



# **GENDER BASED VIOLENCE, WOMEN WITH DISABILITIES AND ACCESS TO JUSTICE: ETHIOPIA AND KENYA**

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## Executive Summary

Globally, women with disabilities are highly vulnerable to violence due to the intersection of gender and disability. Women with disabilities in Kenya and Ethiopia need an effective and efficient response from the justice systems to specifically address the situation of women with disabilities and their vulnerability to multiple forms of discrimination. This paper argues that access to justice for women with disabilities who are victims/survivors of gender-based violence can only become a reality when justice systems fully meet accessibility standards, provide procedural, reasonable and age-appropriate accommodations let alone training of professionals of the justice system, conduct targeted awareness raising activities to sensitize women with disabilities about their rights and how to access justice. Therefore, states general legislative and practical measures should take in to account the specific needs of women with disabilities and their vulnerability to gender-based violence and multiple forms of discrimination and the importance of psycho-social support.

This thesis presents a comparative analysis of Ethiopia and Kenya in light of international human right standards regarding access to justice for women with disabilities who are victims of gender based violence. It looks at international and regional human rights standards, domestic legal frameworks as well as conduct small scale field interviews in Ethiopia to get the practical situations.

The laws of both countries provide protection from GBV and access to justice. Despite the existence of such protections, the legal intervention of both countries regarding access to justice for women with disabilities is deficient. Laws fail to: sufficiently address women with disabilities by taking into account the specific circumstance of women with disabilities and their

vulnerability to multiple forms of discrimination; provide reasonable accommodation and see its denial as discrimination; require justice organs to raise the awareness of women with disabilities on GBV and access to justice; oblige government to train legal professionals on disability and rights of women with disabilities and include gender and age sensitive rehabilitation and reintegration measures for victims of GBV.

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## **List of Abbreviations**

CEDAW: Convention on the Elimination of Discrimination against Women

CRPD: Convention on the Rights of Persons with Disabilities

DEVAW: Declaration on the Elimination of Violence against Women

GBV: Gender Based Violence

ICCPR: International Covenant on Civil and Political Rights

UDHR: Universal Declaration on Human Rights

UN: United Nations

OHCHR: Office of the High Commissioner for Human Rights

UNDP: United Nations Development Programme

UNHCR: United Nations High Commissioner for Refugees



## Introduction

According to the World Health Organization, 15.6% of the world's population and 18% of the population of developing countries live with disability.<sup>1</sup> It is estimated that women and girls with disabilities represent at least 15% of the world's female population.<sup>2</sup> Persons with disabilities include “those with long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”<sup>3</sup> The Central Statistical Agency of Ethiopia, on the other hand, estimated 864,218 (464,202 male and 400,016 Female) out of the entire population of 73,918,505 live with disability.<sup>4</sup> The 2009 National Population Census of Kenya estimated that 1.330,312 million (682,623 female and 647,689 male) or 3.5% of the population of Kenya have impairment.<sup>5</sup>

Women with disabilities are vulnerable to Gender Based Violence (GBV) and face barriers in accessing justice. The Declaration on the Elimination of Violence against Women (DEVAW) defines GBV as any act that “results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary

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<sup>1</sup> World Health Organization, *World Report on Disability*, (2011), p. 27.

<sup>2</sup> Handicap International, *Making it work initiative on Gender and Disability Inclusion; Advancing Equity for women and girls with disabilities*, (October 2015), p. 10.

<sup>3</sup> UN Convention on the Rights of Persons with Disabilities, Article 1.

<sup>4</sup> *Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD), Initial Report of Ethiopia*, 2012, p. 1 and 4.

<sup>5</sup> *Kenya's initial report submitted under article 35(1) of the United Nations Convention on the Rights of Persons with Disabilities*, (31<sup>st</sup> August 2011), p. 7.

deprivation of liberty, whether occurring in public or in private life.”<sup>6</sup> Women with disabilities suffer GBV because of their gender and disability. For the purposes of this thesis, the term “women” should be understood to include women and girls.

Therefore, efficient and effective access to justice for women with disabilities is crucial. Access to justice in this paper refers to the protection of people with disability by the law, their ability to use and seek remedy in cases of grievances through justice institutions, and participate in all stages of the criminal justice system in line with human rights standards and on an equal basis with others.<sup>7</sup> This is a basic right by itself as well as a means for realizing other rights.<sup>8</sup> However, persons with disabilities particularly women with disabilities face challenges to access justice. Reasons include: justice systems are not designed mindful of the needs of persons with disabilities; existence of disability discriminatory laws;<sup>9</sup> failure of legal professionals to address reported cases due to stereotypes;<sup>10</sup> inaccessible buildings and information in justice systems; absence of procedural and reasonable accommodation; no comprehensive services that incorporate health, legal, and psycho-social supports; scarcity of services to rehabilitate and reintegrate the victims;<sup>11</sup> legal professionals lack of knowledge and skills on issues of GBV against women with disabilities due to limited or no training; low level of awareness among

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<sup>6</sup> Declaration on the Elimination of Violence against Women, Article 1.

<sup>7</sup> Australian Human Rights Commission, *Access to justice in the criminal justice system for people with disabilities*, issues paper: (2013), p. 4; Human Rights Commission, *Human Rights Commission Submission to the Expert Mechanism on the Rights of Indigenous Peoples, Indigenous Juridical Systems and Access to Justice for Indigenous Women, Children and Youth and Persons with Disabilities*, (2014), P. 3.

<sup>8</sup> Stephanie Ortoleva, “Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System,” *ILSA Journal of International & Comparative Law* 17, no. 2, (2011), p. 285.

<sup>9</sup> United Nations High Commissioner for Human Rights, *Thematic study on the issue of violence against women and girls and disability, Report of the Office of the United Nations High Commissioner for Human Rights*, (2012), Para 50.

<sup>10</sup> Australian Human Rights Commission, *Access to justice in the criminal justice system for people with disabilities*, issues paper: (2013), p. 9.

<sup>11</sup> *Ibid*, p. 5 and 8.

women with disabilities about their rights and how to access justice;<sup>12</sup> and lack of trust in the justice system.<sup>13</sup> Hence, reinforcing discrimination, inequality and unjust treatment.

Measures to ensure that people with disabilities (particularly women) become active participants (parties, witnesses etc) in the justice systems on an equal basis with others will be in line with the Convention on the Rights of Persons with Disabilities (CRPD) Article 13.<sup>14</sup>

International human rights instruments such as CRPD, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and DEVAW obliges governments to protect women with disabilities from GBV and all types of exploitation and abuse as well as ensure their access to justice.<sup>15</sup>

This paper argues that access to justice for women with disabilities who are victims of GBV can only be realised if meaningful legal and practical measures are taken to implement international and national human rights frameworks. It proceeds by exploring the legal frameworks on access to justice and GBV to identify: gaps, existing barriers, practical challenges in accessing justice for women with disabilities, the need for awareness raising campaigns and capacity strengthening for justice sector professionals. This paper focuses on the criminal justice system which refers to “the aspects of social justice that concern violations of the criminal law.”<sup>16</sup> In this thesis, justice sector organs refer to Police, Judges and Public Prosecutors.

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<sup>12</sup> Colette Ajwang’ Aloo, *Study on Gender Based Violence against Women and Girls with Disabilities in Kenya*, (2014), P. 32.

<sup>13</sup> *Ibid*, P. 33

<sup>14</sup> Grant Esmé and Rhonda Neuhaus, “Liberty and Justice for All: The Convention on the Rights of Persons with Disabilities”, *ILSA Journal of International & Comparative Law* 19, No. 2, (2013), 347-378, P. 355.

<sup>15</sup> United Nations Convention on the Rights of Persons with Disabilities, Article 13 and 16.

<sup>16</sup> Schmallegger, Frank, *Criminal justice, A brief introduction*, 8th ed., (Prentice Hall, 2010), P. 11.

There is lack of sufficient research on access to justice for women with disabilities who are victims of GBV in Ethiopia. This paper seeks to provide insight to relevant government bodies and stakeholders to the areas in need of reform.

Both primary and secondary data are used, obtained from desk research and small scale qualitative field research in Ethiopia. 25 Semi-structured interviews were conducted with women with disabilities,<sup>17</sup> justice sector professionals,<sup>18</sup> civil society organizations<sup>19</sup>. The data was analyzed manually and ethical concerns were addressed and standards met. The Central European University Student Life Office wrote formal letters used to facilitate my interviews in Ethiopia. Informed consent was obtained from all interviewees and women with disability approved the presents of support persons during interviews, who accepted to confidentiality. Respondents could stop the interview at any time.

The research focused on Kenya and Ethiopia, which are State Parties to the CRPD and CEDAW requiring them to take all appropriate legislative, administrative and other measures to ensure compliance. Field interviews were only conducted in Ethiopia and were limited to Addis Ababa because of time and resource constraints. So, qualitative data obtained is not claimed to be representative of the whole country but simply to share some practical experiences.

The paper has three chapters. Chapter one deals with concepts, literatures and data concerning disability, GBV and Access to Justice. Chapter two sets out the international legal

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<sup>17</sup> 3 women with disabilities were identified and interviewed with the support of police and Ethiopian Women with Disabilities National Association.

