities are interlinked in what is called the monitoring cycle (UN 2010).

The section below discusses the role of CSOs in monitoring activities and in promoting the rights of PWDs, at national and international levels, by examining pertinent provisions of the CRPD and cross-referencing to domestic laws and practice in Ethiopia.

Monitoring at National Level

As far as the responsibility of CSOs to monitor the implementation of the laws at national level is concerned, Article 33(3) of the CRPD affirms that full participation of civil society, in particular PWDs and their representative organizations, is essential for effective monitoring and implementation. The requirement to interact with DPOs provides an opportunity to ensure that the voices of PWDs are heard by the government.

The Ethiopian Center for Disability and Development (ECDD) for example works collaboratively with other organizations to promote inclusive development and the inclusion of disability issues in mainstream government and NGO development projects and programs. By doing this, ECDD enhances the promotion of human rights of PWDs through inclusion, monitoring and capacity building activities. The ECDD use the audit questionnaire to assess accessibility of organization for PWDs on policy, programs, services, information and facilities (ECDD 2010).

On another account, FEAPD discharges its responsibilities in promoting and monitoring the implementation of human rights of PWDs. A case in point is FEAPD's engagement in voters' education campaign, election observation, accessibility auditing of election centers, and awareness raising to stakeholders about the rights of PWDs to participate in election. FEAPD also organized consultative meetings with political parties, media and PWDs in which all member associations took part during the sixth national election (FEAPD 2021).

Another important provision governing the role of CSOs with regard to PWDs under the CRPD is Article 32, which provides for international cooperation as a vital means to ensure the full enjoyment of human rights. It expressly acknowledges this relationship, and obliges State parties to

cooperate with other States and/or with relevant international and regional organizations and CSOs in building capacity, including through the exchange and sharing of information, experiences, training programs and best practices. The provision simultaneously puts forward a twin track approach, which aims to increase the resources allocated to PWDs and to monitor and promote the mainstreaming of disability in all projects on one hand, and the strengthening of the role to be played by DPOs in decisions concerning their own lives on the other (Griffo and Marzotti 2015).

The current Ethiopian CSO law is in harmony with what is stated under Article 32 of the CRPD as it expressly permits collaboration between local and foreign organizations under Article 62(3). From this, the amended CSO law has provided a favorable environment to conduct monitoring and implementation of policy, laws and programs concerning PWDs. The amended CSO law has not provided limitation as 'rights based' or 'development based' in terms of operation areas. CSOs can also secure funds from all possible sources whether local or abroad.

Article 33(2) of the CRPD is another important provision dealing with monitoring mechanism at national level in order to protect and promote the human rights of PWDs. It provides that:

State parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

Accordingly, States are obliged to ensure that monitoring authorities are independently established to promote, protect, and monitor the implementation of the Convention within the State. There are two independent national institutions working on human rights in Ethiopia, entrusted with promoting and monitoring human rights. These are the Ethiopian Human Rights Commission (EHRC) and the Institution of the Ombudsman.

However, EHRC's establishment proclamation falls short of providing how the rights of PWDs are to be implemented and monitored in partnership with DPOs. Although a commissioner for the rights of PWDs and the elderly is appointed within the Commission, other enabling laws and programs, including directives, should be envisaged by the Commission to partner with CSOs and better protect the rights of PWDs in the country. By arranging initiatives and other relevant activities

including parliamentary enquiry, allocating budgets, examining the decisions of judiciary and quasi-judiciary bodies and coordinating with CSOs, accountability can be established to advance the rights of PWDs as well as ensure monitoring practices by providing robust evidence-based report solely devoted to PWDs.

In addition to NHRIs, at national level, Ethiopia has established an autonomous directorate, which implements and conduct overall follow up concerning the human rights of PWDs within the Ministry of Labor and Social Affairs. In the meantime, the directorate coordinates disability issues at the federal level to deal with employment and social issues. It is also responsible for providing policy guidance and technical support concerning social and economic integration of PWDs.

The Ministry of Labor and Social Affairs (MOLSA) adopted the revised National Plan of Action (NPA) of PWDs (2012-2021), which was drafted with the aim of, among others, promoting and raising awareness on the rights of PWDs. To achieve its vision, the NPA proposes engaging PWDs and their organizations in a meaningful partnership with the government, local communities, service delivery agencies and other organizations based on respect and equality (MoLSA 2012).

In addition, a National Implementation Monitoring Coordinating Committee (NIMCC) was established under the chairmanship of MoLSA, with representation from key ministries and civil society, including DPOs. The NIMCC is responsible to monitor and report on the implementation of national laws and policies on disability, as well as the CRPD. Parallel structures have been formed at regional levels. However, the government's capacity and technical expertise to monitor implementation is generally inadequate, and DPOs often have weak structures and synergy, especially at regional and district levels (SIDA 2015).

Monitoring at International Level

At the international level, the CRPD provides monitoring through its committee of independent experts, called the Committee on the Rights of Persons with Disabilities, hereinafter CRPD Committee. The CRPD Committee reviews reports submitted periodically by State parties. On the basis of these reports, it engages in constructive dialogue with the concerned State party and draws concluding observations and recommendations (CRPD 2006: Article 34(1)). The CRPD's Optional Protocol also provides avenue for individual complaints, where the Committee rule on a complaint submitted by an individual claiming breach of his/her rights by a State party and avenue for an inquiry procedure, through which the Committee investigates gross or systematic violations of the Convention and, with the agreement of the

concerned State party, undertakes field missions to deepen the inquiry (Optional protocol to CRPD Article 1 and 6(2)).

Even though Ethiopia did not ratify the Optional Protocol to the CRPD, it has submitted its initial State report in August 2016. One of the Committee's recommendations upon review of the report is that Ethiopia must ensure systematic and meaningful consultation with DPOs in the development of all policies and laws, training and awareness-raising across all sectors, including in the implementation of the 2012-2021 NPA, and that it shall ensure the independence of associations of PWDs and their representative organizations (Committee on the Rights of Persons with Disabilities 2016).

Conclusion and Recommendations

Conclusion

Government and CSOs have discharged various legal and institutional responsibilities towards changing the lives of PWDs in Ethiopia. CSOs, especially DPOs, are engaged in activities such as human rights promotion, economic empowerment, monitoring the implementation of policies and laws, advocacy services, mainstreaming disability, and inclusion works. They have ample opportunities in playing their roles in promoting and supporting PWDs in the country.

However, DPOs, which are the principal stakeholders in the implementation and enhancement of disability laws and policies in the country, continue to face considerable capacity and resource constraints. Despite challenges, there are positive developments in terms of ratifying international laws concerning PWDs, issuing national laws and disability-oriented plans by legislative and executive organs, amendment of CSO proclamation, the presence of specific institutions like MoLSA and national human rights institutions (NHRI), which facilitates DPOs to have better engagement in the implementation of laws and policy frameworks through promotion and monitoring activities. Therefore, it is possible to conclude that, the existing policy framework and laws have so far brought some positive changes in ensuring the promotion of the rights of PWDs.

Recommendations

Based on the foregoing discussions, the following recommendations are forwarded towards strengthening the role of CSOs to promote the rights of PWDs in Ethiopia. First, the government shall work in consultation with CSOs operating in the field of disability rights and DPOs towards realization of the rights of PWDs. DPOs and CSOs shall likewise act in

coordinated manner with the government, NHRIs and other organizations.

Second, DPOs should advocate for issuance of a comprehensive law on disability. Third, PWDs and their representative organizations must push forward for the endorsement of the optional Protocol to CRPD and ADP. The signing of the above-mentioned laws could enable effective complaint mechanisms or remedies for disability-based discrimination and compliment the protection of PWDs in the justice system. The signing of these laws would provide PWDs access to international human rights mechanism, regional human right court as well as other relevant institutions and also serve as an additional alternative avenue to seek redress when their rights are not adequately protected domestically.

Finally, to ensure the protection and promotion of the rights of PWDs, CSOs should be encouraged to work on all elements of rights-based approach. Accountability and full participation should be meticulously implemented with an ultimate goal of promoting, monitoring and mainstreaming disability in all ongoing and upcoming development schemes.

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Supported Decision-Making for Persons with Mental and/or Intellectual Disabilities: An Examination of Ethiopia's Legal and Institutional Framework in light of the CRPD

Yilkal Hassabie⁷⁵

Abstract

This article unpacks the concept of supported decision making and show models of support practices that could be customized in Ethiopia. Supported decision making is one of the rights of persons with disabilities recognized under Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD). Elaborating on the concept of supported decision making, General Comment 1 on the CRPD clarifies the right to legal capacity of persons with disabilities. First, it succinctly separates mental capacity from legal capacity and makes the latter absolute right not to be impaired by the earlier. Second, it identifies two steps in the full exercise of the right to legal capacity: recognition before the law on an equal basis and legal agency. Third, it confirmed Persons with disabilities must be provided with support (formal or informal) to enable them to fully exercise their right to legal capacity. However, the CRPD does not specify what types of support States should provide. Hence, States are developing their own supported decision-making system, such as the ombudsman in Sweden, enduring power of attorney and supportive guardians and administrators in Australia. To the contrary, Ethiopia, as it could be understood from its initial report to the CRPD committee, fails to properly understand the concept of supported decision-making and to move forward in legal and policy measures. Therefore, this article, by conducting desktop review, presents foreign experiences of supported decision-making that Ethiopian government could take lesson from.

Keywords: *Legal Capacity, Mental and Intellectual Disability, Substituted Decision Making, Supported Decision Making*

Introduction

There is no internationally agreeable definition for the term legal capacity (Series and Nilsson 2018:349). The Ethiopian civil code under Article 192 defines capacity as capability to perform all acts of civil life; there is however no clear definition of the term civil life. The black's law

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dictionary defines civil action, the term that is synonym with civil life, as an action brought to enforce, redress or protect private or civil right (Garner 2009) including all juridical and non-juridical acts. The term legal capacity, therefore, can refer to “*a person's power or possibility to act within the framework of the legal system*” (CECHR 2012:10). It encompasses a legal concept to have rights and obligations, to make binding decisions and have them respected, facilitate personal freedom and protect from unwanted interventions (Ibid).

In general, the concept of legal capacity has two elements; the legal standing in the sense of being viewed as a person before the law and the legal agency, sometimes called active legal capacity (McSherry 2012). The second leg of the definition, legal agency, signifies the ability of a person to act within the framework of the legal system. With this, the concept of legal capacity is intimately connected with autonomy (Series and Nilsson 2018:349). It signifies the possibility to enjoy one’s own affair with full consent without the need to have a representative who act on his/her behalf.

