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## Reflection on Socioeconomic and Cultural Rights of People with Disabilities in Ethiopia

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### Abstract

People with disabilities face physical and attitudinal barriers to participating in a socioeconomic and cultural activities like education, health, Trade, and other development processes in general. Combined with other extra problem in society other disability makes them more vulnerable to poverty, which is a more socioeconomic and cultural problem. In Ethiopia most classes of the population live in absolute poverty and the socio-economic rights of many people are in a very worst situation. To improve that, even if there is some policy change and different programs the due attention is not given more to people living with a disability. This study by some means aimed to show the inconsistent practice of Ethiopian laws and policies on the socioeconomic and cultural rights of people with a disability with international human rights instruments like The UN Charter, ICESCR, CRPD, The optional protocol, and The African charter of Human rights. Article 5 of the CRPD provides the principles of equality and non-discrimination of PWD. This term paper also affirms the committee concluding observation on the Ethiopian report in July 2016 based on that the paper show whether the current legislative measure in Ethiopia to realize the rights to equality of person with disabilities are compliant with international Human rights law or not additionally the paper focus on Art 41(5) of the FDRE constitution which specifically address the duty of the government to fulfill minimum core rights of some vulnerable group including PWD. And at the end as a possible solution to promote the socio-economic and cultural rights of persons with disabilities, reviewing the state policies and programs are very important in addition to access justice to make accountable the government where there is violation.

**Keywords:** *Disabilities, Legislative measures, Absolute poverty, Socioeconomic and Cultural rights*

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## 1. Introduction

### 1.1. Background of the Study

Disability is an evolving concept and 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<sup>1</sup>. An estimated 1.3 billion people—or 16% of the global population—experience a significant disability today.

<sup>1</sup> United Nations Convention on the rights of person with disability Preamble (e)

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This number is growing because of an increase in non-communicable diseases and people living longer. Persons with disabilities are a diverse group, and factors such as sex, age, gender identity, sexual orientation, religion, race, ethnicity, and economic situation affect their experiences in life and their health needs. Persons with disabilities die earlier, have poorer health, and experience more limitations in everyday functioning than others.

Some view disability as a punishment for sin while others see it as a devilish creation. Disability was regarded as a flaw, deformity, or deficiency in the individual. As a result of disability misunderstandings, persons with disabilities were commonly feared and ostracized, shunned, harmed, or ridiculed. Even persons who obviously had disabilities were used to entertain people. Children and adults with severe disabilities were isolated from the public eye and confined to their houses. They were regularly denied access to things that were available to other people, such as jobs, care, education, to have a family, or a place in society. PWD was labeled as “different,” and their differences were perceived as negative. Society viewed disability as incapacity, and persons with disabilities were typically viewed as a burden on their families and society at large.<sup>2</sup>

Persons with disabilities are more likely to experience adverse socioeconomic outcomes such as less education, poorer health outcomes, lower levels of employment, and higher poverty rates. Poverty may increase the risk of disability through malnutrition, inadequate access to education and health care, unsafe working conditions, a polluted environment, and lack of access to safe water and sanitation. For years, the international disability community pushed to persuade governments of the need to enact a new convention to ensure that PWD could fully enjoy their human rights. The push led to the enactment of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2006.<sup>3</sup> The Convention protects and promotes the right of PWD to have equal access to fundamental rights and freedoms.<sup>4</sup> The general comment No. 3 of the United Nations also imposes a duty on the state parties to give an equal treatment of socioeconomic rights of every person.

The CRPD provides for the participation of PWDs in matters that concern them.<sup>5</sup> It is expected that the active and informed participation of everyone in decisions that affect their lives and rights informs the human rights-based approach to public decision-making processes, and ensures good governance and social accountability.<sup>6</sup> The participation of PWDs in matters affecting their lives, generally in the context of socioeconomic and cultural is crucial to upholding their rights to dignity and equality.

Article 5(1) requires the recognition by states parties ‘that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law’. According to Article 5(2), states Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. This section can be split into two concepts for ease of explanation, as can be seen below.