<sup>18</sup> 5 Judges, 6 public prosecutors including Coordinator of Women, Children and Youth Affairs Office of Ministry of Justice and Human Right Action Plan Coordination Office, 6 police including Coordinator of Women and Children Protection Unit of Addis Ababa Police Commission, 2 Professionals working at Ministry of Labour and Social Affairs.

<sup>19</sup> representatives from Ethiopian Women with Disabilities National Association(one), Ethiopian Young Lawyers Association (one) and Handicap International(one).

framework and obligations regarding access to justice, GBV and women with disabilities. The last chapter assesses the national legal system of Ethiopia and Kenya. It further assessed the practical aspects of access to justice for women with disabilities who are victims of gender based violence in Ethiopia based on data obtained during qualitative field research. This paper ends with a conclusion and recommendations.

## Chapter One

# Understanding Disability, Gender Based Violence and Access to Justice

This chapter looks at various concepts and definitions concerning access to justice for women with disabilities who are victims of GBV.

### *1:0:0 Disability, Impairment and Persons with Disabilities*

The terms impairment, disability and persons with disability are the pillars that have to be discussed to understand disability issues.

Impairment refers to “an injury, illness, or congenital condition that causes or is likely to cause a loss or difference of physiological or psychological function.”<sup>20</sup> It is also defined as “the loss or limitation of physical, mental or sensory function on a long-term or permanent basis.”<sup>21</sup> Therefore, impairment, in simple terms, is a person’s partial or total loss of functioning of parts of the body or organ of the body.<sup>22</sup> Conversely, “disability” is described as “the loss or limitation of opportunities to take part in society on an equal level with others due to social and

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<sup>20</sup> Center for Disability, “Defining Impairment and Disability,” retrieved on February, 2015, p. 1 available at: <http://disability-studies.leeds.ac.uk/files/library/Northern-Officers-Group-defining-impairment-and-disability.pdf>.

<sup>21</sup> “Understanding the Social Model of Disability and what it means when raising disability in the School Curriculum” available at: [www.worldofinclusion.com/res/.../Understanding\\_the\\_Social\\_Model.doc](http://www.worldofinclusion.com/res/.../Understanding_the_Social_Model.doc).

<sup>22</sup> Center for Disability, supra note, 20, p. 1.

environmental barriers.”<sup>23</sup> Disability is limitation from engaging equally with others because of obstacles.<sup>24</sup>

Therefore, disability goes far beyond impairment because disability results when impairments meet with obstacles. For example: - a visually impaired person is disabled if s/he wants to read the criminal law of a country which is not available in Braille or audio. The absence of Braille or audio version of the law makes visually impaired persons disabled because they cannot access the criminal law of the country on an equal basis with people without visual impairment.

The CRPD avoids defining disability. It refers to disability as an evolving concept<sup>25</sup> and defines persons with disabilities to

*[...] include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.*<sup>26</sup> (Emphasis mine)

Even though the definition incorporates various elements, the word ‘include’ shows that it is not an exhaustive definition but an illustration of who persons with disabilities are. Additionally, the definition only considers people who have physical, mental (psycho-social), intellectual or sensory impairments. It correlates with the social model which recognized that disability is a result of the interaction of people with impairments with barriers. The barriers should also limit people with impairments from participating in society in a full and effective manner on an equal

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<sup>23</sup> MJ Oliver, “The Disability Movement and the Professions,” retrieved on March, 2015. (<http://disability-studies.leeds.ac.uk/files/library/Oliver-The-Disability-Movement-and-the-Professions.pdf>).

<sup>24</sup> Center for Disability, supra note 20, p. 1.

<sup>25</sup> Convention on The Rights of Persons with Disabilities, preamble paragraph e.

<sup>26</sup>Ibid , Article 1.

basis with others in order to consider a person with impairment as disabled.<sup>27</sup> This paper uses the definition provided by the CRPD for “persons with disabilities”. The words “persons with disabilities”, “disabled people” and “people with disabilities” will be used interchangeably.

## **1:0:1 Models of disability**

Persons with disabilities face discrimination due to attitudes, misconception and absence of awareness.<sup>28</sup> Historically, disability was considered as an issue of medical support, welfare or charity. This conception has resulted in discriminatory laws, policies and practices that excluded people with disabilities from participating in socio-economic, cultural and political aspects of society, thereby resulting in serious marginalization of people with disabilities. There are medical, charity, social and human rights models that describe approaches to disability. These models created perceptions and beliefs about people with disabilities. Thus, I will briefly describe them in order to have the classic and contemporary awareness of approaches related to disability.

**Medical Model:** As we can understand from its name, the model characterizes disabled people by their medical status. Disability was considered as illness that can be cured with medical treatment.<sup>29</sup> The model considers the disabled person as a problem that needs to be fixed so as to adapt to the situations around her/him. The biological impairment is considered the problem and

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<sup>27</sup> Oliver Lewis, lecture for "Mental Disability Law and Advocacy," Central European university, (12 January 2015).

<sup>28</sup> Janet E. Lord, et al *Human Rights. Yes! Action and Advocacy on the Rights of Persons with Disabilities*, 2<sup>nd</sup>ed, (2012), p. 11.

<sup>29</sup> Oliver, supra note 23.



cause of the disability.<sup>30</sup> Thus, the medical expert decides what should be done to disabled people. This model falls short of describing disability in a comprehensive manner since it reduces disability to impairment.<sup>31</sup> Additionally, the means of addressing the problem was not effective because they fail to address the external barriers of the external environment or community which cannot be fixed solely by medical experts.<sup>32</sup>

**Charity model:** To consider a disabled person as dependent in need of help from the society is a characteristic feature of charity model. In this model, rather than equal opportunity and equality before the law, aid and kindness to disabled people are more contemplated. Persons with disability are considered as needy who want assistance and bestowment from the community.<sup>33</sup> Instead of empowering persons with disabilities, this model promotes dependency, and substitution of “entitlement rights” with “relief measures” either by fund allocated from the state or generous people.<sup>34</sup> This model considers persons with disabilities as passive instead of active members of community and right holders.<sup>35</sup>

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<sup>30</sup>National Commission of Persons with Disability, *Guidelines towards an inclusive society and a positive difference in the lives of Maltese and Gozitan disabled people*, (2007), p. 14.

<sup>31</sup> Bhanushali K., “Changing face of disability movement; from charity to empowerment,” in national seminar on *revising social work in the field of health- a journey from welfare to empowerment*, faculty of social work, the Maharaja Sayajirawo University of Baroda, (February 20-21, 2007), p. 3 available at: <file:///C:/Users/Administrator/Downloads/SSRN-id965999.pdf>.

<sup>32</sup> Lord et al, supra note 28, p. 12.

<sup>33</sup> Ibid, p. 2.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid. p. 12.

**Social model:** This model pinpoints the difference between the notion of impairment and disability. As explained earlier in the definition part, impairment is linked to the biological facet while disability is associated to impairment intertwined with barriers such as environmental, social and legal. As provided in a good practice guide, disability is not only a personal matter but also a social issue that is caused by barriers such as “policies, practices, attitudes and/or the environment.”<sup>36</sup> This model shifts the emphasis from biological limitation of people with impairment to “problems caused by disabling environments, barriers and cultures.”<sup>37</sup> Thus, it stressed on the need to take measures to abolish existing barriers that restrict persons with disabilities from participating equally with others such as introducing reasonable accommodation and positive attitudes towards persons with disabilities.<sup>38</sup>

The social model challenges the assumptions forwarded by medical and charity model. It argues that the issues of disabled people are tied to the neglect of the society and environment to take account of their individual needs; it is mainly the community that is the source of their problems. Therefore, there is a need to bring social change and remove barriers to create accessible environment.<sup>39</sup> However, it does not mean that interventions at individual level are unnecessary for people with disabilities.<sup>40</sup>

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<sup>36</sup> K., Bhanushali, supra note 31, p. 3.

<sup>37</sup> Oliver, supra note 23.

<sup>38</sup> Lord et al, supra note 28, p. 12.

<sup>39</sup> Oliver, supra note 23.

<sup>40</sup> Barnes, Colin and Geoff Mercer ed. *Exploring the Divide: Illness and Disability*. (Leeds: Disability Press, 1996), p. 4.

**Human Rights Model:** This model mainly states that persons with disabilities also enjoy human rights equally with others. It relies on the belief that disability is a form of human diversity and culture. According to human rights model “all human beings irrespective of their disabilities have certain rights, which are unchallengeable.”<sup>41</sup> Disability may restrict a person’s ability to move, hear, see, or affect the way of thinking or processing information of people, however, “disability neither subtracts from nor adds to a person’s humanity, value, or rights.” It is simply character and diversity of human kind.<sup>42</sup>

It is built on the principle of Universal Declaration of Human Rights that “all human beings are born free and equal in rights and dignity.”<sup>43</sup> In this model, people with disabilities are viewed as subjects of human rights and active members of the society rather than objects of pity and charity.<sup>44</sup> Thus, it puts the barriers of people with disabilities on the external environment taking into account human right standards<sup>45</sup> This approach among other things includes empowering persons with disabilities and the need for developing holistic policies.<sup>46</sup>

## **1:0:2 Definition of Disability, Impairment and Persons with Disabilities in Ethiopia and Kenya**

The definition of these terms provided by the laws of Kenya and Ethiopia will be assessed in this part.