It was not an easy task to clearly incorporate the concept of legal capacity in the United Nations’ Convention on the Rights of Persons with Disabilities (CRPD), an international human rights instrument adopted in the 21st century for the protection of the rights of persons with disabilities. During the drafting process of the CRPD, the concept of legal capacity was raised to be an underlying element of Article 12 and was the center of debate mainly by non governmental organizations. While States, such as India, and the chair of the *Ad Hoc* Committee for the preparation of the CRPD mentioned guardianship through which persons with mental and/or intellectual disabilities could make decisions, international disability alliance and inclusion international proposed for equal recognition of persons with disabilities before the law emphasizing the importance of not differentiating legal status based on actual or perceived disability (Series and Nilsson 2018:344). The *Ad Hoc* Committee disagreed mainly on the meaning of the term legal capacity claiming that while the ‘capacity to hold and bear right’ could not be the ‘capacity to act’, the latter can be limited by law (Ibid). One of the debating issues was on the need for Article 12 of the CRPD to explicitly incorporate the term ‘capacity to act’.⁷⁶ In this debate, in one of the meetings, the chair noted that:

A fundamental issue in Article 12 is finding a balance between a clear assertion that persons with disabilities have the same right to recognition as persons before the law and legal capacity as everyone else and recognition of the fact that there are circumstances in which persons

⁷⁶ See the daily summary of the discussion at the seventh session of the Ad Hoc Committee, Related to Article 12 Equal Recognition as a Person Before the Law (18 January 2006). Available at <https://www.un.org/esa/socdev/enable/rights/ahc7sum18jan.htm>.

with disabilities require support in exercising legal capacity and capacity to act.⁷⁷

The International Disability Caucus (IDC) gave an opinion that persons with disabilities have not been recognized as 'persons' before the law and "*legal capacity is only a shell in the absence of capacity to act*" (Ibid). The core of this debate revolved on whether substituted decision making shall continue or not. The firm position of the inclusion international and IDC was that substituted decision making or guardianship, even as a last resort, should be over and the shift should be towards supported decision making (Ibid).

At the end, the CRPD recognized equal recognition of persons with disabilities before the law.⁷⁸ Article 12(2) of the CRPD also incorporated, within the concept of legal capacity, the power to act under the laws with specific reference to persons with disabilities. The concept of 'legal capacity' within this document "*consists of two integral components: the capacity to hold a right and the capacity to act and exercise the right, including legal capacity to sue, based on such rights*".⁷⁹ Although this provision does not use the term 'legal capacity to act' (Robert 2012), it adopts the right of persons with disabilities to legal capacity including the power to act with it.⁸⁰ CRPD's General Comment No. 1 also explicitly state the concept of legal capacity to include both the holder of the right and actor under the laws.⁸¹ Meanwhile, Article 12(3) of the CRPD provides that "*State parties shall take appropriate measures to provide access by Persons with disabilities to the support they may require in exercising their legal capacity*".

Ethiopia signed the CRPD on the 30th of March 2007 and ratified it on 7th July, 2010 by proclamation no. 676/2010.⁸² Ethiopia accordingly had made its initial treaty-specific report on the implementation of the CRPD in accordance with Article 35 of the convention. The treaty-specific report partly details what Ethiopia has implemented to comply with the CRPD. Therefore, this article, from the treaty-specific report made by Ethiopia

⁷⁷ The daily summary of discussion at the seventh session of the Ad Hoc Committee, Related to Article 12 Equal Recognition as a Person Before the Law (18 January 2006). See the statement by the chair. Available at <https://www.un.org/esa/socdev/enable/rights/ahc7sum18jan.htm>.

⁷⁸ See Convention on the Rights of Persons with Disabilities and Optional Protocol, 13 December 2006, Article 12(1).

⁷⁹ Legal Opinion on Article 12 of the CRPD, June 21, 2008. Available at <https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/legal-opinion-LegalOpinion-Art12-FINAL.pdf>

⁸⁰ Article 12(3) of the Convention on the Rights of Persons with Disabilities and Optional Protocol (2006) reads as "States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity."

⁸¹ See the UNCRPD Committee CRPD General Comment No. 1: Article 12 (Equal recognition before the law) 11 April 2014 Para. 12.

⁸² See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en and proclamation no. 676/2010 of the Federal Democratic Republic of Ethiopia.

on Article 12 of the CRPD, analyzes the position of the Ethiopian government on supported decision-making.

Understanding Mental and Intellectual Disabilities

Disability and impairment are an evolving concept and does not have one definition.⁸³ Article 1 of the CRPD identifies four categories of impairments; physical, mental, intellectual and sensory. Mental disability, also called psychosocial disability, is associated with the disfunctioning of the mental part or disorder related to mental health. These may include depression, bipolar disorder, schizophrenia and other psychoses, dementia, and developmental disorders including autism (WHO 2021). On the other hand, intellectual disability, otherwise known as cognitive disability, is associated with the reduced ability of intellectual functioning, mostly during the developmental period of an individual that adversely affects the learning capability of a child.⁸⁴ In one or another, these two types of disabilities affect the decision-making of a person.

Substituted Vs. Supported Decision-Making

A distinction between substituted and supported decision-making systems lies on the power of the third party in making decisions on behalf of a person with disability or supporting them to make decisions respectively. If the third party makes the decision on behalf of a person with mental and/or intellectual disability, it is substituted decision making while if the decision of a person with mental disability is facilitated or supported by the third party, it is called supported decision-making. It can be summarized in the following statement; *“the difference between supported and substitute decision-making is that, in a supported situation, the person with a disability is at the center of the discourse”* (Series and Nilsson 2018:345).

The Shift to Supported Decision-making

The CRPD requires State parties to investigate their laws and make a shift from an age-old guardianship system to supported decision-making approach in recognition to the right to legal capacity of persons with

⁸³ The CRPD, instead of defining the term persons with disabilities, under Article 1, indicates what is included as ‘persons with disabilities’. Paragraph (e) of the preamble of the CRPD also clearly reads as *“disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.”*

⁸⁴ Office of Special Program U.S. Department of Education, Cognitive Disability Resources. Available at <https://www.ocecd.org/CognitiveDisabilityResources.aspx>.

intellectual or mental disabilities.⁸⁵ In this, the first measure would be to identify the laws that enforce the guardianship regime. The CRPD Committee, in its concluding observations to Ethiopia's initial report, has identified few provisions of Ethiopian laws that do not comply with Article 12 of the CRPD.⁸⁶ These are the Civil Code (Chapters 3 and 4, Articles 339-388, 1728(3)) and Commercial Code (Article 740). The major concern of the CRPD committee in its concluding observation was the position of the civil code towards 'insane' and 'infirm' persons. The CRPD committee expressed its concern with the statement that runs as:

those provisions restrict the right of persons with psychosocial disabilities and intellectual disabilities to the full enjoyment and exercise of their rights, including the right to marry, to act as witness and to vote, and parental rights and, for blind, deaf and deaf-blind persons, the right to carry out banking transactions.⁸⁷

Examining the provisions of the civil code, the general rule is *"every physical person is capable of performing all the acts of civil life unless he is declared incapable by the law and this presumption is taken by law unless the one alleging the disability/incapability/proves otherwise"*.⁸⁸ The term 'civil life' refers to both juridical and non-juridical acts including all the civil, political, economic, social and cultural rights (Mohammed 2017). To this general rule, however, there are two exceptions based on 'insanity' and 'infirmity'.

Under chapter 3 of the Civil Code, there are two situations that remove the legal capacity of a person under the concept of insanity. The first is notorious insanity when (1) individuals are kept in an institution or hospital or nursing home because of insanity⁸⁹ and/or (2) the liberty of a person is limited due to mental conditions or kept at home by the family or persons living in a rural community of less than 2000 inhabitants.⁹⁰ This category, according to the civil code, is *"broad and may include large number of people with mental impairment, particularly, given the lack of adequate mental health facilities in Ethiopia"*.⁹¹ In both instances of notorious insanity, with proof of either of the two facts, there will not exist legal capacity. This is a status approach that depends exclusively on mental impairment.⁹² The legal effect of notorious insanity is that any juridical act performed by notoriously insane person may be impugned by the

⁸⁵ See CRPD Article 12; see also UNCRPD Committee General Comment No. 1, paras. 3 and 7.

⁸⁶ Concluding observation on the initial report of the Ethiopian government, CRPD committee, para. 26.

⁸⁷ CRPD Committee Concluding Observations, Para. 25.

⁸⁸ Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, Art. 192 and 196.

⁸⁹ Civil Code, Article 341.

⁹⁰ Civil Code, Article 342.

⁹¹ Ibid.

⁹² Ibid.

request of the person or by his/her representatives or heirs.⁹³ In such a case, the act will not be automatically void but anyone of the parties mentioned above may request invalidation of the act.⁹⁴ As a result, no one will be tempted to have transactions with a person with mental and/or intellectual disability for fear of invalidation of the act.

The second situation is judicial interdiction to which an application may be made by the insane person, the spouse, relative or public prosecutor.⁹⁵ The court pronounces the interdiction of the insane person if the measure is necessary and by seeing the person whose interdiction is applied for unless the in-person appearance of the individual is impossible.⁹⁶ In this situation, even though it is not proved that a person was notoriously insane, the judicial interdiction puts the person under the protection of the law. As a result, the judicially interdicted person will be treated as a minor for all administrative matters of personal and property affairs, and in all cases the court shall assign a guardian and tutor.⁹⁷ The guardianship is presumed to be plenary guardianship, though the court may permit the judicially interdicted person to perform certain acts by him(her)self.⁹⁸

Once the person is judicially interdicted, he/she loses the power to act by him(her)self and the court assigned guardian and tutor continue to act on his/her behalf. Nonetheless, the Civil Code has tried to put some protection mechanisms against the interest of the judicially interdicted. These include (1) the family council,⁹⁹ (2) any member of the family council by appealing to the family council against the decisions of the guardian¹⁰⁰ and (3) the court.¹⁰¹ There are also instances whereby the Civil Code recognizes the need to hear the consent of the judicially interdicted person. For instance, the consent of both the interdicted and the guardian is required for divorce.¹⁰² The court may also decide, during the pronouncement of the interdiction, that the tutor may not perform certain acts, that it determines, without the concurrence of the interdicted person.¹⁰³ There are also certain acts, such as family matters, the court allow persons with mental and/or intellectual disabilities to perform by themselves.¹⁰⁴

⁹³ Civil Code, Article 343(1).

⁹⁴ See Civil Code, Article 344(2). Invalidation on the ground of insanity is assimilated with invalidation on the ground of error pursuant to Articles 1696-1703.

⁹⁵ Civil Code, Articles 351 and 353(1).

⁹⁶ See Civil Code, Article 354.

⁹⁷ See Civil Code, Articles 358-359.

⁹⁸ Civil Code, Article 371(2).

⁹⁹ Civil Code, Article 360.

¹⁰⁰ Civil Code Article 364.

¹⁰¹ For instance, the Civil Code, Article 368(3) puts that the court may invalidate, in whole or in part, the will made by interdicted person.

¹⁰² Civil Code, Art. 370(1).

¹⁰³ Civil Code, Article 371(3).

¹⁰⁴ See the Revised Family Code, Articles 15, 34, 43, 175, and 243.