Both are peremptory since the CRPD provides that states parties ‘shall’ take both measures that follow in the section. The first concept in Article 5(2) creates an obligation on states to prohibit all discrimination based on disability. The Committee recognizes four specific forms of discrimination that must be prohibited, namely direct discrimination, indirect discrimination, denial of reasonable accommodation, and harassment.<sup>7</sup>

The second concept in Article 5(2) requires that ‘equal and effective legal protection’ against ‘discrimination on all grounds’ be implemented. The express inclusion of the phrase ‘legal protection’ makes it clear that states must enact anti-discrimination legislation.<sup>8</sup>

## 2. Statement of the Problem

People living with disabilities are often sidelined in society unable to access education, housing, food, and health care, not participating in development goals, and failing to achieve their full potential. In situations of forced displacement, persons with disabilities have the same rights and basic needs as others and face the same challenges. However, they face numerous additional barriers. They have difficulties accessing humanitarian assistance, education, livelihoods,

<sup>2</sup> Disability Inclusion Overview <<https://www.worldbank.org/en/topic/disability>> accessed on May 29, 2021.

<sup>3</sup> Maya Sabotello and Marianne Schulze (2014). *Human Rights and Disability Advocacy*, University of Pennsylvania Press, Philadelphia.

<sup>4</sup> Convention on the Rights of Persons with Disabilities (CRPD).

<sup>5</sup> Art 3(c) of the CRPD (19) provides for the principle of the full and effective Participation and inclusion of PWDs in society.

<sup>6</sup> Committee on the Rights of Persons with Disabilities, General Comment 7 on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention (2018) UN Doc CRPD/C/GC/7 dated 9 November 2018, paragraph 2.

<sup>7</sup> Para 18 of General comment 6.

<sup>8</sup> Para 22 Of General comment 6.

healthcare, and other services. They may be denied certain legal rights, and are often excluded from decision-making processes and leadership opportunities.<sup>9</sup>

Ethiopia is one of the countries with the largest population living in absolute poverty in the world. With about 117 million people (2021), Ethiopia is the second most populous nation in Africa after Nigeria, and still the fastest-growing economy in the region, with 6.3% growth in FY2020/21. An estimated 95% of all persons with disabilities in the country are living in poverty. Additionally, 84% of the populations in Ethiopia live in rural areas so it is like PWDS are also living in rural areas, where access to services is limited and often inaccessible to PWDs. In order to address the needs of the poor, the FDRE has created a Plan for Accelerated and Sustainable Development to End Poverty (PASDEP). This plan, however, did not directly address the needs of PWDs or their families.<sup>10</sup>

Additionally the ICESCR imposes a duty on a member state to respect, protect and fulfill economic, social, and cultural rights for every person. In addition, the state part has the obligation to undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or another status.<sup>11</sup>

Under the convention against a person with disability discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person by any means denying Economic social and cultural rights based on disabilities amounts to a violation of other Human rights.<sup>12</sup>

The first and the most thing that motivate me to conduct this term paper on this topic is to address the challenge people living with disabilities are faced in socioeconomic areas and to address how much the state gives special treatment by providing minimum core rights like adequate food, shelter, healthcare, education, market activities, access to justice and others.

Therefore what necessitated conducting this term paper is to analyze how much the Ethiopian domestic policies confirm those international Human rights instruments, especially on socioeconomic and cultural rights of persons with disabilities.

### 3. International Instruments

#### 3.1. *The Convention on the Rights of Persons with Disabilities*

On December 13, 2006 the United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities (CRPD) which came into force on May 3, 2008.<sup>13</sup> Ethiopia is one of the 166 States that have ratified the Convention on the Rights of Persons with Disabilities on August 11, 2016.<sup>14</sup> The CRPD is the first international instrument that deals specifically with the rights of persons with disabilities and represents a response to the international community's long history of discrimination, exclusion, and dehumanization of persons with disabilities.<sup>15</sup> The CRPD does not create new rights for persons with disabilities but rather clarifies the obligations and legal duties of member states to ensure the equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, including the promotion of their intrinsic dignity.<sup>16</sup> The CRPD also reaffirms the CRC's principles of non-discrimination, and interdependence of all rights whether socio-economic rights or civil and political rights enjoyment for every human. The Preamble, for example, recognizes that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with others.<sup>17</sup>