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<sup>41</sup> K. Bhanushali, supra note 31, p. 4.

<sup>42</sup> Ibid.

<sup>43</sup> Universal Declaration of Human Rights, Article 1.

<sup>44</sup> Secretariat for the Convention on the Rights of Persons with Disabilities of the Department of Economic and Social Affairs; United Nations Population Fund; Wellesley Centers for Women, *Disability Rights, Gender, and Development--A Resource Tool for Action*. (2008) P. Module 1-6.

<sup>45</sup> K. Bhanushali, supra note 31, p. 4.

<sup>46</sup> Ibid.

## Ethiopia

There is no Constitutional definition of disability, impairment or persons with disability in Ethiopia. A Person with disability is defined in the statutory laws of Ethiopia. Similar to the CRPD, Ethiopian laws do not define disability but only defined person with disability.

According to the Right to Employment of Persons with Disability Proclamation, “Person with disability” means “an individual whose equal employment opportunity is reduced as a result of his physical, mental or sensory impairments in relation with social, economic and cultural discrimination.”<sup>47</sup> It is a progressive definition that takes into consideration the environment aspect as a reason for disability. However, it is not a comprehensive definition as it only addresses barriers based on social, economic and cultural discrimination. Environmental, communication, political, institutional and legal barriers are missing from the definition. The definition is more or less linked to the social model of disability as it lists out barriers intersecting with impairment. Additionally, the law is only applicable to employment issues between persons with disabilities and an employer and is not applicable to other areas of life.<sup>48</sup>

The National Plan of Action of Persons with Disabilities 2012 – 2021, on the other hand, copied the definition given by the CRPD. Nonetheless, the National Action Plan on Persons with Disabilities is not legislation per se in the Ethiopian legal system. It is used for guiding the implementation of the Disability Action Plan and does not have binding force on legal action and courts.

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<sup>47</sup> The right to Employment of Persons with Disability of Ethiopia Proclamation No. 568/2008, Article 2(1).

<sup>48</sup> Ibid, Article 3.

## Kenya

Disability is defined both in the Constitution and Persons with Disabilities Act of Kenya. Disability is defined in the constitution to include “[...]any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long term effect on an individual’s ability to carry out ordinary day-to-day activities.”<sup>49</sup> Persons with Disability Act defines it as “physical, sensory, mental or other impairments, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation.”<sup>50</sup>

The phrase “other impairments” in both definitions gives a non-exhaustive list of impairments. The constitution provides “other impairments” to be determined according to the perception of considerable sectors of the society. This opens a room for the term to be interpreted either in a broad or narrow manner (for instance failure to consider albinism or psycho-social problems as impairment),<sup>51</sup> resulting in legal uncertainty. Additionally, the term “long term effect” should not be a mandatory element in the definition of disability as illustrated by the CRPD Committee in the case of S.C v. Brazil.

Both definitions focus on the impairment and do not take into account the physical, attitudinal, legal and other environmental factors that bar people with disabilities from participating fully and effectively in society on equal basis with others. They focus on individual problems and impairment and do not take into account the interaction of impairment and environment. Hence, the definitions are based on the medical model of disability and still do not

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<sup>49</sup> Constitution of Kenya, Article 260.

<sup>50</sup> Persons with Disability Act of Kenya, Article 2.

<sup>51</sup> Mental Disability Advocacy Center, *The Right to Legal Capacity in Kenya*, (2014), p. 16.

consider the social or human right aspect of disability. Unlike the CRPD, both the constitution and the Persons with Disability Act did not define persons with disabilities and impairment; rather they define disability.

Despite the changing models of disabilities, people with disabilities have continued to be victims of violence especially gender-based violence.

### ***1:1:0 Gender Based Violence***

Gender based violence affects women in various ways. The types and degree of GBV show similarities and differences, and exists in every society. It can be committed against both women and men. However, the term is mostly used for women since it is much more experienced by women all over the world<sup>52</sup> and has tremendous consequence on the lives of women.<sup>53</sup> It results in harmful psychological, health, behavioral, physical, educational, social, and economic problems.<sup>54</sup>

The Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Recommendation No. 19 defines gender based violence as:

violence that is directed against women because they are *women* or that *affects women disproportionately*. It includes acts that inflict physical, mental or sexual harm or

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<sup>52</sup> Maggie WYkes and Kirsty Welsh, *Violence, Gender and Justice*, (Great Britain: SAGE publications, 2009), p. 1.

<sup>53</sup> Russo, Nancy Felipe and Angela Pirlott, "Gender Based Violence: Concepts, Methods and Findings" in *Violence and exploitation against women and girls*, ed., Denmark, Florence L, et.al, Annals of the New York Academy of Sciences Volume 1087, (Boston, Massachusetts, 2006), p. 191 -192; Inter-Agency Standing Committee, *Guidelines for Gender-Based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies*, (2005), p. 7.

<sup>54</sup> Ibid.

suffering, threats of such acts, coercions and other deprivations of liberty<sup>55</sup>[...] It is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedom on a basis of equality with men.<sup>56</sup> (Emphasis mine)

The Committee acknowledges that GBV takes various forms including physical, psychological and sexual abuses, and results from discrimination as well as discriminately affects the enforcement of the rights of women. The violence shall be inflicted against women or should impact women disproportionately so as to qualify as GBV. The Committee emphasized that GBV is discrimination since it impairs women's enjoyment of human rights under international instruments and is also discrimination within meaning of article 1 of the Convention.<sup>57</sup>

The term is also defined as “an umbrella term for any harmful act that is perpetrated against a person's will, and that is based on socially ascribed (gender) differences between males and females.”<sup>58</sup> This definition is a bit different from the definition given by the CEDAW Committee since it has the element of “gender” and “consent”. The definition given by CEDAW Committee specifically mentions women while this definition mentions gender as one element for gender based violence. Gender is rather the socially constructed characteristics given to men and women.<sup>59</sup> Additionally, absence of will is clearly expressed in the second definition while the CEDAW Committee did not make any mention of it.

Similarly, gender based violence is also defined as:

Violence against women based on women's subordinate status in society. It includes any act or threat by men or male dominated institutions that inflict physical, sexual, or

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<sup>55</sup> CEDAW Committee, *General Recommendation No. 19: Violence against women*, 1992, Para 6.

<sup>56</sup> *Ibid.* Para 1.

<sup>57</sup> *Ibid* Para 7; Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women specifies that “Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.”

<sup>58</sup> Inter-Agency Standing Committee, *Guidelines for Gender-Based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies*, (2005), p. 7.

<sup>59</sup> CEDAW Committee, *General recommendation on women's access to justice*, 23 July 2015, Para 7.

psychological harm on a woman or girl because of their gender. In most cultures, traditional beliefs, norms and social institutions legitimize and therefore perpetuate violence against women.<sup>60</sup>

This definition recognizes the gender element of the violence but did not mention the element of consent. The definition most importantly addresses the main cause of violence against women i.e. patriarchal attitude and society. It focuses on the patriarchal nature of society in which women hold inferior position than men and women's higher rate of vulnerability to abuse is linked to their subordinate position.

Often, the phrase "gender-based violence" is used interchangeably with the term "violence against women." Hence, it is important to look at definitions provided for the term "violence against women." Accordingly, DEVAW defined violence against women as:

Any act of *gender based violence* that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.<sup>61</sup> (emphasis mine)

This definition has made a clear reference to violence against women as an act of "gender based violence." It also added that the crime can be committed either in "private or public life."

On the other hand, in a study of United Nations High Commissioner for Human Rights, the term violence against women was used as:

Violence accomplished by physical force, legal compulsion, economic coercion, intimidation, psychological manipulation, deception, and misinformation, and in which absence of free and informed consent is a key analytical component.<sup>62</sup>

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<sup>60</sup> [http://www1.umn.edu/humanrts/svaw/advocacy/modelsessions/what\\_is\\_GBV.PDF](http://www1.umn.edu/humanrts/svaw/advocacy/modelsessions/what_is_GBV.PDF) retrieved on February 2014.

<sup>61</sup> Declaration on the Elimination of Violence against Women, Article 1.

<sup>62</sup> United Nations High Commissioner for Human Rights, supra note 9, Para 4.



This definition does not make any reference to violence against women as a result of gender roles of women. However, it clearly sets out that consent should be absent to consider an act as violence against women.

Therefore, from the above definitions we can infer that gender based violence/violence against women is inflicted because of the socially constructed role given to women and subordinate status of women. Deep rooted traditional gender norms that support male dominance and societal norms that excuse GBV are the major factors for the incidence of violence against women. The abuses deny women the equal enjoyment of human rights with men as well as maintain the subordinate status of women thereby lowering their political participation, educational and job opportunities.<sup>63</sup>

Gender based violence and violence against women will be used interchangeably in this research. For the purpose of this research, these terms mean

Any act or threat committed by men without the consent of women that inflict or is likely to inflict physical, sexual, or psychological harm or suffering to a woman whether occurring in public or private life.