Pursuant to the Revised Family Code of the Federal Democratic Republic of Ethiopia (FDRE), judicially interdicted persons cannot marry without the authorization of the court.¹⁰⁵ If the judicially interdicted person contracts marriage without the authorization of the court, his/her guardian may apply for the dissolution of the marriage.¹⁰⁶ A contract of marriage made to limit the pecuniary/personal effect of marriage by the judicially interdicted person is also of no effect unless approved by the court;¹⁰⁷ and an action to disown a child by judicially interdicted person requires permission of the court and may also be performed by the guardian.¹⁰⁸ Thus, in these instances, the court may authorize or approve the acts of the judicially interdicted person. Enacting family law is within the jurisdiction of each Regional State in the federal structure. However, an assessment of the family laws of the constituent Regional States of Ethiopia shows that the laws are almost a replica of the 2000 Federal Revised Family Code.¹⁰⁹ Therefore, it is possible to conclude that the rights of persons with intellectual or mental disabilities in family matters are the same all over the country.

However, none of the protection mechanisms discussed above and the authorization by a court to do certain acts equate with the notion of supported decision-making. The requirement of consent of the interdicted person for certain acts does not make it part of the supported decision-making system. Consent from the tutor that the court may put as a requirement during the pronouncement of the interdiction on certain acts also indicate that the consent of the tutor is equally relevant with the consent of the judicially interdicted person. The authorization by the court for the judicially interdicted person to do certain acts also puts the legal capacity of the person at the discretion of the court. Hence, it is possible to conclude that the Civil Code is far from the new supported decision-making approach of the CRPD.

In general, therefore, the CRPD committee seems right in observing that the Civil Code provisions under chapter three (Articles 339-379) contradict with Article 12 of the CRPD. Nonetheless, it is unclear why the CRPD included chapter 4 (Articles 380-388) of the Civil Code on persons interdicted by law, among cited provisions in the concluding observation document, in the list of articles that are against the CRPD. These articles are all about legal interdiction, instead of judicial interdiction, that are not related with persons with intellectual or mental disabilities. Legal

¹⁰⁵ The Revised Family Code, Article 15(1).

¹⁰⁶ The Revised Family Code, Article 34(1).

¹⁰⁷ The Revised Family Code, Article 43(1).

¹⁰⁸ The Revised Family Code, Article 175.

¹⁰⁹ See Amhara National Regional Family Code Proclamation No. 79/2003, Articles 26, 45, 54 (1), 186, and 254; Tigray Regional State Revised Family Code Proclamation No. 116/2007, Arts. 22 (1), 49(1), 61(1), and 206; Southern Nations Nationalities and Peoples Regional State Family Proclamation No. 75/2004, Articles 25, 43, 52, 190, 258 (1). All the above provisions are direct copies of their federal companion provisions in terms of limiting the legal personality of the judicially interdicted persons in the family life.

interdiction in these articles addresses limitation imposed on legally interdicted persons regarding enjoyment of legal personality because of their criminal liability.¹¹⁰

In addition to the general rule that takes away the legal capacity of persons with mental and/or intellectual disabilities and irrespective of the discretion of courts to allow the interdicted person to perform certain acts, there are also specific laws that completely prohibit judicially interdicted persons to do certain acts.¹¹¹ Mental condition is, for that matter, one source of the general disabilities (incapacities) to perform all acts of civil life.¹¹² Here, it must be noted that the Civil Code uses the terms disability and capacity synonymously while the term disability in the CRPD shall mean the interaction between persons with impairment and the barriers resulting in the lack of equal opportunity.¹¹³ It follows that judicially interdicted persons may not conclude any sort of contract.¹¹⁴ Moreover, in commercial transactions, judicially interdicted persons may not bind themselves by commercial instruments such as bill of exchanges, cheques, promissory notes and others.¹¹⁵ In the same token, the criminal law of Ethiopia takes away the legal capacity of persons with mental and/or intellectual disabilities to defend criminal cases established against them.¹¹⁶ In such instances, the court orders treatment or protection of the so called ‘irresponsible person’ pursuant to Articles 129-131.¹¹⁷

Existing laws of Ethiopia adopt guardianship and conflate legal capacity and mental capacity¹¹⁸ and restricts the legal capacity of persons with mental and/or intellectual disabilities on a basis of status approach. The initial report of Ethiopia to the CRPD committee also confirmed that it has not yet placed supported decision-making system. The initial report reads as “*the restriction of legal capacity on the ground of mental disability is*

¹¹⁰ See Civil Code, Articles 380-388.

¹¹¹ See the Civil Code, Article 368 that prohibits judicially interdicted persons from making wills. The FDRE Revised Family Code Proclamation No. 213/2000, Article 243 does not allow judicially interdicted persons to be guardian for minors. The Ethiopian Electoral, Political Parties Registration and Election’s Code of Conduct Proclamation No. 1162/2019, Article 18(3)(a), indicates a person who is proved to be incapable of making effective decision by an authorized body or sufficient evidence due to insanity is not legible to register as elector; Article 31(1)(f) further prohibits same person to register as a candidate.

¹¹² Civil Code, Articles 192 and 193.

¹¹³ See the UNCRPD, Article 1. This article identifies persons with disabilities as they 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.*”

¹¹⁴ Civil Code, Article 1678(a).

¹¹⁵ Commercial Code of the Empire of Ethiopia Proclamation No. 166/1960, Articles 733 and 741.

¹¹⁶ See the Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation No. 414/2004, Article 48.

¹¹⁷ Criminal Code, Article 48(3).

¹¹⁸ UNCRPD General Comment No. 1, para. 15 clarified that persons with cognitive or psychosocial disabilities shall not be discriminately denied of their legal personality because of the assessment of the inner workings of the human mind (emphasis added).

to protect the interest of such a person".¹¹⁹ With this statement, the initial report of Ethiopia acknowledges the restriction of the legal capacity of persons with mental and/or intellectual disabilities is in the best interest of the individual. Had Ethiopia believed in the guardianship regime to best protect the interest of persons with disabilities compared to supported decision-making system, it would have made reservations on Article 12.¹²⁰

Again, the 2012–2021 National Plan of Action of Persons with Disabilities of Ethiopia (hereinafter referred as NPA) does not have any mention of supported decision-making as well.¹²¹ Of course, the NPA, under priority two entitled health and medical treatment, cites Article 25(d), which calls governments to take measure that:

require health professionals to provide care of the same quality to Persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of Persons with disabilities through training and the promulgation of ethical standards for public and private health care.¹²²

The health care service is one of the areas whereby persons with mental and intellectual disabilities are denied of their legal capacity. Health institutions admit persons with mental and intellectual disabilities without free and informed consent and upon the request of their guardians or appropriate authorities.¹²³ Therefore, the recitation of Article 25(d) by the NPA is much appreciated in recognizing free and informed consent of persons with mental and/or intellectual disabilities in health institutions. Unfortunately, however, none of the outputs or activities listed under the priority on health and medical treatment explicitly show how to realize free and informed consent by health

¹¹⁹ Implementation of the UN Convention on the Rights of Persons with Disabilities, treaty-specific initial report of the Ethiopian government, UN Secretary General, (2012), para. 54.

¹²⁰ For instance, Egypt has already declared that it interprets Article 12(2) to have given only the capacity to have the right for persons with intellectual or cognitive disabilities at the time of signing the CRPD. Thus, Egypt may not be bound by the convention to provide support to enable persons with intellectual or cognitive disabilities to independently exercise their capacity to act. Available at https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&clang=en

¹²¹ The 13 action priorities of the NPA are (1) public awareness, (2) health and medical treatment, (3) HIV/AIDS and persons with disabilities, (4) education and training, (5) employment and work, (6) social protection, (7) living environment, (8) culture, sport and recreation, (9) full participation of women with disability, (10) self-representation through DPOs, (11) research and information, (12) human resource development, and (13) international cooperation. See the 2012–2021 National Plan of Action of Persons with Disabilities, P. 13-57.

¹²² The National Plan of Action of Persons with Disabilities, P. 18.

¹²³ For instance, the court may send him to the treatment or special protection center if a person with mental and/or intellectual disability is found to have committed a criminal act pursuant to Articles 48(2)(3) and 129-131.

institutions.¹²⁴ Other than mere duplication of Article 25(d) of the CRPD on free and informed consent, the NPA did not give sufficient attention to the supported decision-making system to ensure the legal capacity of persons with mental and/or intellectual disabilities. Consequently, given the fact that the right to legal capacity is inextricably linked to other basic human rights,¹²⁵ the NPA should have included, within its priorities, the right to legal agency of persons with disabilities in general and persons with intellectual or mental disabilities in particular.

The National Mental Health Strategy of Ethiopia also mentions protection of human rights of people with mental illnesses. Under the heading of human rights and the ‘mentally ill’, the strategy pledged to apply the rights enshrined in the CRPD including the right to equality before the law.¹²⁶ To ensure the protection of human rights of persons with ‘mental illness’, the strategy promised the enactment of a specific legislation for the protection of persons with ‘mental disorders’. However, the promised legislation is not yet proclaimed. In the same way, the revision of the Civil Code, which had been said to be in process in the State’s initial report to the CRPD Committee nine years ago, has not yet come true.¹²⁷ Nonetheless, the CRPD is quite clear that:

State parties must review the laws allowing for guardianship and trusteeship, and take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person’s autonomy, will and preferences.¹²⁸

In fact, developing supported decision-making alternatives while maintaining guardianship laws does not also comply with the obligations in Article 12 of the CRPD.¹²⁹ Therefore, Ethiopia shall come up with a new supported decision-making legislation by obviating guardianship laws.

¹²⁴ See National Plan of Action of Persons with Disabilities, P. 19-21. The only activities that may have relevance to this end are those mentioned under 2.14 and 2.15 that require disability awareness to be part of the curriculum of relevant universities and training centers and courses and training to be given to the health professionals on disability issues.

¹²⁵ UNCRPD Committee General Comment No. 1, para. 31 et seq.

¹²⁶ National Mental Health Strategy, Federal Democratic Republic of Ethiopia, Federal Ministry of Health, 2012/2013 and 2015/2016. Available at <http://www.centreforglobalmentalhealth.org/sites/www.centreforglobalmentalhealth.org/files/uploads/documents/ETHIOP~2.pdf>

¹²⁷ Treaty-specific initial report of Ethiopia to the UNCRPD Committee, *supra* note 27, para. 58. The initial report recognized some derogatory terms and provisions in relation to the signature of the visually-impaired in the civil code calling for revision.

¹²⁸ UNCRPD Committee General Comment No. 1, para. 26

¹²⁹ UNCRPD Committee General Comment No. 1, para. 28

Provision of Support for Persons with Intellectual and/or Mental Disabilities

Obviating guardianship laws and legislating supported decision-making system make persons with intellectual or mental disabilities holder of the right to legal capacity but does not render them legal agency. That means, such a system may equally recognize persons with mental and/or intellectual disabilities before the law. Yet it does not ensure that they can effectively act upon it. Rather, there shall exist a system where persons with intellectual or mental disabilities could get support to recompense their disabilities.¹³⁰ This system “*must be able to encompass the supports and reasonable accommodations to which a person deserves in the decision-making process*” (Bach and Kerzner 2010). Provision of support for persons with disabilities to enable them to fully exercise the right to legal capacity is thus an obligation of State parties to the CRPD.¹³¹ So, the focus of this section would be to discuss what Ethiopia could do in the establishment of such a system.