Of further importance is the fact that the CRPD requires states to provide not only Means to fulfill socioeconomic and cultural rights of persons with disabilities but also to support the way they themselves participate in the socioeconomic activity as other persons. Under General Comment, Number 12 The committee clarify what the obligation to facilitate mean, The obligation to fulfill (facilitate) means the State must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally,

<sup>9</sup> <https://emergency.unhcr.org/entry/43586/persons-with-disabilities>

<sup>10</sup> International Labour Organization. (2013). *Inclusion of People with Disabilities in Ethiopia: Fact Sheet, January.*

<sup>11</sup> The ICESCR Rights Article 2(2).

<sup>12</sup> United Nation Convention on the rights of Person with Disabilities Preamble(h).

<sup>13</sup> UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution adopted by the General Assembly, January 24, 2007, UN Doc A/RES/61/ 106 (2007). <https://www.refworld.org/docid/45f973632.html>. Accessed on January 12, 2021.

<sup>14</sup> <https://www.ohchr.org/en/press-releases/2016/08/ethiopias-record-rights-persons-disabilities-faces-review-un-committee#:~:text=Ethiopia%20is%20one%20of%20the,it%20is%20implementing%20the%20Convention.>

<sup>15</sup> Foreword to the 'UN Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol' (2007) [https://www.un.org/disabilities/documents/tool action/ ipuhb.pdf](https://www.un.org/disabilities/documents/tool_action/ipuhb.pdf). Accessed on January 20, 2020.

<sup>16</sup> Para (a) of the Preamble & art 1 of the CRPD.

<sup>17</sup> Para (h) of the Preamble and art 1 of the CRPD.

whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfill (provide) that right directly.<sup>18</sup> This clarification include all persons of humankind without any ground of discrimination In terms of the Convention, state parties are required to submit an initial report followed by periodic reports to the United Nation's Committee on the Rights of Persons with Disabilities (the Committee on the CRPD) including measures that were taken to implement the provisions of the CRPD.<sup>19</sup>

The government of Ethiopia signed the convention on March 2008 and ratified the same year in July 2010. Ethiopia's initial report to the CRPD Committee was due in 2012 and was submitted in 2013. The report was presented by the Ministry of Labor and Social Affairs (MoLSA), the main points were matters relating to the implementation of the Convention and disability issues in Ethiopia. The report was also contributed to by different stakeholders from government offices and Organizations of Persons with Disabilities (OPDs).<sup>20</sup> Likewise, the second report was submitted in 2016. The Committee on the CRPD made concluding observations and recommendations on that first report. The Committee on the CRPD recognized the efforts made by the state that the State party has adopted the National Action Plan for Persons with Disabilities 2012-2021. The Committee welcomes the incorporation of the obligation to provide reasonable accommodation in the Employment of Persons with Disabilities proclamation and the Federal Civil Servants proclamation, and the upcoming revision of the Civil Code.<sup>21</sup>

The Committee is concerned that legislation and policies continue to employ derogatory terms to refer to persons with disabilities such as "insane", "infirm" and "deaf-mute". The Committee recommends that the State party eliminate the use of all derogatory language to refer to persons with disabilities and ensure that all existing and new laws and regulations, and definitions used therein, comply with the human rights-based model of disability in accordance with the Convention.<sup>22</sup> The Committee is concerned that the concept of reasonable accommodation enforced in domestic law is only related to employment and not to other areas covered by the Convention. It also notes with concern that the denial of reasonable accommodation is not recognized as a form of discrimination in all areas, including the denial of reasonable accommodation in detention and in education. The Committee recommends that the State party adopt a comprehensive definition of reasonable accommodation in the law that applies to all rights. It also recommends that the State party recognize the denial of reasonable accommodation in all areas as amounting to discrimination, as prescribed by Article 5, and provide training to the public and private sectors on this obligation.<sup>23</sup> The Committee recommends that the State party provide legal protection against disability-based discrimination, and multiple and intersectional forms of discrimination faced by persons with disabilities and establish effective legal remedies. It also recommends the provision of training and awareness-raising for public officers, the judiciary, and organizations of persons with disabilities on how to bring complaints and access justice.