It should also be noted that gender based violence against women with disabilities is also part of the larger issue of gender based violence.

### **1:1:1 Intersectionality and Vulnerability of women with disabilities to violence**

Social factors, identity or life aspects such as poverty, disability, race/ethnicity, religion, language, may have an impact on the increment of risk for violence against individuals or groups. The recognition of these facts is known as “intersectionality,” “multidimensionality,”

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<sup>63</sup> Ibid, Para 9.

and “multiple forms of discrimination”.<sup>64</sup> This type of scenario is vital for assessment of any type of violence against people particularly women with disabilities.<sup>65</sup> A study on violence against women with disabilities has identified that “violence against women and girls with disabilities is not just a subset of gender-based violence: it is an intersectional category dealing with gender-based and disability-based violence.”<sup>66</sup> The vulnerability of women with disabilities to high risk of violence emanates from the convergence of gender and impairment.

Both disability and being a woman are factors for vulnerability to violence. Thus, these factors make women with disabilities compounded with violence. A study on women with disabilities in Ethiopia has identified that Ethiopian women with disabilities are vulnerable to violence due to intersection of gender and disability.<sup>67</sup> Some group of women with disabilities who also belong to another disadvantaged or marginalized group also have a higher risk of violence because of the additional factors.<sup>68</sup> For example, empirical researches show that old, indigenous and migrant women with disabilities are at higher degree of vulnerability to violence due to the intersection of various forms of discrimination.<sup>69</sup>

A study by Human Rights Watch revealed that persons with disabilities have the likelihood of being victim of physical and sexual violence four times as much as others. People

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<sup>64</sup> Ortoleva, supra note 8, p. 28.

<sup>65</sup> Ibid.

<sup>66</sup> International Network of Women with Disabilities (INWWD), *Document on Violence against Women with Disabilities*, (2010), p. 7.

<sup>67</sup> Hisayo Katsui & Mina C. Mojtahedi “Intersection of disability and gender: multi-layered experiences of Ethiopian women with disabilities,” *Development in Practice* 25, no 4, (2015), p. 571. DOI: [10.1080/09614524.2015.1031085](https://doi.org/10.1080/09614524.2015.1031085).

<sup>68</sup> Ortoleva, supra note 8, p. 28.

<sup>69</sup> United Nations High Commissioner for Human Rights, supra note 9, Para 18 and Para 20.

with intellectual disability are the most vulnerable, with a likelihood of being abused four times as much as other people with disabilities.<sup>70</sup>

Researches have shown that there are substantial differences in the prevalence of violence against women with disabilities and women without disabilities, as well as between women with disabilities and men with disabilities.<sup>71</sup> Statistics show that women with disabilities are more vulnerable to violence. A study conducted in Kenya found out that sexual violence is the most prevalent form of violence against women with disabilities<sup>72</sup> and women with mental disability are the most vulnerable to sexual violence<sup>73</sup> followed by the visually, hearing and physically impaired.<sup>74</sup> Most perpetrators are acquaintances of the victims.<sup>75</sup> A study conducted on 200 women with intellectual disabilities in Kenya, found out that 51% of the participants were sexually abused and mostly more than once.<sup>76</sup> 51% of the perpetrators are families of the victims such as parents, care givers and other relatives.<sup>77</sup> It was also revealed that 80% of the population has negative attitude towards women with intellectual disabilities.<sup>78</sup>

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<sup>70</sup> <http://www.hrw.org/news/2011/06/08/fact-sheet-hiv-aids-and-disability> retrieved on February 2015.

<sup>71</sup> International Network of Women with Disabilities (INWWD), *supra* note 66, p. 7.

<sup>72</sup> Aloo, *supra* note 12, P. 23.

<sup>73</sup> *Ibid* P. 21.

<sup>74</sup> Aloo, *supra* note 12, P. 35.

<sup>75</sup> *Ibid*.

<sup>76</sup> Coalition on Violence against Women (COVAW) and Kenya Association of the Intellectually Handicapped(KAIH), *Baseline Survey: Knowledge, awareness, practices and prevalence rate of gender based violence (GBV) especially sexual violence among women and girls with intellectual disabilities*, May-June 2013, (2013), P. 28.

<sup>77</sup> *Ibid*, P. 29 – 30.

<sup>78</sup> *Ibid*, P.10.

It is reported by another study that 15% of women with disabilities are sexually or physically abused by service providers.<sup>79</sup> A study conducted by Handicap International in Ethiopia surveyed 194 women with disabilities and found out that 46.4% were sexually abused.<sup>80</sup> These studies show that violence is a real problem that needs to be addressed in the lives of women with disabilities.

There are several factors that make people with disabilities vulnerable to violence. These include the stereotype, believe and perception that: People with disabilities are not autonomous and cannot make decision by themselves;<sup>81</sup> violence inflicted against women with disabilities is not as serious when compared to those committed against women without disabilities; the effect of violence affects women without disabilities more; violence obstructs the life goals of women without disabilities while women with disabilities have no purpose in life.<sup>82</sup> Additionally, less credibility is given to their words.<sup>83</sup>

The difficulties in reporting abuse due to barriers to access to justice such as lack of accessible forms of communication; inaccessibility of information and barriers in the physical environment are also factors causing their vulnerability to violence.<sup>84</sup> For example, a hearing impaired person is less likely to communicate the violence inflicted against her/him to the police

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<sup>79</sup> Nosek et al., "National study of women with physical disabilities: Final report," *Sexuality and Disability* 9 no. 1, 5-39 (2001), as cited in Powers, Laurie E. and Mary Oswald, "Violence and Abuse against People with Disabilities: Experiences, Barriers and Prevention Strategies," available on <http://www.phinational.org/sites/phinational.org/files/clearinghouse/AbuseandViolenceBrief%203-7-04.pdf> P. 5.

<sup>80</sup> Handicap International and Bureau of Labor and Social Affairs, *Sexual Violence and Abuse Faced by Persons with Disabilities, Formative Research In Dire Dawa and Addis Ababa, Ethiopia*, (2011), P. 20.

<sup>81</sup> United Nations High Commissioner for Human Rights, *supra* note 9, Para. 14.

<sup>82</sup> *Ibid*, Para. 15.

<sup>83</sup> *Ibid*, Para 14.

<sup>84</sup> Australian Human Rights Commission, *supra* note 10, p. 9; see also United Nations High Commissioner for Human Rights, *supra* note 9, Para 14.

or an outsider unless they can both use the sign language or an interpreter. Things get complex if the abuser is the only person interpreting the testimony of the victim.<sup>85</sup> The stereotypes coupled with barriers to access justice that women with disabilities face, make perpetrators believe that disabled people are unlikely to report their abuse which in turn makes them target for violence.<sup>86</sup> It should also be noted that the high rate of vulnerability to violence is tied to factors that increase dependency of women with disabilities on others.<sup>87</sup> Victims do not report violence to appropriate organs due to fear of losing support.

Poverty and exclusion is more experienced by women with disabilities. These results in their vulnerability to violence and stiffen the possibility of escaping the cycle of violence. This is the reality of the lives of women with disabilities even in developed world; they have relatively lower economic status.<sup>88</sup> Also, they are more vulnerable to violence committed by family members because of their dependency on their family. Reporting the violence may deprive them of the support they get from their family. At the same time, they do not have the economic capacity to live on their own which makes it difficult for them to report the case.<sup>89</sup>

Though women with disabilities experience similar forms of violence with others, they also frequently face other types of violence which are not experienced by other women such as verbal abuse/insults regarding their disability, denial of medicine and assistive equipment (for

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<sup>85</sup>Handicap International and Bureau of Labor and Social Affairs, supra note 80, P. 11.

<sup>86</sup>United Nations High Commissioner for Human Rights, supra note 9,.Para 14

<sup>87</sup> Ibid, Para 16.

<sup>88</sup> Ibid, Para 17.

<sup>89</sup> Laurie E. Powers and Mary Oschwald, “Violence and Abuse against People with Disabilities: Experiences, Barriers and Prevention Strategies,” available on <http://www.phinational.org/sites/phinational.org/files/clearinghouse/AbuseandViolenceBrief%203-7-04.pdf> \_P. 8; see also Handicap International and Bureau of Labor and Social Affairs, supra note 80, 2011.

example wheelchairs and white canes); unwillingness to support their daily living; psychological abuse; and limiting their communication with friends and relatives.<sup>90</sup>

Women with disabilities are also exposed to high risk of violence due to their impairment. Their impairment makes them to be less capable of resisting an attack or fleeing from attack.<sup>91</sup> Each type of disability has risk factor for violence that is attached to it. For example; there is high risk of violence for visually impaired person because of their inability to see the abuser. They are target for abuse because the perpetrators know that they cannot see who is abusing them, making it difficult to report the abuse as well as to identify the criminal to the justice sector professionals and others concerned.<sup>92</sup> This gives the predator the perception of less risk of discovery. Besides, women with disabilities who have specific impairments may sometimes be target for abuse.<sup>93</sup> For example, there are incidences where women who are visually impaired were used for forced begging due to the belief that visible impairment can be source of public empathy.<sup>94</sup> A study on GBV against Women and Girls with Disabilities in Kenya found out that one of the reasons for their vulnerability to violence is the impairment, such as inability to see the predator and communicate.<sup>95</sup>

Similarly, in a study carried out in Ethiopia among victims of sexual offence, 70% reported that their disability increased the risk for the violence. It found out that inability to

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<sup>90</sup>United Nations High Commissioner for Human Rights, *supra* note 9, Para 22.