Models of Supported Decision-Making System

The mode of support that State parties provide for persons with disabilities in general and for persons with intellectual or mental disabilities in particular vary based on the nature and severity of the disability.¹³² The support may also vary based on the type of decision to be made.¹³³ The support could be informal with no legal enforceability or formal having legal force (Nina et al. 2012). As a result, a given State party is supposed to select models and customize them into its own contexts.

Currently, there is no one model of support for persons with intellectual or mental disabilities to enable them make decisions. Rather countries have developed and adopted multiple types of support practices.¹³⁴ The Swedish Personal Ombudsman is a new social profession model that is adopted by many European countries such as Norway, Finland and Czech Republic, to provide support for individuals with severe intellectual or mental disabilities.¹³⁵ In this model, the Personal Ombudsman meet and communicate persons with mental and/or intellectual disabilities to gain their trust.¹³⁶ The overall process is informal, flexibly operated by professionals, as the formal way of approaching these persons may let

¹³⁰ CRPD, Article 12(3)

¹³¹ UNCRPD Committee General Comment No. 1, para. 16.

¹³² See UNCRPD Committee General Comment No. 1, para. 17.

¹³³ Everyone has the Right to Make Choices, how does Supported Decision-Making work? Available at http://www.supporteddecisionmaking.org/choices_brochure.

¹³⁴ See e.g.: representative agreement act, R.S.B.C. 1996, c. 405, British Colombia available at http://www.bclaws.ca/Recon/document/ID/freeside/00_96405_01 See also 13 various support practices identified by Inclusion Europe, available at <http://www.right-to-decide.eu/support-types/>

¹³⁵ Available at <https://zeroproject.org/policy/sweden-2/>

¹³⁶ Ibid.

them go back of the system.¹³⁷ While 310 Personal Ombudsmen provided support to more than 6,000 individuals in 2014, a study in Sweden reported that *“individuals with disabilities who are supported by a Personal Ombudsman require less care and that their psychosocial situation improves”*.¹³⁸

Another model is developed by the office of public advocate called Powers of Attorney in Australia to enable persons with intellectual or mental disabilities get the necessary support or representation to make decisions.¹³⁹ It has two types of support models. The first one is called an enduring power of attorney whereby a person attaining majority age can appoint an individual, before sustaining mental and/or intellectual disability, to make decisions on personal matters.¹⁴⁰ It gives leverage for everyone to decide the attorney before losing decision-making capacity. The second is supportive guardians and supportive administrators.¹⁴¹ In this mode, the Victorian Civil and Administrative Tribunal (VICAT) appoints a supportive guardian or supportive administrator when it finds the person in question can make decisions but sometimes needs support.¹⁴² The power of the supportive guardian or supportive administrator is defined by the VICAT and will have responsibilities under guardianship and administration act 2019.¹⁴³ Among others, the supportive guardian or supportive administrator remains responsible to act honestly, diligently and in good faith; to exercise reasonable skill and care; to discuss anything about a supported decision with the person in a way they can understand and that will assist them to make the decision; participate in decisions affecting their interest and develop their decision-making capacity.¹⁴⁴ In addition, many projects are running in Australia and the United States to identify the best support practice and promote the right to supported decision-making of persons with intellectual or mental disabilities (Anna et al. 2017).

Ethiopia, thus, can take lessons from such practices and adapt to its socio-economic realities. To do so, it is encouraged to develop projects, which undertake research on existing practices of guardian/ward relationships and the way forward to supported decision-making. The main objective of such projects should be to identify the best model(s) of supported decision-

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Available at <http://www.publicadvocate.vic.gov.au/power-of-attorney>. There are two types of powers of attorney as enduring powers of attorney and supportive powers of attorney to get persons with cognitive or psychosocial disabilities represented if they are unable to make their own decisions about matters and/or need support to make decisions.

¹⁴⁰ Office of the Public Advocate, Making an Enduring Power of Attorney. Available at <https://www.publicadvocate.vic.gov.au/your-rights/enduring-power-of-attorney/making-a-power-of-attorney>

¹⁴¹ See Information for Supportive Guardians and Supportive Administrators. Available at <https://www.publicadvocate.vic.gov.au/guardianship-and-administration/vcat-appointed-guardians-and-administrators/information-for-supportive-guardians-and-supportive-administrators>

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

making and to study the mechanisms for its implementation. To accomplish such purpose, examining legal frameworks and institutional structures of Ethiopia can be a starting point to identify best practices from other jurisdictions. For instance, one of the duties of the Federal Attorney General is to represent persons with disabilities who are unable to institute and pursue their civil suits before the federal courts.¹⁴⁵ Thus, it might be possible to research on whether this duty of the Federal Attorney General could be transformed into ‘an enduring powers of attorney’ as practiced in Australia or ‘representation agreement’ in British Colombia, Canada.

On the other hand, the Ministry of Labor and Social Affairs has duties to ensure that persons with disabilities are benefiting from equal opportunities and full participation and to provide the necessary services.¹⁴⁶ The Disability Affairs Directorate within the ministry, however, did not include the provision of support for persons with disabilities as one of the functions of the Directorate except for conducting awareness raising activities and ensuring disability inclusion in other ministries.¹⁴⁷ Nonetheless, the directorate, working with social workers, can provide support for persons with intellectual or mental disabilities like the Swedish Personal Ombudsman.

Another opportunity can be enhancing the role of the court, stipulated under Article 371 of the Civil Code, that makes the person with mental and/or intellectual disability at the center of the decision-making process. The court can restrict the mandates of the tutor to be concurrent with the consent of the judicially interdicted person on certain acts. This provision, therefore, may be easily revised in such a way that the consent of the judicially interdicted person will be prioritized and facilitated by the tutor in all acts in the same way ‘supportive guardianship or supportive administrators’ does in Australia.

Underlying Principles in the Selection and Application of Models of Supported Decision-Making

State parties shall observe safeguarding measures to comply with Article 12 of the CRPD in choosing appropriate and effective model of supported decision-making system.¹⁴⁸ In all cases, at the center of adhering to supported decision-making, the prime purpose must be respecting the will and preference of a person with intellectual or mental disability.¹⁴⁹ To

¹⁴⁵ The Federal Attorney General Establishment Proclamation No. 943/2016 Article 6(4)(e) lists persons whom the Federal Attorney General may represent as ‘women, children, disabled and the elderly’. More importantly, the Federal Attorney General has also duties to design strategies for free legal aid and to follow up implementation of international and regional human rights treaties ratified by Ethiopia.

¹⁴⁶ See Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 1097/2018, Article 29(11).

¹⁴⁷ Ibid.

¹⁴⁸ CRPD, Article 12(4).

¹⁴⁹ UNCRPD Committee General Comment No. 1, para. 20.

extract the will and preference of persons with intellectual or mental disabilities, the mode of support may have to include some minor accommodations and strong formal measures (Flynn and Anna 2014).¹⁵⁰ In general, at its core, supported decision-making is about taking the time to listen and communicate. This gives direction that any model of supported decision-making, which State parties adopt to comply with Article 12 of the CRPD, should be tailored to the specific needs of individuals with intellectual or mental disabilities to provide them with appropriate means of communication.

Yet, determining the will and preference of an adult might be difficult in some severe and complex disabilities even after the necessary support is given (Vivienne 2011).¹⁵¹ This is why some States have reservations on Article 12 of the CRPD upon ratification.¹⁵² Under such circumstances, however, the *“best interpretation of will and preferences”* must replace the *“best interests determinations.”*¹⁵³ This implies, *“supports for exercising legal capacity would be offered to the individual, but not imposed”* (Flynn and Anna 2014:129). More eloquently, the quality of interaction between the supporter and the supported should be free from any sign of fear, aggression, threat, deception or manipulation.¹⁵⁴

Conclusion

Ethiopia is one of the first signatory States that ratified the CRPD without reservation. Ethiopia thus has an obligation to comply with Article 12 of the CRPD to shift from guardianship to supported decision-making for people with disabilities. However, the Ethiopian government initial treaty-specific report on the implementation of Article 12 of the CRPD reveals that it lacks clear understanding of what the right to legal capacity for persons with intellectual or mental disabilities mean. The initial report rather shows that Ethiopia believes in protecting interests of persons with

¹⁵⁰ Minor accommodations may include accessible information, giving additional time to make a decision, and the like whereas robust formal measure include nominating supporter or facilitator to assist the person with cognitive or psychosocial disability in the process of decision-making.

¹⁵¹ In some circumstances, it may appear that an individual lacks the capacity necessary to make certain choices, particularly those that are complex and/or give rise to potentially grave outcomes. The Mental Capacity Act 2005 of U.K. is a legal framework applicable in such doubting circumstances.

¹⁵² The United Mexican State emphasized that in case of conflict between the CRPD and national legislations, the one which accords the greatest legal protection shall apply. Available at http://www.bayefsky.com/html/mexico_t2_disability.php. Canada's reservation reads as "Article 12 permits supported and substitute decision-making arrangements in appropriate circumstances and in accordance with the law." Available at http://www.bayefsky.com/html/canada_t2_disability.php. In addition, Estonia, France and Poland have entered a declaration to Article 12 of the CRPD. Available at <http://fra.europa.eu/en/publication/2014/indicators-right-political-participation-people-disabilities/art-12-CRPD>.

¹⁵³ UNCRPD General Comment No. 1, para. 21.

¹⁵⁴ UNCRPD General Comment No. 1, para. 22.

mental and/or intellectual disabilities through substituted decision-making. There is however no practical move available to ensure supported decision-making. Therefore, it is recommended for a new and holistic movement to legislate mental health law in line with supported decision-making. It needs also to study model(s) of support practices and apply the one that best serves the needs of persons with mental and/or intellectual disabilities in the country.

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Protection of Accused Persons with Hearing and Speech Disabilities under the Ethiopian Criminal Justice System

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Abstract

Human rights are protected by all human beings by birth without any discrimination on any grounds. Despite this, equal application of the national, regional, and international human rights and fundamental freedoms standards have been hardly observed to persons with disabilities in general and accused persons with hearing and speech disabilities (PHSDs) in particular. Since the criminal justice system operates by the vehicle of oral communication, suspects or accused PHSDs require special attention to ensure equal enjoyment of their due process rights. The purpose of this study is therefore to examine the normative and practical mechanisms the Ethiopian criminal justice system put in place to meet the appealing interests of PHSDs. The findings of the study indicate criminally suspected and accused PHSDs hardly exercise their due process rights in the criminal justice system of Ethiopia. The attributing factors for this emanate from failure of the legal frameworks to outline effective enforcement schemes, poor commitment of law enforcing bodies to carry out their mandate in line with the ascription of laws, and personal factors such as illiteracy. With the aggregate effects of these circumstances, arrested PHSDs do not effectively enjoy the rights incorporated in the Miranda Warnings. Accused PHSDs cannot also exercise the rights safeguarded to accused persons on an equal basis with others. This empirical study, inter alia, examines the rights of suspected PHSDs from investigation to conviction by assessing the normative protections and practices by employing a qualitative research methodology.