The Committee recommends that the State party repeal the legislative provisions that are non-compliant with article 12 of the Convention, in particular, those provisions of the Civil Code (Chaps. 3 and 4, arts. 339-388 and 1728) and Commercial Code (Art. 740) and all forms of substituted decision-making. It also recommends that the State party explicitly recognize in law the full legal capacity of persons with disabilities with respect to all rights, including the right to marry, to enter into a contract, to vote, to own property, to a family, to carry out banking transactions and to have access to justice, in line with the Committee's general comment No.1 (2014) on equal recognition before the law. Still today those provisions are not repealed.

The Committee recommends that the State party enhance the availability, accessibility, and inclusiveness of existing public services and develop further community-based services for persons with disabilities to ensure that they have the opportunity to choose their place of residence and where and with whom they live, including in rural areas. It also recommends that the State party ensure the availability and accessibility of personal assistance services for persons with disabilities.

Although inclusive education resource centers have been established, the Committee notes with concern the absence of a comprehensive strategy toward an inclusive education system with fixed deadlines and outputs, especially for deaf students and students with intellectual disabilities. The Committee is concerned that no policy exists to enable students with disabilities

The Committee recommends that the State party ensure that hospital and healthcare center staff are given regular and compulsory training on the rights of persons with disabilities, including the individual right to free and informed

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<sup>18</sup> Para 15 of General comment No 12.

<sup>19</sup> Art 35 of the CRPD.

<sup>20</sup> Consideration of reports submitted by states parties under article 35 of the Convention, March 19, 2015.

<sup>21</sup> Concluding observation on the Initial report of Ethiopia.

<sup>22</sup> Concluding observation on the Initial report of Ethiopia (n. 26).

<sup>23</sup> Concluding observation on the Initial report of Ethiopia.

consent, sexual and reproductive health, HIV, and sexually transmitted infections. The CRPD provides for the participation of PWDs in matters that concern them. It is expected that the active and informed participation of everyone in decisions that affect their lives and rights informs the human rights-based approach to public decision-making processes, and ensures good governance and social accountability. The participation of PWDs in matters affecting their lives, particularly in the context of healthcare is crucial to upholding their rights to dignity and equality.<sup>24</sup>

#### 4. The ICSECR

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the United Nations General Assembly on December 16, 1966 and entered into force on January 3.<sup>25</sup> It is a multilateral treaty focusing on the economic, social, and cultural rights of every person without any ground for discrimination. It imposes an obligation on state duty to guarantee and access all socioeconomic and cultural rights in accordance with the very principle and establishment purpose of the UN.

#### 5. The African Charter on Humans and Peoples Rights

The African Charter also address the socioeconomic right of all person by saying All peoples have the right to their economic, social, and cultural development with due regard to their freedom and identity and in equal enjoyment of the common heritage of mankind.<sup>26</sup> It also imposes an obligation on the state's part to give special measures for a person with disabilities. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.<sup>27</sup> The state has no justification to deny the promotion and protection of socioeconomic Rights of people with disabilities rather the state has a duty to give due care and special measures.