<sup>91</sup> Handicap International and Bureau of Labor and Social Affairs, *supra* note 80, P. 14.

<sup>92</sup> *Ibid*, P. 17.

<sup>93</sup> United Nations High Commissioner for Human Rights, *supra* note 9, Para 25.

<sup>94</sup> *Ibid*.

<sup>95</sup> Aloo, *supra* note 12, p. 20.

escape (63.5%), dependency on the abuser (15.9%), and inability to seek help because of communication barriers (11.1%) are the major factors that increased their vulnerability.<sup>96</sup>

Absence of information and awareness is another issue as regards violence against women with disabilities. Some women with disabilities do not understand that they are experiencing violence and do not know where to get the necessary services.<sup>97</sup> Due to communication barriers, and less attention given to the rights and marginalization of women with disabilities, they are not targets of awareness raising programs. Hence, they are not provided with information about human rights, where to get appropriate services and information on appropriate and inappropriate sexuality.<sup>98</sup> For example, since women with disabilities are mostly excluded and do not have much social interactions, they are less likely to get information about sexual and reproductive health unlike women without disabilities, which influence their ability to identify what they experience as unacceptable behavior or violence.<sup>99</sup>

Moreover, there is a belief that women with disabilities are not sexually attractive. They are not thought to be sexually active and are considered virgins, thus free from sexually transmitted diseases including HIV/AIDS,<sup>100</sup> a factor that makes them target for sexual exploitation.<sup>101</sup>

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<sup>96</sup>Handicap International and Ethiopian National Association for Mentally Retarded Children and Youth, *Summary Report of the Baseline Survey on Sexual Violence against Persons with Disabilities in Yeka Sub City, Kebele 01/02, (2007)*, P. 11.

<sup>97</sup> Rajan Doris et al, *Women with Disabilities and Abuse: Access to Supports, Report on the Pan-Canadian Focus Groups*, (2011), p. 19.

<sup>98</sup> International Network of Women with Disabilities (INWWD), *supra* note 66, P. 9.

<sup>99</sup> Handicap International and Bureau of Labor and Social Affairs, *supra* note 80, p. 14.

<sup>100</sup> *Ibid*, P. 14.

<sup>101</sup> *Ibid*, P. 15.

A study conducted by Handicap International in Ethiopia on the prevalence of sexual violence against women with disabilities, reveals that 68.5% of victims of violence did not report because of fear of not being trusted by the appropriate service providers. Other reasons forwarded by the study participants include victims' acceptance of the abuse, lack of knowledge of available services, and inability of communicating the violence particularly as regards women with hearing impairment.<sup>102</sup> Fear of the perpetrator was the reason for 52.1% of victims of sexual violence who did not report the crime.<sup>103</sup>

Last but not least, empirical researches show that there are instances in which women developed permanent physical and/or mental impairment due to GBV particularly as a result of sexual violence and harmful traditional practices.<sup>104</sup> This illustrates bi-directional link between impairment and GBV. Impairment is a cause of vulnerability to GBV while GBV can also cause impairment.

### ***1:2:0 Access to Justice***

There is no conclusive definition for the term "access to justice". It is defined differently in different situations and contexts by different people.

The traditional definition of "access to justice" relates to the courts as main providers of justice and the availability of legal aid.<sup>105</sup> Even though courts are the ultimate organs that give

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<sup>102</sup>Ibid P. 10.

<sup>103</sup>Ibid P. 11.

<sup>104</sup>United Nations High Commissioner for Human Rights, *supra* note 9, Para 27.

<sup>105</sup> Australian Government, Attorney General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System*, (2009), p. 5.



verdict on legal matters, interpret laws and give enforceable rule on the rights and duties of people, they are only one part as regards access to justice. Similarly, legal aid is also another part of the system which makes this approach to have a narrow view.<sup>106</sup>

Access to justice is also described as “opening up the *formal systems and structures of the law* to disadvantaged groups in society”.<sup>107</sup> This definition rather than focusing only on courts included the whole of justice system. Here, the concept is more attached to giving marginalized groups access to the justice system and improving the justice system so that it challenges inequalities through amending discriminatory laws and legal procedures. It includes eliminating legal, financial and social barriers (for example lack of knowledge of legal rights<sup>108</sup> as well as modifying procedures of court so as to make it victim friendly).<sup>109</sup> This is important as regards access to justice of persons with disabilities since it gives emphasis on the rights of disadvantaged groups.

Stephanie Ortola defined access to justice as “encompassing peoples *effective access* to the *systems, procedures, information, and locations* used in the administration of justice”.<sup>110</sup> This definition shows a broad perspective that incorporates the need for *effective* access to the whole mechanism of the justice system including information and location. Similarly, the concept has been described as

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<sup>106</sup> Ibid.

<sup>107</sup> Global Alliance against Traffic in Women (GAATW), Available at <http://www.gaatw.org/atj/> [Retrieved on March, 2015]  
[http://www.gaatw.org/atj/index.php?option=com\\_content&view=article&id=123:intro&catid=1:Latest%20News](http://www.gaatw.org/atj/index.php?option=com_content&view=article&id=123:intro&catid=1:Latest%20News).

<sup>108</sup> Ibid.

<sup>109</sup> Australian Government Attorney General’s Department, *supra* note 105, P. 3.

<sup>110</sup> Ortoleva, *supra* note 8, P. 285 and 282.

a situation where people in need of help, find effective solutions available at justice systems which are accessible, affordable, comprehensible to ordinary people, and which dispense justice fairly, speedily and without discrimination, fear or favour and a greater role for alternative dispute resolution.<sup>111</sup>

This definition has covered various issues. It covers not only the formal justice system but also alternative dispute resolution mechanisms. Additionally, it sets out the requirements of an effective, efficient, fair and equitable justice system.<sup>112</sup> The concept of non-discrimination is also mentioned which is helpful for ensuring the rights of persons with disabilities. For an equal, just and non-discriminatory system to exist, justice systems must be accessible to all marginalized groups, including women with disabilities. Here, it is the duty of the state to guarantee that people are able to get remedy for breach of their rights on an equal basis with others.<sup>113</sup>

Access to justice mainly consists of two aspects i.e. substantive and procedural justice. Substantive justice refers to assessing the availability of rights claim to people who need remedy while procedural aspect is concerned about “opportunities and obstacles” that are related to taking a claim to court of law or any dispute resolution medium. The symbolic component of access to justice examines how far the legal system of a country fosters citizens “belonging and empowerment”.<sup>114</sup> Thus, three elements must be fulfilled to guarantee access to justice i.e. one must be entitled to get fair and just remedy for violation of rights, effective and accessible means

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<sup>111</sup> M.T. Ladan, “Access To Justice As A Human Right Under The Ecowas Community Law” presented at: The Commonwealth Regional Conference On *The 21st Century Lawyer: Present Challenges And Future Skills*, Abuja, Nigeria, 8 – 11 April, 2010, as cited in Kariuki Muigua, “ADR: The Road to Justice in Kenya,” presented at the Chartered Institute of Arbitrators-Kenya Branch, International Arbitration Conference, Kenya, (7-8th of August, 2014), p. 3.

<sup>112</sup> Ibid.

<sup>113</sup> Eilionóir Flynn, “Making human rights meaningful for people with disabilities: advocacy, access to justice and equality before the law,” *The International Journal of Human Rights* 17, no 4, (2013): p. 499, doi: [10.1080/13642987.2013.782858](https://doi.org/10.1080/13642987.2013.782858).

<sup>114</sup> Lord et al, supra note, 28, p. 138.

to the justice system and the system as a whole shall promote empowerment and belongingness. This approach is important for disabled people since it is in line with social and human rights approaches to disability. It pinpoints the need to avoid obstacles as well as empower individuals with the legal system.

It should also be noted that access to justice refers to all legal proceedings. Also, it should be available in every stage of the legal process, starting from report of violence to the police till the decision of a court of law.<sup>115</sup>

In this paper, access to justice will imply to the protection of people with disability by the law, their ability to use and seek remedy in cases of grievances through justice institutions, and participate in all stages of the criminal justice system in line with human right standards and on an equal basis with others.<sup>116</sup>

The components of access to justice that will be discussed are accessibility, reasonable accommodation, awareness of women with disabilities of their rights and the available services, skill and training of justice sector professionals on gender based violence against women with disabilities and the availability of psycho-social service to the victims.

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<sup>115</sup> Supra note 107.

<sup>116</sup> Australian Human Rights Commission, supra note 10, p. 4; Human Rights Commission, *Human Rights Commission Submission to the Expert Mechanism on the Rights of Indigenous Peoples, Indigenous Juridical Systems and Access to Justice for Indigenous Women, Children and Youth and Persons with Disabilities*, (2014), p. 2.