Keywords: *Procedural Safeguards, Persons with Hearing and Speech Disabilities, Criminal Justice*

Introduction

Human rights are universal, indivisible, interdependent, and interrelated, possessed by all human beings irrespective of social,

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economic, political, or any other grounds.¹⁵⁶ This conceptual underpinning of the notion of human rights uphold the inherent dignity and equal worth of every human being (Chapman and Carbonetti 2011:684). To this end, the general human rights normative frameworks articulate minimum conditions to ensure a dignified life for all human beings (Ibid). The mere articulation of these minimum conditions, however, does not warrant the equal and inclusive enjoyment of every human right and fundamental freedom by all. The adoption of enabling normative frameworks at both international and national levels may be necessary to address particular barriers to the full and equal enjoyment of these rights by certain groups as a result of their vulnerability stemming from age, sex, disability, or other factors.¹⁵⁷ Accordingly, persons with disabilities require special enabling protections to fully and effectively enjoy the inherent rights and fundamental freedoms on an equal basis with other members of society.¹⁵⁸ With this conviction, the international community, under the umbrella of the UN, came up with an agreement to adopt the Convention on the Rights of Persons with Disabilities (CRPD) in December 2006.¹⁵⁹ The Convention is comprehensive and, as a result, set forth basic human rights and fundamental freedoms of persons with disabilities. As will be discussed in the subsequent sections, the Convention has incorporated relevant provisions to accused persons with disabilities in general, and accused persons with hearing and speech disabilities in particular.

Apart from the CRPD, Ethiopia does not have a specific legislation that exclusively covers the various concerns of persons with disabilities. More specific to arrested and accused PHSDs, the criminal justice system is far-off in encapsulating explicit and sufficient legal protection that enables to fully and effectively exercise their due process rights at different steps of criminal proceedings. Consequently, persons with such disabilities face difficulty in exercising their national, regional, and international human rights, guaranteed to all human beings.

The main objective of this empirical study is therefore to appraise the Ethiopian criminal justice system concerning the rights of accused persons with hearing and speech disabilities. To this end, the study looks into the available normative protections under the Ethiopian Criminal

¹⁵⁶ Vienna Declaration and Programme of Action, Adopted by World Conference on Human Rights, A/CONF.157/23, 12 JULY 1993, 14-25 JUNE 1993, Part I Para. 5. Even before this Declaration, the African Charter on Human and Peoples Rights plainly states that civil and political rights cannot be dissociated from economic, social, and cultural rights in their conception as well as universality. See the preamble of the African Charter on Human and Peoples Rights, adopted in 1981 and entered into force in 1986.

¹⁵⁷ The Convention on the Rights of Persons with Disabilities UNGA Res. 61/106, U.N. Doc. A/RES/61/106, 13 December 2006 (referred to as CRPD), Article 4(1). This stipulation of the Convention outlines the general obligations of State parties to comply with the obligations incorporated under the Convention and includes taking legislative and administrative measures for the implementation of the rights recognized in the Convention.

¹⁵⁸ Ibid, Para. (W) of the preamble and Article 9.

¹⁵⁹ Ibid, Para. (Y) of the preamble.

justice system and the extent of the enforcement of such protection from interrogation to the conviction of accused PHSDs. More to that, it examines the various barriers accused PHSDs experience in all these processes.

Methodology of the Study

Qualitative research method was employed in the undertaking of this study. Data was collated using a combination of key informant interviews and document analysis of qualitative data collection tools. Key informant interviewees were carefully chosen based on their knowledge, role, and position concerning the theme of the study using purposive sampling and snowballing techniques. Semi-structured interview questions were presented to various actors of the Federal and Amhara Regional State (referred to as ANRS) criminal justice system. The empirical data gathered from the key informant interviews was complemented by desk reviews and textual analyses of international, regional, and national normative standards and other secondary sources that addressed the due process rights of arrested and accused PHSDs. The data collated was then categorized based on different themes and these themes were analyzed and interpreted by using the thematic content analysis technique. The qualitative research method along with the adopted data collection tools and data analysis technique has benefited to capture, interpret, and understand the due process rights of arrested and accused PHSDs in Ethiopia.

Persons Falling within the Meaning of PHSDs

The term disability is a complex, dynamic, multidimensional, and contested subject matter (WHO 2011:3). For this reason, there is no single universally agreed definition of the term 'disability'.¹⁶⁰ However, this does not mean there are no widely accepted definitions. Concerning this, the World Health Organization (WHO) defines disability "*as an impairment which causes some level of dis-ability to function in a normal way*".¹⁶¹ By this definition, for example, an injury sustained on the ears due to different factors is an 'impairment' and the inability to hear ordinarily is 'disability'.¹⁶² Thus, 'disability' is fundamentally an outcome of a certain impairment.

In the same vein, The CRPD pursues the approach of the World Health Organization in explicating the meaning of disability. The Convention

¹⁶⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 5: Persons with Disabilities, 9 December 1994, E/1995/22, Para. 3.

¹⁶¹ The World Health Organization definitions of disability, available at: <http://thechp.syr.edu> > WHO_DEFINITIONS

¹⁶² Ibid.

identifies various dimension of impairments that are consequential to the disability of a person. As it is set forth under Article 1 of the Convention, 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*” (CRPD 2006: Article 1). This inclusionary convention stipulates the importance of the cumulative fulfillment of three requisites for a person to be taken as a person with a disability. These are (1) the presence of any physical, mental, intellectual, or sensory impairments, (2) long-term impairments and (3) the circumstance of the interaction with various barriers that hinder the full and effective participation in a society. The profound point from the above definition of the Convention is the articulation of disability as an interaction of a person with impairment and various barriers. This articulation avers disability as an interaction means and not an attribute of the person (WHO 2011:4).

Ethiopia has not yet enacted a comprehensive national disability law. This creates a legal deficit to have an applicable definition to all contexts of disability in the country. The Rights of Employment of Persons with Disabilities Proclamation No. 568/2008 (Employment Proclamation of Persons with Disabilities) is the only exclusive disability-focused bill in the country that provides a definition closely related to the foregoing definitions of WHO and the CRPD. It defines a person with a disability as an individual whose equal employment right is reduced as a result of his/her physical, mental or sensory impairments with social, economic, and cultural discrimination.¹⁶³ Since the purpose of this definition is to articulate the meaning of disability concerning employment rights of persons with disabilities, it is hardly applicable to the multidimensional aspects of disability. Hence, the definition set out in the CRPD fills this vacuum since Ethiopia has ratified the Convention and thereby made it an integral part of the law of the country.¹⁶⁴ In sum, the above definitions are informative to understand persons with disabilities and their eligibility to the protections enunciated under international and national disability normative frameworks.

The above general definitions of persons with disabilities somehow hint at the meaning of PHSDs. WHO defines ‘hearing loss’ as the loss of a normal hearing threshold whether it is mild, moderate, moderately severe, severe, or profound, and can affect one or both ears.¹⁶⁵ By this definition, the duration of the hearing loss is not taken into account. Consequently, the loss of hearing in light of this definition may not meet the CRPD definition of disability unless such loss is for a long-term and

¹⁶³ The Right to Employment of Persons with Disability Proclamation No. 568/2008, Article 2(1)

¹⁶⁴ Federal Democratic Republic of Ethiopia (FDRE) Constitution, Article 9(4); and the Convention on the Rights of Persons with Disability Ratification Proclamation No. 676/2010, Article 2.

¹⁶⁵ Deafness and Hearing Loss, available at: <https://www.who.int/health-topics/hearing-loss#tab=tab>

diminishes the full and effective participation of a person in society on an equal basis with others.

Apart from the above, there are some definitions sketched in relation with the effect of the due process rights of PHSDs. Relating to this, some define a 'deaf person' as one who *"cannot understand the proceedings and is incapable of presenting or assisting in the presentation of his defense"* (Wood 1987:167). This definition emphasizes the inability of persons with hearing disabilities to understand and handle their cases in the right manner. On the other hand, deafness is defined as a disability when a person cannot hear and understand speech, with or without amplification (Smith 1994:87). Compared to the foregoing, this one is a well-expounded definition of hearing disability and presupposes a means through which the disability can be rectified. The limitation of this definition is its exclusion of hard-of-hearing persons, i.e. persons whose sense of hearing is impaired and the impairment can be corrected by using amplification (Simon 1994:161). Unlike deaf persons, hard-of-hearing persons have some hearing ability. However, this does not mean persons who are hard-of-hearing are not protected by the CRPD. As enshrined in the inclusionary provision, a disability need not be total or long lasting to enjoy the protection guaranteed by the Convention. The pertinent factor to be looked into is the existence of an impairment, which with other barriers affect the full and effective participation of an individual in a society on an equal basis. Any person, therefore, who has a difficulty to interact and as a result cannot fully and effectively participate in the society, enjoys the rights prescribed in the Convention regardless of the severity of his/her disability. Following the above definitions, PHSDs, for this article, refers to persons who have a long-term hearing and/or hearing and speech impairments, which together with other barriers impede their full and effective participation in a society on an equal basis.

Legal Safeguards of Criminal Suspects with Hearing and Speech Disabilities

The general legal protections of criminal suspects are recognized under the various international human rights instruments, the FDRE Constitution, and subsidiary bills of Ethiopia. The machinery of the criminal justice system of the country is, therefore, required to enforce all legal protections to suspects of PHSDs on an equal basis.¹⁶⁶ Otherwise, the final conviction passed by a court of law against such person will be unjust and discriminatory thereby infringing the international obligations and the dictum of the Constitution and subsidiary legislations of the country. The protections are guaranteed from the time of arrest to

¹⁶⁶ Universal Declaration of Human Rights (UDHR), (10 December 1948), 217 A (III), Para. 1 of the preamble and Article 1, and CRPD Article 4(1), 5(1), and 13.

the final ruling of the competent court. This part of the article therefore assesses the legal safeguards endorsed by the Ethiopian criminal justice system to PHSDs.

Legal Protections of Arrested PHSDs during Police Interrogation

An arrested person has a range of rights protected under the Ethiopian criminal justice system. These rights include:

- the right to be informed promptly, in a language they understand, of the reasons for their arrest and any charge against them;¹⁶⁷
- the right to remain silent, and upon arrest, to be informed promptly, in a language they understand that any statement they make may be used as evidence against them in court;¹⁶⁸
- the right to be brought before a court within 48 hours of their arrest;¹⁶⁹
- the right to petition the court to order their physical release where the arresting police officer or the law enforcer fails to bring them before a court within the time mentioned above and to provide reasons for their arrest;¹⁷⁰
- the right not to be compelled to make confessions or admissions which could be used in evidence against them and any evidence obtained under coercion to be inadmissible;¹⁷¹ and
- the right to be released on bail save exceptional circumstances prescribed by law.¹⁷²

These rights, embedded in the Miranda Warnings, fundamentally necessitate the intelligibility of language. Due to the nature of their impairment, arrested PHSDs may face a language barrier that reduces their enjoyment of the right incorporated in the Miranda Warnings.

After arresting a criminal suspect, the first task of an investigating police officer is to interrogate such a suspect.¹⁷³ The rights of a suspect in the course of a police interrogation are widely known as the Miranda Warnings after the verdict of the prominent *Miranda Vs. Arizona* case by

¹⁶⁷ FDRE Constitution Article 19(1).