##### 5.1. *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa*

In January 2018 the African Commission on Human and Peoples' Rights adopted the Protocol on the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (Disability Protocol). At the time of writing this contribution, only nine out of 55 African countries have ratified the Protocol. Ethiopia (FDRE) is a State Party to the African Charter on Human and Peoples' Rights (the African Charter) having ratified the same on June 15, 1998.<sup>28</sup> The protocol affirms the principle of non-discrimination principle of equality and imposes the obligation on state parties to take administrative and legislative measures to promote whatever rights of person with disabilities including their socioeconomic rights.<sup>29</sup>

It also imposes an obligation on state parties to provide an adequate standard of living ensuring affordable service.<sup>30</sup> But in Ethiopia the implementation of those socio-economic rights is in a very low situation

#### 6. Ethiopian Legal Framework The 1995 Constitution of FDRE

The Constitution contains an extensive Bill of Rights that guarantees everyone and people with disabilities the right to equality<sup>31</sup> (including the prohibition of unfair discrimination based on a number of grounds such as age, gender, and disability). The constitution also recognizes socioeconomic and cultural rights for every person<sup>32</sup> especially rights to development,<sup>33</sup> In other words, the Constitution recognizes socioeconomic and cultural rights for every person including PWD. As well as the provision of Article 9(4) and Article 13 impose an obligation on Ethiopia to be bound by any treaties ratified for the protection and promotion of human rights as a general and socioeconomic cultural right of PWD in particular.

<sup>24</sup> Para 63 of Committee concluding observation on Ethiopian initial report in 2016.

<sup>25</sup> <https://www.ohchr.org/en/treatybodies/cescr/backgroundcovenant#:~:text=About%20Treaty%20Bodies,Overview&text=The%20International%20Covenant%20on%20Economic,States%20par%20ties%20had%20ratified%20it>.

<sup>26</sup> African charter on Human and people's rights Article 22(1).

<sup>27</sup> African charter on Human and people's rights Article 18(4).

<sup>28</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa <https://au.int/en/treaties/protocol-african-charterhuman-and-peoples-rights-rights-persons-disabilities-africa>. Accessed on January 15, 2021. For a discussion on the debate as to whether a regional Protocol is necessary and how it will complement the CRPD, refer to SAD Kamba 'A call for a Protocol to the African Charter on Human and People's Rights on the rights of persons with disabilities in Africa' (2013) 21 African Journal of International and Comparative Law 219.

<sup>29</sup> Article 16 of disability protocol.

<sup>30</sup> Article 20 of Disability Protocol.

<sup>31</sup> Article 25 of the FDRE Constitution.

<sup>32</sup> Article 41 of The 1995 FDRE constitution.

<sup>33</sup> Article 43 of the Constitution.

Article 41(5) of the FDRE reads: The State shall, within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guardian.

The state should not have used the language of progressive realization as a license for the violation of the socioeconomic rights of every person including the socio-economic rights of PWD.

Some other proclamations and directives like building proclamation 624/2009, Proclamation 676/2010, The Marrakesh Treaty, The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation 1162/201 Directive 41/2015, and others are those related to PWD Rights in Ethiopia but there is a clear implementations problem. The Committee concerned that policies on accessibility are limited to physical impairment and do not target all persons with disabilities and that no criteria on accessibility have been adopted and applied within public procurement policies.<sup>34</sup>

## 7. Conclusion

Despite of the availability of different policies and legislations on the rights of PWDs at the International and national levels, the reality of PWDs is far from the legislation or policies. PWDs still live under the shadow without any access to public services including education, health, Justice, and transportation in Ethiopia. From my personal observation the challenge I faced when I where serving as a public prosecutor at woreda court was what motivated me to write this term paper on this title. At that time I meet a person who knows everything about the crime committed but due to language problems excluded from being a witness. Access to justice is guaranteed for any justifiable matter in a court of law under many human rights instruments. Still, if the state does not provide the means by training sign language or by making sign language a working language at the national level otherwise it's difficult to make accountable the government. The committee also gives its concluding observation in Ethiopia by saying 'the State party takes all legislative and other measures to significantly increase the number of trained and qualified sign language interpreters throughout the territory'.<sup>35</sup> Also it's better to give awareness for disable people living in rural areas about their socio economic rights justifiability in a court of law why because it enhances sense of confidence for PWD to exercise their rights at all.

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<sup>34</sup> Concluding observation on the initial report of Ethiopia on the rights of person with disabilities (adopted on August 29, 2016)

<sup>35</sup> *Ibid.*

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**Website**

OHCHR Website <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights>

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