## 1:2:1 Importance of Access to Justice to people with Disabilities

Access to justice is one of the basic rights that guarantees of all other rights.<sup>117</sup>Historically, persons with disabilities particularly women with disabilities face challenge in accessing justice.

According to International Disability Alliance,

The act of lodging a complaint, seeking police assistance, engaging a lawyer, obtaining legal aid, testifying in court, participating in court proceedings or in investigations, among others, has, in most jurisdictions, been overwhelmingly frustrated by inaccessible mechanisms and procedures, lack of awareness and training of actors in the justice system, a lack of information, and general disability-based discrimination exercised in the law, policy and practice pertaining to the administration of justice.<sup>118</sup>

Hence, participation in the process of justice system starting from reporting crimes to police officials till implementation of the decision of courts was difficult for persons with disabilities because of various legal, attitudinal, and environmental barriers. The justice systems were not guaranteeing access to justice because they were not designed taking into account the needs of persons with disabilities.

*Stephanie Ortoleva* describes law as a source of both “oppression and liberation.”<sup>119</sup> Law can provide people equal access of all rights and may in contrast encourage oppression. Hence, there are times that the justice system compensates inequality and marginalization while at other times it maintains existing inequalities and marginalization. People with disabilities are facing negative experience, exclusion and oppression by various laws.<sup>120</sup>They were least served by the justice system and the law was a source of their exclusion and disadvantage. Amending

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<sup>117</sup> Ortoleva, *supra* note 8, p. 285.

<sup>118</sup> International Disability Alliance (IDA), *submission to the CEDAW Committee’s General Discussion on access to justice, 54<sup>th</sup> session*, (18 February 2013), p. 1.

<sup>119</sup> Ortoleva, *supra* note 8, p. 285.

<sup>120</sup> *Ibid.*

discriminatory laws up to par with international human right standards is vital for the exercise of access to justice. Hence, existence of disability friendly laws can help persons with disabilities realize their right to effective access to justice, challenge exclusion of persons with disabilities and support their empowerment. This way, the law will also serve as “source of liberation’\”.

It must be stressed that enjoyment of all other rights mainly rely on the ability of individuals to equally and effectively access the justice system.<sup>121</sup> For instance, a disabled person may wish to lodge a complaint of a crime to the police, but may not be able to effectively exercise this right due to barriers in physical accessibility of police stations, gap in communication and absence of understandable information. This in turn, will make the person not able to get remedy for the infringed right.<sup>122</sup> Inability to access justice or get remedy for violation of human rights, also affects the realization of other rights negatively; it makes rights meaningless.<sup>123</sup> Due to this, persons with disabilities will remain disadvantaged and marginalized and unable to exercise human rights on an equal basis with others. Effective remedies that can redress violation of rights shall be available so as to give rights of persons with disabilities meaningful effect.<sup>124</sup>

Besides, the ability of persons with disabilities to exercise other rights also have an impact on the realization of the right to access to justice. Access to transportation can determine if a person is able to travel to places of justice sector organs such as police stations, prosecutor

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<sup>121</sup> Ibid, 285-286,

<sup>122</sup> Ibid.

<sup>123</sup> Ibid, p. 286.

<sup>124</sup> Ibid.

offices and courts. Likewise, educated persons with disabilities might understand and use the justice system better. Furthermore, the ability of persons with disabilities to exercise right to political participation determines if they can run for elections or vote for politicians who support access to justice system of persons with disabilities.<sup>125</sup> Thus, these examples show that human rights are “indivisible, interdependent, and interconnected.”<sup>126</sup>

Furthermore, people with disabilities need to exercise their right to access to justice so that they can be included in the community. They will not be able to take full responsibilities or defend their rights if they face challenges to participate in justice systems.<sup>127</sup> Hence, barriers to access to justice should be removed to ensure the enjoyment of human rights by persons with disabilities on an equal basis with others. All appropriate actions should be taken to facilitate their involvement in the justice system. They should also be treated equally and in a just manner throughout the process of administration of justice.<sup>128</sup>

Last but not least, access to justice is one element of rule of law and a fundamental feature of democratic society. It is also prerequisite for growth of civil society and making governments accountable. People can choose their way of living with the existence of rule of law. The respect of rule of law gives assurance for the observance of the rights of persons. It also has advantage for economic and social collaboration as well as nation’s growth.<sup>129</sup>

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<sup>125</sup> Ibid, P. 286.

<sup>126</sup> Australian Human Rights Commission, *supra* note 10 see also Ortoleva, *supra* note 8, p. 285-286.

<sup>127</sup> Lord et al, *supra* note 28, p. 137.

<sup>128</sup> Grant and Neuhaus, *supra* note 14, P. 355

<sup>129</sup> Australian Government, Attorney General’s Department, *supra* note 105, p. 1-2.

## 1:2:2 Barriers of Access to Justice for Women with Disabilities

As a group that belongs to disadvantaged population, women with disabilities are susceptible to barriers to justice.<sup>130</sup> A study conducted in Kenya found low level of awareness among women with disabilities about their rights and how to seek justice,<sup>131</sup> economic dependency on the abuser,<sup>132</sup> and lack of trust in the justice system<sup>133</sup> as some of the barriers in accessing justice. In addition, negative attitudes of the community about disability, lack of service providers with skills and knowledge to communicate with victims of abuse particularly people with hearing or mental impairment and the absence of comprehensive support facilities to address violence are challenges to access to justice of women with disabilities.<sup>134</sup> A study of 194 persons with disabilities in Ethiopia found that 81.1% of victims of sexual abuse did not report the abuse and 68.5% did not report due to lack of trust on responsible organs. Among those who reported the violence, the majority reported the incident to their families. Only few reported the abuse to the police;<sup>135</sup> Out of 17 identified cases in the study, only 3 cases were reported to the police.<sup>136</sup>

The major barriers include:

**Existence of Discriminatory Laws:** There are discriminatory laws that restrict legal capacity. Laws may deprive judicially interdicted women with disabilities from filing complaints to justice

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<sup>130</sup> Grant and Neuhaus, *supra* note 14, p.351.

<sup>131</sup> Aloo, *supra* note 12, P. 32.

<sup>132</sup> *Ibid*, P. 33.

<sup>133</sup> *Ibid*.

<sup>134</sup> *Ibid*, P. 36.

<sup>135</sup> Handicap International and Ethiopian National Association for Mentally Retarded Children and Youth, *supra* note 96, P. 10.

<sup>136</sup> *Ibid*, P. 17.

organs due to substituted decision making mechanisms.<sup>137</sup> Thus, the consent of the guardian may be required to report violation of their rights. Things get worse when the violation is inflicted by their guardian. This creates conflict of interest in which case the disabled woman is susceptible to multiple forms of abuse, increased vulnerability and continuity of the violence. Such laws are in breach of several international standards such as Article 12 of the CRPD on right to legal capacity, Article 15 of CEDAW and Article 16 of International Covenant on Civil and Political Rights (ICCPR) on equality before the law. However, such practices are prevalent in many parts of the world denying women with disabilities the right to be considered as autonomous.<sup>138</sup>

Existing legislative frameworks of different countries do not link gender and disability appropriately; thus, failing to address the specific situation of women with disabilities and factors that put women with disabilities at risk of higher rate of violence.<sup>139</sup> The United Nations High Commissioner for Human Rights study revealed that the element of gender is missing even in programs that target persons with disabilities.<sup>140</sup>

**Stereotypes and stigma:** Another challenge to access to justice is failure of legal professionals to take reported cases of abuse seriously due to their perception that women with disabilities (especially women with psycho-social disabilities) as incompetent or not credible to testify.<sup>141</sup> Cases of sexual violence may not get the attention they deserve due to stereotypes. Women with

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<sup>137</sup> In substituted decision making regimes, judicially interdicted women with disabilities cannot undertake juridical activities by themselves. Their guardian or tutors are in charge of managing their activities.

<sup>138</sup> International Disability Alliance (IDA), supra note 118, p. 2; see also Lord et al supra note 28, p. 138.

<sup>139</sup> United Nations High Commissioner for Human Rights, supra note 9, 2012, Para 50.

<sup>140</sup> Ibid, Para 51.

<sup>141</sup> Simone Cusak, *Eliminating Judicial Stereotypes, Equal Access to Justice for Women in Gender-based Violence Cases, Submitted to the Office of High Commissioner for Human Rights on June 2014*, (2014), p. 11; Australian Human Rights Commission, supra note 10, p. 9.



disabilities are not considered as sexual beings in the eyes of the general public and the justice sector professionals.<sup>142</sup> Additionally, reported cases of abuse may also be discounted on the basis of attitude and perception about women with disabilities as “hypersexual and lack self-control.”<sup>143</sup>

There are also “disability-specific stereotypes” that discredit testimonies of women with disabilities. The capacity of women with psychosocial disabilities to tell the truth is questioned on the basis of their mental health history.<sup>144</sup> Furthermore, the reliability of the testimony of women with visual and hearing impairment is questioned because of their inability to narrate what was actually seen or heard.<sup>145</sup> Hence, police and prosecutors may not conduct investigation or prosecute allegations made by women with disabilities.<sup>146</sup>

**Lack of accessibility and reasonable accommodation:** These also bar women with disabilities from reporting their cases of abuse, give testimonies and participate in court proceedings.<sup>147</sup> Firstly, there are physical barriers i.e. building of the justice sector organs such as police stations, prosecutors’ offices and court rooms are not physically accessible. Secondly, there is absence of accessible information for people with disabilities particularly for the blind or people with intellectual impairment that deal with the rights of persons with disabilities, available services

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<sup>142</sup> International Disability Alliance (IDA), supra note 118, p. 2.