¹⁶⁸ Ibid, Article 19(2).

¹⁶⁹ Ibid, Article 19(3).

¹⁷⁰ Ibid, Article 19(4).

¹⁷¹ Ibid, Article 19(5).

¹⁷² Ibid, Article 19(6).

¹⁷³ Criminal Procedure of Ethiopia, a Proclamation to provide for the Criminal Procedure of Ethiopia, Proclamation No. 1, 1962, Article 27, (referred as CrPC).

the Supreme Court of the United States (Wood 1987:171).¹⁷⁴ Miranda Warnings are essential procedural safeguards of a suspect from self-incrimination during interrogation. These warnings are hardly encompassed in an articulated manner by the international bill of rights. The only conspicuous protection about these warnings is the one set forth under Article 9(2) of the International Covenant on the Civil and Political Rights (ICCPR), which guarantees for any arrested person the right to be informed, at the time of arrest, of the reasons for his/her arrest.¹⁷⁵ Unlike this limited recognition of the Miranda Warnings by the ICCPR, the Ethiopian criminal justice system, besides the verbatim recognition of the above right protected by ICCPR, embraces the right of arrested persons to remain silent and be informed promptly, in a language they understand, that any statement they make may be used as evidence against them in court.¹⁷⁶ This right is particularly relevant for an arrested person to refrain from making any statement of a prejudicial upshot to his defense.

It is worthwhile to emphasize the phrase "*in a language, they understand*" with regards to protection and proper administration of the Miranda Warnings to arrested PHSDs. Besides the aforementioned Constitutional right, Article 27(4) of the Ethiopian Criminal Procedure Code embraced the right to be communicated the Miranda Warnings in a language the arrested person understands in a well-tailored way. The provision stipulates that "*where the arrested person is unable to properly understand the language in which his answers are to be recorded, he shall be supplied with a competent interpreter, who shall certify the correctness of all questions and answers.*"¹⁷⁷ However, neither of the law is clear whether the term 'language' includes sign language.

The FDRE Constitution is devoid of any explicit recognition to the Ethiopian sign language. This avows the trifling attention it has given to the general concerns of PHSDs. In this regard, the constitutions of South

¹⁷⁴ By this ruling, the Supreme Court assured criminal suspects the right to be warned effectively of their constitutional rights before in-custody interrogation. Under the criminal justice system of the United States, a law enforcing police officer has to present the Miranda Warnings to a suspect as follows; (1) You have the right to remain silent. Do you understand this? (2) Anything you say can and will be used against you in Court. Do you understand this? (3) You are not being promised anything to talk to us and no threats are or will be made against you. Do you understand this? (4) You have the right to talk to a lawyer and have him present now or at any time during any questioning. If you proceed to answer any questions without a lawyer the questioning will stop if you should change your mind and request the presence of a lawyer. Do you understand this? (5) If you cannot afford a lawyer, one will be furnished, without charge, before any questioning, if you so desire. Do you understand this? (6) Do you understand each of the rights I have explained to you? (7) Understanding each of these rights, are you willing to talk to us without a lawyer? I have elected of my own free will without any force, threats, or promises to answer verbally all questions asked.

¹⁷⁵ ICCPR, Article 9(2).

¹⁷⁶ FDRE Constitution Article 19(1)(2); CRPC Article 27(2).

¹⁷⁷ Criminal Procedure of Ethiopia, Proclamation No. 1, 1962, Article 27(4).

Africa,¹⁷⁸ Uganda,¹⁷⁹ and Kenya¹⁸⁰ can be positively taken for unequivocally stating their respective national sign language. The obscurity of the FDRE Constitution on the scope of the notion of language whether it encompasses sign language or otherwise has somehow triggered the present poor national normative standards relating to the effective protection of arrested and accused PHSDs in the country.¹⁸¹ However, the advent of the CRPD has resolved this elusiveness of the Constitution by plainly underlining language as encompassing spoken and other forms of non-spoken languages such as sign language.¹⁸² Therefore, by the operation of the Convention, PHSD suspects are guaranteed access to competent interpreters to exercise their due process rights protected by the Miranda Warnings. However, often, the right to get an interpreter is associated with a circumstance whereby the suspect speaks a language different from the one used for interrogation.¹⁸³

Investigating police officers may administer the Miranda Warnings to suspects of PHSDs by employing various communication means, mainly through writing, lip-reading, or sign language (Wood 1987:122). However, the most preferred and effective method of visual communication for such suspects is sign language (Ibid:167). This is because it gives, to such suspects, a complete and simultaneous translation of the discussion provided that the interpreter is competent enough and well-versed with the legal terminologies (Ibid). This seems the reason why the CRPD and its monitoring Committee significantly promote sign language to ensure the integration of the PHSDs in the community and enjoy their human rights and freedoms.¹⁸⁴

Some criminal jurisdictions in the United States provide the right to have interpreters to suspects with hearing disabilities in plain legal

¹⁷⁸ See Republic of South African Constitution (1996), Article 6(5)(A)(III).

¹⁷⁹ Republic of Ugandan Constitution (1995), XXIV(III).

¹⁸⁰ Kenyan Constitution (2010), Article 6(3)(B) and Article 54(1)(D). The Kenyan Constitution further endorsed the Kenyan Sign Language as one of the official languages of the parliament. See Article 120 of the Kenyan Constitution.

¹⁸¹ Interview with Amare Taye, director of the Ethiopian National Association of the Deaf (referred to as ENAD), on December 17/2021. According to him, the non-recognition of the Ethiopian sign language by the Constitution has contributed to the overall poor living standard including their right to access to justice of the PHSDs. Further, concerned with this weak normative recognition, the CRPD Committee recommended Ethiopia to adopt sign language as one of the official languages of the country. See, Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of Ethiopia, (4 November 2016), 108 of 1996, paras. 47-48.

¹⁸² CRPD, Article 2.

¹⁸³ For example, see UN Human Rights Committee (HRC), General comment no. 32, Article 14, Right to equality before courts and tribunals and to a fair trial, 23 August 2007, CCPR/C/GC/32, Paras. 41-44,

¹⁸⁴ See, for instance, CRPD Articles 9(2)(E), 21 (e), 24(3)(B) and 30(4). See also Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of Ethiopia, (4 November 2016), Para. 47-48, Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrCAqhKb7yhs2gZdYXWBKA18z%2FSv%2F6lkjDqI9zs5hd5%2BUAXK5vbPAJ7j6jyrAv5vGf3%2BKDAISC4b6HZ89os5fSRy3geaPEuCRLunudv%2BuislMknxs7omG>.

stipulations during arrest and subsequent interrogation and some others exclude evidence obtained from such suspects in the absence of sign language interpreters (Wood 1987:172). In the same vein, the Canadian Constitution guarantees accessibility of interpreters to persons with hearing disabilities (Pye 1982:227). Conversely, police stations in Ethiopia have not been equipped with sign language interpreters.¹⁸⁵ Most of the interrogations of PHSD suspects, as a result, have been administered by employing nonprofessional interpreters, i.e. relatives or friends.¹⁸⁶ Such way of interrogation would compromise the due process rights of PHSD suspects that might expose them to unjust and prejudicial convictions.

Apart from the legal protection, courts in the United States play vibrant roles in the proper enforcement of the Miranda Warnings to suspects with hearing disabilities. In this regard, jurisprudential precedents portray that courts reject confessions made by such suspects, if the Miranda Warnings are administered without sign language interpreters or if the suspect did not understand the Miranda Warnings properly. On the other hand, the Ethiopian criminal justice system does not have a clear answer to a confession obtained by disregarding the proper communication of the Miranda Warnings. The FDRE Constitution outlaws coercion of an arrested person to make a confession that could be used against him.¹⁸⁷ This is the only circumstance whereby the exclusion of evidence is explicitly stipulated under the Ethiopian criminal justice system. As a result, lawyers may argue that all evidence obtained during investigation in the exclusion of coercion is admissible. In line of this argument, evidence obtained from a suspect, including PHSD, would be admissible even if the Miranda Warnings are not duly administered. This would amount to the admission of self-incriminatory statements of the suspect. However, the application of Miranda Warnings in line with this argument would make it meaningless and defeat its purpose. The Miranda Warnings are protected by the Constitution. It is, therefore, important to administer it in light of the Constitution. If the Warnings are not communicated as provided by the Constitution, the administration of the Warnings would violate the Constitution. Hence, the conduct and evidence obtained from the suspect, by contravening the Constitution, which is the supreme law of the land, would be null and void.¹⁸⁸ Since courts are mandated to respect and enforce the Constitution,¹⁸⁹ they have to reject any involuntary confession or evidence gathered from PHSD suspects whose Constitutional rights of the Miranda Warnings are

¹⁸⁵ Interview with Mengistu Tadelde, the public prosecutor of Ministry of Justice at Arada Branch, and Tadele Yibeltal, the public prosecutor of the ANRS justice Bureau at the Southern Wollo Zone Division, on December 16/2021.

¹⁸⁶ Interview with Mengistu Tadele, the public prosecutor of Ministry of Justice at Arada Branch, and Dejene Bitew, the public prosecutor of Ministry of Justice at Kolfe Keraniwo Sub-City branch. However, there are some instances whereby investigating police officers request the cooperation of interpreters from ENAD.

¹⁸⁷ FDRE Constitution, Article 19(5), See also ICCPR Article 14(3)(g).

¹⁸⁸ FDRE Constitution, Article 9(1).

¹⁸⁹ Ibid, Article 13(1).

violated. This should be a guiding principle for the proper enjoyment of these constitutionally protected rights. Moreover, this would play an essential role in serving the purpose of the Warnings and thereby circumvents any involuntary self-incrimination.

To play the aforementioned mandate, courts have to get accurate evidence that depicts the proper administration of the Miranda Warnings, particularly to suspects with hearing and speech disabilities during interrogation. To this end, the interrogation of a suspect with hearing and speech disability has to be video and audiotaped to ensure the validity of police records regarding police interviews, suspect statements, confessions, and the administration of the Miranda rights waiver (Wood 1987:131). Needless to say, these are essential instruments to courts to check police officers are applying the Miranda Warnings according to the inscription of the law. Such records would also make investigating police officers alert to conduct the Miranda Warnings based on the dictation of the law. They also benefit the suspects to challenge the admissibility of a statement they made during interrogation by invoking any failure of the police in the presentation of the Warnings and would assist courts to decide whether the Miranda Warnings were properly administered.

However, the existing practice exhibits that the interrogation of any suspect including a suspect with hearing and speech disability is not under video and audio taping.¹⁹⁰ Consequently, the chance of being an area of contention is very high. Generally, the rights contemplated in the Miranda Warnings are very critical rights that can determine the outcome of the prosecution. As a result, the Warnings have to be applied to suspects in the fullest sense to guarantee uncorrupted criminal prosecutions. Therefore, particular attention needs to be provided in fulfilling the appropriate facilities for lawful administration of the Warnings to PHSD suspects.

Besides communicating the Miranda Warnings, the presence of a lawyer with the suspected PHSD during the administration of the Warnings underpins the reliability of police interrogation. Nonetheless, the Miranda Warnings protected under the ICCPR and national laws of Ethiopia do not take into account the right of suspects, including PHSDs, to claim the presence of a lawyer during interrogation. Such legal lacuna could expose to undue manipulation of statements of suspects with hearing disabilities by interrogating police officers. Hence, the presence of lawyers, particularly in the course of the administration of Miranda

¹⁹⁰ Interview with Abere Reta, a public prosecutor in the Ministry of Justice at Gulele Branch, on November 30, 2019; a telephone interview with Adane Bezabih, a public prosecutor in the ANRS Justice Bureau in Bahir Dar main office, on December 3, 2019; interview with Dagnachew Mekonen, attorney and former public prosecutor of the Ministry of Justice, on December 21/2021.

Warnings to PHSD suspects, is relevant to ensure the effective observance of their constitutionally guaranteed rights.¹⁹¹

Seemingly with this conviction, the Special Rapporteur on the rights of persons with disabilities adopted the International Principles and Guidelines on Access to Justice for Persons with Disabilities, which laid down duty on States to ensure free or affordable timely legal assistance to all persons with disabilities in all legal procedures and proceedings.¹⁹² The objective of this protection is to safeguard the equal participation of persons with disabilities in any legal proceedings.¹⁹³ Albeit this, it serves an instrumental part in the development of international and national normative frameworks thereby addressing the existing shortfalls in relation to the proceeding of interrogation of suspected persons with disabilities in general and PHSDs in particular.

Rights of Accused PHSDs

Ensuing the completion of a criminal investigation by police detectives, the file will be transferred to the appropriate public prosecution office.¹⁹⁴ Receiving the investigation file, one of the possible measures the public prosecutor would take is to accuse or prosecute the suspect by preparing the appropriate charge/charges.¹⁹⁵ Prosecution then requires the active participation of the defendant to defend the charge brought against him/her. With this regard, the defendant has the right to understand the charge of the public prosecutor,¹⁹⁶ to raise any objection he/she may have to the charge,¹⁹⁷ to state on his/her plea of guilty,¹⁹⁸ to cross-examine witnesses produced by the public prosecutor and produce witnesses in his/her favor and examine them,¹⁹⁹ and to open his/her case and state his/her defense.²⁰⁰ All these rights can only be enforced using the means of language. Thus, accused PHSDs cannot exercise these rights properly

¹⁹¹ Interview with Desalegn Workineh, the Federal Supreme Court Public Defenders Office Directorate director of the Crimes Committed on National Security and Transboundary Crimes; interview with Gutema Mitiku, the Federal Supreme Court Public Defenders Office Directorate director of Crimes Committed against Life and Property, on December 18/2021; interview with Abdurahman Kiyar, judge of the Federal First Instance Court Arada branch in the criminal Bench, on December 17/2021.

¹⁹² International Principles and Guidelines on Access to Justice for Persons with Disabilities, (2020), Principle 6, Available at: <https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2020/10/Access-to-Justice-EN.pdf>. These principles and guidelines have enjoyed the endorsement of the International Disability Alliance, the International Commission of Jurists, and the United Nations Development Program.

¹⁹³ Ibid.

¹⁹⁴ Ethiopian Criminal Procedure Proclamation at note 29, Article 37(2).

¹⁹⁵ Ibid, Article 38(1).

¹⁹⁶ Ibid, Article 129

¹⁹⁷ Ibid, Article 130.

¹⁹⁸ Ibid, Article 132.

¹⁹⁹ FDRE Constitution Article 20(4) and the Ethiopian Criminal Procedure Proclamation, Article 137(3).

²⁰⁰ Ethiopian Criminal Procedure Proclamation, Article 142.

and defend accusations lodged against them unless their right to access to justice in the fullest sense is observed.

To enable an accused person to effectively exercise the aforementioned rights, a range of legal protections are recognized under international human rights conventions, to which Ethiopia is a State party, and national laws of the country. Among these protections, which have particular importance to accused PHSDs, are the presumption of innocence until proven guilty,²⁰¹ the right to have legal representation,²⁰² and free assistance of an interpreter,²⁰³ as will be discussed in detail in the following sections.

The Notion of Presumption of Innocence

Accused persons are presumed innocent until proven guilty according to the law.²⁰⁴ By this procedural safeguard, the public prosecutor assumes the obligation to produce admissible evidence and prove each element of the crime that the accused is charged with (Assefa 2018). Crime is a commission or omission of a certain act against the prescription of criminal law (Lammond 2007:609).²⁰⁵ The cumulative fulfillment of three elements is imperative to label a certain commission or omission as an act of crime under the Ethiopian criminal justice system. These are (1) the legal stipulation of a commission or omission of an act as a crime (legal ingredient), (2) the commission or omission of such act (material ingredient), and (3) the intentional or in some cases negligent commission or omission of a criminal act (moral ingredient).²⁰⁶

Relating to the moral element, no one is punishable for an act should such act be performed or occurred without there being any guilt on his/her part, or is caused by force majeure, or occurred by accident.²⁰⁷ Nor can he/she be convicted for what he/she neither knew of nor for what goes beyond what he/she intended either directly or as a possibility.²⁰⁸ The intention component of an act of a crime is said to have existed provided that a person performs an unlawful and punishable act with full knowledge and intend to achieve a given result for being aware that his actions may cause illegal and punishable consequences, commits the act regardless.²⁰⁹ Therefore, it is worthwhile to bear in mind that a person would be liable only if he/she committed the act being in a healthy

²⁰¹ FDRE Constitution Article 20(3), UN General Assembly, Universal Declaration of Human Rights (UDHR), (10 December 1948), 217 A (III), Article 11(1), and ICCPR, Article 14(2).

²⁰² FDRE Constitution Article 20(5) and ICCPR Article 14(3)(B) and (D).

²⁰³ FDRE Constitution Article 20(7) and ICCPR Article 14(3)(F).

²⁰⁴ FDRE Constitution Article 20(3).

²⁰⁵ see also Article 23(1) of CRC.

²⁰⁶ FDRE Criminal Code, Proclamation No 414/2004, Federal Negarit Gazeta, Year 9, May 2005 (referred as FDRE Criminal Code), Article 23(2).

²⁰⁷ Ibid, Article 57(2).

²⁰⁸ Ibid, Article 58(3).

²⁰⁹ Ibid, Article 58(1).

mental condition.²¹⁰ The Mens Rea is, therefore, a significant element of a crime that is not simply substantiated compared to the legal and material elements. Since the public prosecutor is legally burdened to prove each ingredient of a crime, he/she has to be cognizant enough of the mental condition and cognitive capacity of an accused person ahead of any prosecution.

Various factors affect the cogent mental condition and thereby determine the responsibility of a person for the criminal act he/she is accused of. About this, an individual is not responsible for his/her act under the law due to:

age, illness, abnormal delay in his (sic) development, deterioration of his mental faculties,... a derangement or an abnormal or deficient condition or any other similar biological cause, was incapable at the time of his act, of understanding the nature or consequences of his act, or of regulating his conduct according to such understanding.²¹¹

The issue of 'responsibility' is an important point, which appeals to greater attention regarding accused PHSDs. Studies indicate that persons with 'profound' hearing disabilities are more susceptible to mental disorders than their peers, which may lead them to conduct criminal acts (Harry and Dietz 1985). This problem exacerbates among pre-lingual deaf persons (Ibid:94). In another but related study, it has been found that persons with hearing disabilities suffer from isolation, aggressiveness, and distress, thus, being prone to drug and alcohol use, which make them more susceptible to commit crimes than others (Tituts et al. 2008).

Ostensibly taking into account this scientific finding, the FDRE Revised Criminal Law under Article 51(1) explicitly stipulates that:

When there is a doubt as to the responsibility of the accused person, whether absolute or partial, the Court shall obtain expert evidence and may order an inquiry to be made as to the character, antecedents, and circumstances of the accused person. Such evidence shall be obtained particularly when the accused person shows signs of a deranged mind or epilepsy, is deaf and dumb or is suffering from chronic intoxication due to alcohol or due to drugs.

This proviso of the Criminal code accentuates the duty of a court to request the support of an expert when it is in doubt regarding the level of responsibility of any accused person. Whereas, a court is necessarily required to order the diagnosis of the mental state of accused PHSDs by

²¹⁰ Ibid, Article 48(1).

²¹¹ Ibid, Article 48(2).

the appropriate expert. The expert evidence hence shall explain “*the present condition of the accused person and its effect upon his faculties of judgment*”.²¹² Additionally, it shall “*afford guidance to the Court as to the expediency and the nature of medical treatment or safety measures*”.²¹³ Courts then render decisions, which they think are appropriate based on the scientific finding of the expert.

Despite this legal requisite, the practice on the ground is divergent. The case between Azmeraw Fenta Vs. the ANRS General Attorney is one example when the court with the first instance jurisdiction failed to order the diagnosis of an accused PHSD by disregarding the dictation of the Criminal Code.²¹⁴ The case was lodged at the South Gonder High Court and, the defendant, accused of committing first-degree homicide against his uncle, was a PHSD. Taking into consideration the illiteracy of the defendant to sign language, the court requested the local education office for a sign language facility in the administration of the Zone in order to suspend the proceeding and facilitate sign language communication for the accused to ensure his right to defend himself. The reply of the office, however, was in the negative. Notwithstanding this fact, the court proceeded with the prosecution, without the plea of guilty of the defendant. After hearing the testimony of the witnesses of the public prosecutor and noting the failure of the defendant to come up with evidence to refute this testimony, the court convicted and sentenced him to 18 years of rigorous imprisonment. The court rendered this decision without proving the responsibility of the defendant with the legally required evidence. Thus, this decision of the court went against the notion of presumption of innocence, which is a constitutionally protected right to accused persons. Yet, the ANRS Supreme Court by its appellate jurisdiction overruled the conviction and sentence rendered by the High Court and absolved the defendant until he gets trained in sign language and is capable of exercising the rights protected to accused persons. The Supreme Court, however, silently passed the legal requirement of the medical examination of the defendant despite the proposition of the public prosecutor to this effect.

In this case, the defendant was proscribed from exercising his procedural rights starting from interrogation to conviction. Accordingly, his right to be warned of the Miranda Warnings during police interrogation, to raise preliminary objections against the charge filed by the public prosecutor, to cross-examine and refute evidence brought against him, to produce evidence and rebut adversarial evidence upon which he was convicted, to present mitigating circumstances before the sentence was passed by the High court and many other of his rights were undermined.

²¹² FDRE Criminal Code Article 51(2).

²¹³ Ibid.

²¹⁴ Azmeraw Fenta vs. ANRS General Attorney Sup. C. Cr. File No. 21948/2011.

In another related case, a PHSD, who was suspected of committing bodily injury, was charged before Dera Woreda court of South Gonder Zone of ANRS. However, the accused, like the above case, was illiterate to sign language. Noting this fact, the Court provisionally released him before any proceeding by protecting the right of the public prosecutor to recommence the case provided that the accused is capable of using his safeguarded procedural rights.²¹⁵ These two cases hint the degree of challenges the justice machineries are facing to ensure criminal accountability of accused PHSDs that are illiterate in sign language.