<sup>143</sup> International Disability Alliance (IDA), supra note 118, p. 2; United Nations High Commissioner for Human Rights, supra note 28, para 41.

<sup>144</sup> International Disability Alliance (IDA), supra note 118, p. 2.

<sup>145</sup> Ibid.

<sup>146</sup> Australian Human Rights Commission, supra note 10, P. 9.

<sup>147</sup> International Disability Alliance (IDA), supra note 118, p. 3.

and how the justice system functions.<sup>148</sup> Thirdly, there is lack of reasonable accommodation (necessary modifications and adjustments) to aid communication and accommodate the needs of persons with disabilities<sup>149</sup> especially people with hearing and visual impairment in the provision of services by the police, courts, public prosecutors and other service providers.<sup>150</sup> For instance, the Supreme Court Policy of Philippines specified that a sign language interpreter will be provided only if the person with hearing impairment requires to be understood.<sup>151</sup> Moreover, a study on access to justice of people with intellectual disabilities shows that people with intellectual disabilities were devoid of their right to access to justice due to absence of assistance and measures that facilitate their access.<sup>152</sup>

**Absence of coordinated, integrated and comprehensive service<sup>153</sup>:** Victims of violence need health, legal, and psycho-social services so as to get justice, rehabilitate and reintegrate into the society. Nonetheless, support and educational services for persons with disabilities who are victim of violence are scarce.<sup>154</sup> Support by way of referring GBV victims to appropriate service providers is insufficient.<sup>155</sup> A study conducted on 29 African countries show that there is absence

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<sup>148</sup> Stephanie Ortoleva and Hope Lewis, “Forgotten sisters: a report on violence against women with disabilities: an overview of its nature, scope, causes and consequences,” *Northeastern Public Law and Theory Faculty Research Papers series no. 1*, (2012), P. 59.

<sup>149</sup> Australian Human Rights Commission, *supra* note 10, p. 7.

<sup>150</sup> Lord et al, *supra* note 28, p. 138.

<sup>151</sup> Supreme Court of the Philippines Memorandum 59-2004; *Supreme Court Circular 104-2007* as cited in International Disability Alliance (IDA), *submission to the CEDAW Committee’s General Discussion on access to justice, 54<sup>th</sup> session*, (18 February 2013), p. 3.

<sup>152</sup> International Disability Alliance (IDA), *supra* note 118, p. 3.

<sup>153</sup> Australian Human Rights Commission, *supra* note 10, p. 5 and 8.

<sup>154</sup> *Ibid* p. 5.

<sup>155</sup> *Ibid*, p. 8.

of coordination among service providers for persons with disabilities.<sup>156</sup> Victim protection measures are insufficient for women with disabilities making them vulnerable to abuse.<sup>157</sup>

**Absence of training for justice sector and other professionals:** There is little or no training for professionals such as police, public prosecutors, judges and social workers on gender based violence against women particularly the specific needs of women with disabilities in the process of access to justice and how to accommodate their individual needs.<sup>158</sup> The research of OHCHR found absence of systematic programs for training justice sector professionals on the rights of women with disabilities and means of effective communication.<sup>159</sup> Due to lack of knowledge about disability, police and judges use interrogation and cross examination methods which are confusing to women with disabilities leading them to give conflicting and unreliable testimony.<sup>160</sup>

**Low level of awareness among women with disabilities about their rights and where to access justice:** Even though, early access to information on how to respond to legal issues is vital to reduce barriers to justice and overcoming social exclusion,<sup>161</sup> many people with disabilities do not know their rights, and therefore cannot recognize when their rights are

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<sup>156</sup> World Health Organization, *Disability and rehabilitation: status review of disability issues and rehabilitation services in 29 African Countries*, (2004), p. 22.

<sup>157</sup> United Nations High Commissioner for Human Rights, *supra* note 9, Para 41.

<sup>158</sup> Lord et al, *supra* note 28, P. 138.

<sup>159</sup> United Nations High Commissioner for Human Rights, *supra* note 9, Para 43.

<sup>160</sup> Australian Human Rights Commission, *supra* note 10, p. 8.

<sup>161</sup> Australian Government Attorney General's Department, *supra* note 105, p. 77.

violated. These cumulative factors may make them not to identify the on-going abuse as unacceptable behavior or violence.

## Chapter Two

### International Legal Framework on Access to Justice, Gender Based Violence and Women with Disabilities

This chapter selects and sets out key international human rights instruments that deal with access to justice and GBV against women with disabilities. CRPD, CEDAW, DEVAW, ICCPR, Universal Declaration on Human Rights (UDHR) and African Charter on the Human and People's Right (Banjul Charter) are assessed in light of the thematic areas of the thesis.

#### 2.0.0 Introduction

Convention on the Rights of Persons with Disabilities, as described in the previous chapter is a comprehensive convention that addresses the rights of persons with disabilities. It incorporates civil, political, social, economic and cultural rights. The Convention does not come up with new rights; rather it supplements existing international human right standards.<sup>162</sup> It clarifies existing legal obligations of states that emanate from other international human right treaties and contextualizes the rights applicable to all human beings to people with disabilities because people with disabilities faced enormous barriers to equally enjoy and exercise general human rights. It also identifies the areas where adjustments are necessary for the effective exercise of human rights by people with disabilities. Additionally, it sets minimum standards that need to be met to facilitate the implementation of the Convention.<sup>163</sup> For example, the CRPD

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<sup>162</sup>United Nations, United Nations Office of the High Commissioner for Human Rights and Inter-Parliamentary Union, *From Exclusion to Equality Realizing the rights of persons with disabilities; Convention on the Rights of Persons with Disabilities and its Optional Protocol*, (2007), p. 5.

<sup>163</sup> Ibid.

emphasizes the concepts of reasonable accommodation and universal design which are helpful to realize substantive equality particularly for women with disabilities.

Similarly, the Convention on the Elimination of Discrimination against Women was enacted due to challenges in implementing human rights of women despite the applicability of existing general human rights to women. It was believed that there is a need to adopt a specific law that deal with the rights of women so as to realize the human rights of women. Similar to the CRPD, CEDAW clarifies and contextualizes the general human right standards, to aid in the protection and promotion of the rights of women. Moreover, CEDAW transforms existing international human right instruments by specifically addressing the “gender based discrimination” rather than “sex based discrimination”, which was gender neutral. This means that women were the group that were disadvantaged from ‘sex based discrimination’ due to the social construction of roles, expectations and practices of women because of various patriarchal, social and cultural attitudes and practices.<sup>164</sup>Hence, it was necessary to address gender based discrimination.

## ***2.1.0 Convention on the Rights of Persons with Disabilities and Convention on the Elimination of Discrimination against Women***

### **2.1.1 General obligations**

Both CRPD and CEDAW have similar general obligations required from states for the effective enforcement of the Conventions i.e. Article 2 of CEDAW and Article 4 of CRPD.

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<sup>164</sup>United Nations Development Fund for Women, *CEDAW: Restoring Rights to Women*, (2004), p. 17.

States have the general obligation to promote, fulfil and protect the human rights of persons with disabilities without discrimination of any kind in the CRPD<sup>165</sup> and in CEDAW.<sup>166</sup> Accordingly, both Conventions have enumerated general obligations that states shall undertake to implement the Conventions. States shall take all the necessary measures such as legislative and administrative for the effective enforcement of rights stipulated in the conventions.<sup>167</sup> Both Conventions are flexible in this regard since they have stipulated the word “other/appropriate measures” so as to allow states to use any effective method for the purpose of effective implementation of the rights of women/people with disabilities taking into consideration the specific circumstance of their country.

States also have the duty to amend or eliminate existing discriminatory laws and practices concerning disability and women to par up to the Conventions. All public institutions and authorities shall act in accordance with the Convention.<sup>168</sup> States also have the duty to make sure that discrimination based on disability/gender by any person and all institutions including private organizations is abolished.<sup>169</sup> The need to give legal protection for women including via national courts is also stipulated under the general obligation of the state in CEDAW.<sup>170</sup>

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<sup>165</sup> Convention on the Rights of Persons with Disabilities, Article 4(1).

<sup>166</sup> Convention on the Elimination of All Forms of Discrimination against Women, Article 2.

<sup>167</sup> Convention on the Rights of Persons with Disabilities, Article 4(1); Convention on the Elimination of All Forms of Discrimination against Women, Article 2(a).

<sup>168</sup> Convention on the Rights of Persons with Disabilities, Article 4(1) (d). Convention on the Elimination of All Forms of Discrimination against Women, Article 24.