The Right to Free or Affordable Legal Assistance

The other right, which requires greater attention in a criminal proceeding is access to legal representation. The right to free or affordable legal assistance is one of the essential components of access to justice to accused PHSDs.²¹⁶ The FDRE Constitution, concerning this right, vividly ascribes that “*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*”.²¹⁷ This stipulation, one can say, is the verbatim copy of ICCPR.²¹⁸

Both the ICCPR and the FDRE Constitution have primarily guaranteed accused persons the right to choose their legal representative. Exceptionally, however, an accused person has the right to obtain a State-appointed legal representative on the amassed satisfaction of two prerequisites, i.e. the financial incapacity of the accused to hire a legal representative, and the conviction of the court that miscarriage of justice would befall if the defendant keeps on the prosecution without legal assistance. With regards to the second precondition, the essence of the law is not aligned with the predominant practice of courts. In the practice of the Federal Courts, accused persons may be provided public defendants upon their request or by the direction of judges taking into account the severity of crimes or degree of punishment.²¹⁹ Given the limited communication opportunities, it is highly implausible for accused PHSDs to know and raise this protection compared to others. Hence, courts need to be proactive to intervene and ensure the provision of public defendants to accused PHSDs that are financially incapable.

On the other hand, the practice in several Regional States, in this respect, unveils that miscarriage of justice is thought to occur to defendants who

²¹⁵ Interview with Mengistu Tadele. He came across this case in 2010 while he was working as a public prosecutor at Dere Woreda of South Gonder Zone of Amhara Regional State Justice Bureau before he moved to his current office.

²¹⁶ International Principles and Guidelines on Access to Justice for Persons with Disabilities.

²¹⁷ FDRE Constitution Article 20(5).

²¹⁸ ICCPR, Article 14(3)(D).

²¹⁹ Interview with Desalegn Workineh and Gutema Mitiku.

are accused of crimes mostly punishable with life imprisonment or the death penalty. Courts of ANRS, for instance, enforce this protection to indigent accused persons who are charged with intentional homicide, aggravated robbery, or in some circumstances, grave terrorism crimes, which may be consequential for a rigorous sentence including a sentence for life or capital punishment.²²⁰ A study has also revealed the dominance of analogous practice in Benshangul Gumuz and the Tigray Regional States (ELA and EYLA 2015). But limiting the application of the right to access legal assistant only to certain crimes or degrees of punishments does not seem to fulfil the intention of the aforesaid laws. Had it been the case, the laws could have expressly stated the types of crimes or severity of penalty, which could lead to miscarriage of justice if the defendant fails to get legal assistance. Especially, the likelihood of befalling miscarriage of justice is very high to accused PHSDs irrespective of the nature of the crime or solemnity of the punishment caused by the criminal act they are charged with. To ensure the right to access justice by accused PHSDs, courts should set aside this practice and warrant legal representation at least to financially incapable accused persons in any criminal prosecution.

The Right to Interpreter

Since oral communication is the principal mode of litigation throughout the proceeding of prosecution, the right to an interpreter is an underlying right that needs maximum protection to accused PHSDs.²²¹ It is an essential component of the right to access justice for accused persons who are not familiar with the language of the prosecution, inter alia, to accused PHSDs. The Ethiopian criminal justice system safeguards this right to all accused persons who are not acquainted with the working language of the court.²²² More specifically, the recently enacted Federal Courts Proclamation No. 1234/2021 explicitly imposes a duty on Federal Courts to furnish expert sign language interpreters to accused PHSDs.²²³ Consequently, any criminal proceeding, which failed to take into account any of the rights of accused PHSDs can, in no way, be considered as fair and any failure in this regard with the justification of resource constraint

²²⁰ Personal observation of the author in his previous experience as a public prosecutor and from his current career as a legal attorney and legal counselor; telephone interview with Abraham Belete, judge of the ANRS Supreme Court, on December 19/2021; interview with Zemedkun Girma, the public prosecutor of the ANRS Justice Bureau North Shewa Branch, on December 19/2021, and Biyazn Mengiste, public defender of Bahir Dar High Court of the ANRS Supreme Court, on December 22/2021. Courts provide legal assistant to suspects who are indicted of committing serious offenses contained in the Criminal Code and in various criminal legislation, which impose severe punishment such as life imprisonment or death.

²²¹ See the Ethiopian Criminal Procedure Proclamation, Article 130 and FF.

²²² FDRE Constitution Article 20(7); Ethiopian Criminal Procedure Proclamation, Article 126(2); ICCPR Article 14(3)(F) and CRPD Articles 2, 9(2)(E), 21(B) and 24(3)(B) and (4).

²²³ Federal Courts Proclamation No. 1234/2021, FEDERAL Negarit Gazette of the Federal Democratic Republic of Ethiopia, 27th Year No.26, Addis Ababa 26th April 2021, Article 31(3).

is unacceptable.²²⁴ Further, such a proceeding is null and void since it failed to be conducted within the ascription of the Constitution.²²⁵

The normative protection of the right to access to sign language interpreters is required to be corroborated with the necessary measures to effectively enforce the right on the ground. However, there are various problems with the practical enforcement of this right to PHSDs. The first such problem stems from the weak implementation of legal protection by law enforcement bodies. For instance, in the above-mentioned case of Azemeraw Fenta Vs. the ANRS General Attorney, the law enforcing bodies, from the police to the court, was not concerned with the right of the defendant to defend the accusation he was charged with. In this respect, they kept on the proceeding knowing that the defendant was a PHSD without sign language skill and the defendant stayed as a spectator from investigation to conviction, without having any participation in the process. Failure of the investigating police officer and public prosecutor to take note of the importance of having the result of a medical examination to the mental health of the defendants before prosecution was another lacking element. On top of this, sign language illiteracy is a factor that significantly inhibits PHSDs not to enjoy their protected rights. With regards to this, the illiteracy of Azemeraw Fenta to sign language, besides the recklessness of the law enforcement bodies, contributed negatively to the enjoyment of his safeguarded rights.

A study conducted on access to justice of persons with disabilities in the Federal Courts unveiled the absence of sign language interpreters (Aschalew 2020:27). The Federal Supreme Court has two interpreters for Afan Oromo and English languages. The interpreters are not skilled to sign language and Bisrat Mulugeta, one of the interpreters, underlined the necessity of taking sign language training to bridge the communication barrier between judges and the accused and other PHSD clients of the Court.²²⁶ The Federal and Regional Courts are dependent upon the cooperation of sign language experts of ENAD and its regional branches when they encounter accused PHSDs.²²⁷ However, the key

²²⁴ UN Committee on the Rights of Persons with Disabilities (CRPD), Concluding Observations in relation to the initial report of Ethiopia 2016, CRPD/C/ETH/CO/R.1, available at: <https://digitallibrary.un.org/record/1310640?ln=en> The CRPD Committee following the Ethiopian initial report unequivocally concluded that “the limitation in resources would always be there and therefore the excuse that the protection and rights of persons with disabilities, and their inclusion, could not be advanced because of lack of resources could no longer be accepted.” See also Communication No. 390/1990, Lubuto v. Zambia, U.N. Doc. CCPR/C/55/D/390/1990/Rev.1 (1995), available at: <http://hrlibrary.umn.edu/undocs/session55/vws390r1.htm>. In this case, the UN Human Rights Committee decided that “a State cannot use its economic situation to justify violations of minimum human rights standards (including violations of fair trial rights).”

²²⁵ FDRE Constitution Article 9(1).

²²⁶ Interview with Bisrat Mulugeta, interpreter of English Language speaking customers of the Federal Supreme Court, on December 22/2021. The same was reiterated by the director of the registrar of the Federal Supreme Court. Interview with Habte Fichila, director of the registrar of the Federal Supreme Court, on December 22/2021.

²²⁷ Interview with Amare Taye.

question is how many of the ENAD sign language experts are capable of understanding the legal jargon and are able to communicate with the accused. In sum, the basic challenge to the enforcement of the rights of accused PHSDs is the weak implementation of the rights protected by international and national laws.

Conclusion and Recommendations

Conclusion

According to the International Principles and Guidelines on Access to Justice for Persons with Disabilities, “everyone should, on an equal basis with others, enjoy the rights to equality before the law, to equal protection under the law, to a fair resolution of disputes, to meaningful participation and to be heard”.²²⁸ To this end, various efforts have been made in the international arena to ensure the observance of human rights and fundamental freedoms to persons with disabilities. The international community has realized the UN Convention on the rights of persons with disabilities in 2006 having the purpose of promoting, protecting, and ensuring the full and equal enjoyment of all human rights.²²⁹ Although Ethiopia is a member of the CRPD and thereby responsible to take normative and institutional steps in meeting the purpose of the Convention, the reality on the ground shows otherwise, particularly, to rights of suspected and accused PHSDs. There is a significant deficit in normative frameworks that address accused PHSDs.

Beyond and above the normative deficit of the country, the magnitude of challenges in the law enforcing institutions is insurmountable. Contrary to the inherent mandate of enforcing the legal protections to PHSDs, at times they become the cause of violation of the rights of such accused persons. Suspected and accused PHSDs have been experiencing violation of their due process rights by the recklessness of the law enforcing bodies, mainly, the police, public prosecutor, and courts. To the extreme case scenario, ordinary procedural safeguards, mainly the right to have a sign language interpreter and legal assistant, have been unheeded to accused PHSDs by courts. Generally, the criminal justice system of Ethiopia has to normatively and institutionally create suitable environment for suspected/accused PHSDs from the time of arrest to conviction.

Recommendations

To cater to the existing challenges of arrested/accused PHSDs, the following recommendations are suggested. First, it is necessary to enact a comprehensive legal framework for persons with disabilities and to

²²⁸ International Principles and Guidelines on Access to Justice for Persons with Disabilities.

²²⁹ CRPD, Article 1.

include in such law the rights of PHSDs or enact an exclusive law that explicitly protects the rights of PHSDs. Second, in addition to the normative framework, it is relevant to strengthen the law enforcement institutions through training on the rights of persons with disabilities in general and PHSDs in particular. This would enhance awareness about PHSDs and help to lessen the poor enforcement of the rights of PHSDs by law enforcing bodies. Moreover, equipping these institutions with qualified personnel would make them accessible to arrested/accused PHSDs. Particularly, it is vital to have qualified sign language interpreters. Further, courts have to take steps to meet reasonable accommodation to PHSDs emphasized by the CRPD. The national human rights institutions, such as the Human Rights Commission, have to follow up and monitor the enforcement of the procedural rights of suspected and accused PHSDs.

Third, a tangible measure is essential throughout the country to the reduction of sign language illiteracy of PHSDs. In this regard, the ministry of education has to take the initiative and work with regional education bureaus and other stakeholders. Fourth, it is vital to have at least one sign language training facility in the country, which provides training on legal jargon. An ordinary sign language interpreter may not have the capacity to communicate to PHSD unless he/she is acquainted with the meaning of the legal jargon. Hence, to effectively ensure access to justice of PHSDs, it is mandatory to train qualified sign language interpreters.

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