<sup>169</sup> Convention on the Rights of Persons with Disabilities, Article 4(1) (e); Convention on the Elimination of All Forms of Discrimination against Women, Article 2(e).

<sup>170</sup> Convention on the Rights of Persons with Disabilities, Article 2(c).

The CRPD has specifically stipulated that states need to mainstream the rights of persons with disabilities in all their programs and actions.<sup>171</sup> States shall also provide training on the rights of persons with disabilities to professionals working with people with disabilities so as to ensure the effective and efficient service delivery for people with disabilities.<sup>172</sup> Therefore, judges, public prosecutors, police, social workers are among the professionals that need training.

For effective implementation of the CRPD, the Convention had outlined principles in which its other provisions are guided and interpreted. These principles are “respect for inherent dignity and individual autonomy; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.”<sup>173</sup> The Convention should be enforced in the light of the principles.

Therefore, from the above provisions, we can conclude that women with disabilities need equal protection before the law. Existing discriminatory laws and practices should be abolished and states need to take measures to ensure that both private and public entities comply with the Convention. To this end, the necessary legal reform should also be taken and the rights of women with disabilities should be taken into account in policies, programs and actions of justice sector institutions. Adequate training should be given to justice sector professionals about the rights of women with disabilities who are victims of GBV.

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<sup>171</sup> Ibid., Article 4(1) (c).

<sup>172</sup> Ibid, Article 4(1) (i).

<sup>173</sup> Phillip French, *Convention on the Rights of Persons with Disabilities and Key concepts in international human rights law*, Australian Centre for Disability Law, (2012), p. 7.



## 2.1.2 Obligation to equality and non-discrimination

Both CRPD and CEDAW provide that everyone is equal before the law and equal protection shall be accorded to persons with disabilities/women without any distinction.<sup>174</sup> Discrimination based on sex is expressly prohibited by all international human rights instruments. However, Article 5 of the CRPD is the first international law that explicitly ban discrimination based on disability.<sup>175</sup> Equality is also one of the general principles of the Convention.<sup>176</sup> The Convention further define “discrimination on the basis of disability” as

any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.<sup>177</sup>

Prohibition of discrimination is extended to both direct and indirect discrimination. Absence of reasonable accommodation is also considered as discrimination based on disability. Hence, States have the responsibility to take all appropriate measures to provide reasonable accommodation in order to “promote equality and eliminate discrimination.”<sup>178</sup> Additionally, they should also provide “equal and effective protection” from discrimination.<sup>179</sup>

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<sup>174</sup> Convention on the Rights of Persons with Disabilities, Article 5(1) ; Convention on the Elimination of All Forms of Discrimination against Women, Article 2(c).

<sup>175</sup> Ortoleva, supra note 148, p. 32.

<sup>176</sup> Convention on the Rights of Persons with Disabilities, Article 3(g).

<sup>177</sup> *ibid*, Article 5.

<sup>178</sup> *Ibid*, Article 5(3).

<sup>179</sup> *Ibid*, Article 5(2).

Additionally, the CEDAW Committee, in the case of Karen Tayag Vertido v. Philippines, concluded that state parties are obliged to guarantee that all proceedings regarding sexual offences are “impartial and fair, and not affected by prejudices or stereotypical gender notions.”

So, women with disabilities should not be victims of discrimination. They need to be protected from direct and indirect discrimination; states shall take measures to this end, such as providing reasonable accommodations particularly when they seek remedy for violation of their rights.

### **2.1.3 Obligation to gender based violence against women with disabilities and intersectionality**

CRPD is one of the conventions that is gender sensitive and acknowledges the element of gender in various provisions. Particularly, the Preamble and Article 6 of the Convention clearly describe women with disabilities as susceptible to multiple forms of discrimination. Accordingly, states are duty bound to take all the necessary measures diligently so as to ensure the promotion and protection of the human rights of women with disabilities on an equal basis with others.<sup>180</sup>

CRPD makes a clear reference to exploitation, violence and abuse against persons with disabilities and obliges states to take the necessary measures such as “legislative, administrative, social and educational measures” to protect people with disabilities from any type of violence whether within or outside their home. Particular reference is given to GBV.<sup>181</sup> This provision manifests social model of disability as it clearly outlines the need to take social measures for protection of people with disabilities. States have the duty to provide assistance in particular

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<sup>180</sup>Ibid, Article 6(1).

<sup>181</sup> Ibid, Article 16(1).

“gender and age appropriate” support for disabled people and their care givers to avoid any type of exploitation and violence against people with disabilities.<sup>182</sup> The support includes raising the awareness of people with disabilities, their careers and relatives on the means of avoiding, identifying and reporting violence inflicted against disabled people.<sup>183</sup> It is further provided that states have the obligation to take necessary gender and age sensitive measures to protect, rehabilitate and reintegrate victims of violence or exploitation.<sup>184</sup> Article 16(5) of CRPD outlines the need for states to enact legislation to guarantee that violence and exploitation against disabled people can be “identified, investigated and, where appropriate, prosecuted.” Article 16 shows a holistic approach towards preventing and responding to violence against women with disabilities and is an important provision when it comes to violence against such population. It stipulates the need for awareness raising, protection, rehabilitation, and reintegration measures as well as legal and judicial remedy.

Article 6 of CEDAW deals with the need to take necessary measures such as legislative frameworks to avoid trafficking in women. Nonetheless, the provision only specifies trafficking in women and does not specifically cover all types of violence inflicted against women. However, the CEDAW Committee, in its General Recommendation 19, confirmed that GBV may be a violation of some provisions of CEDAW whether those provisions explicitly mention violence or not. Additionally, the Committee urged states to “take appropriate and effective measures to overcome all forms of GBV, whether by public or private act.”<sup>185</sup> This is to mean

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<sup>182</sup> Ibid, Article 16(2).

<sup>183</sup> Ibid, Article 16(2).

<sup>184</sup> Ibid, Article 16(5).

<sup>185</sup> CEDAW Committee, General Recommendation 19 on Violence against women, (1992), Para 24 (a).

that states need to take legislative, administrative and other measures to provide effective protection from violence.<sup>186</sup>

CEDAW does not make any mention of persons with disabilities in its provisions. However, there are some General Recommendations by the Committee on the Elimination of Discrimination against Women regarding the rights of women with disabilities. The Committee, in its General Comment no. 18 on disabled women, acknowledged that women with disabilities face double discrimination due to their specific circumstances and recommended the need to take special measures to address their vulnerability. Furthermore, in its General Recommendation no. 27, the Committee suggested states to take legislative action so as to prevent violence against older women and guarantee an investigation, prosecution and punishment for violence inflicted against older women with disabilities.<sup>187</sup>

#### **2.1.4. Obligation to combat stereotype and raise awareness**

Both Article 8 of CRPD and Article 5 of CEDAW address the role that negative attitudes towards women and people with disabilities play in their lives. Accordingly, the provisions prescribe duty on states to curb negative attitudes, perceptions and harmful traditional practices towards people with disabilities and women, respectively.<sup>188</sup> Responsibility is given to states to engage in extensive awareness raising campaigns to change the attitudes of the society about

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<sup>186</sup> Ibid, Para 24(t).

<sup>187</sup> CEDAW Committee, General recommendation No. 27 on older women and protection of their human rights, (16 December 2010) Para 37.

<sup>188</sup> Convention on the Rights of Persons with Disabilities, Article 8(1)(b).

persons with disabilities/women and their rights including women with disabilities.<sup>189</sup> The CRPD specifically obliges states to fight against negative attitudes towards women with disabilities by adopting “immediate, effective and appropriate measures” to raise the awareness of the society concerning people with disabilities and their rights.<sup>190</sup> The Convention also describes the medium of awareness raising programs.<sup>191</sup> The CEDAW Committee also emphasized on the need to combat stereotypes against older women including women with disabilities.<sup>192</sup>

Moreover, in the case of R. P. B. v. Philippines, the CEDAW Committee concluded that legal proceedings regarding violence shall be free from stereotypes. The Committee further noted that judicial gender stereotypes and failure to take into account the individual situation of victims including their disability and age reinforces discrimination. Thus, it recommended states to guarantee the conduct of all GBV proceedings fairly and impartially without any prejudice and stereotypes, and provision of sufficient and regular training for legal professionals on CEDAW, its optional protocols and general recommendations.<sup>193</sup>

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<sup>189</sup> Ibid, Article 8(1)(b); Convention on the Elimination of All Forms of Discrimination against Women, 5(a).

<sup>190</sup> Convention on the Rights of Persons with Disabilities, Article 8(1)(a).

<sup>191</sup> Ibid, Article 8(2).

<sup>192</sup> CEDAW Committee, General recommendation No. 27 on older women and protection of their human rights, (16 December 2010), Para 36.

<sup>193</sup> In the case of Karen Tayag Vertido v. Philippines, the committee concluded that failure of the state to take due diligence in abolishing gender stereotypes is violation of the convention. Accordingly, the committee recommended the state party to engage in a mandatory and regular training to legal professionals such as judges, prosecutor and police on CEDAW, its optional protocols and understanding of sexual offences particularly rape. The training will help to change discriminatory attitudes of legal professionals towards violence against women thereby improving handling of legal cases and avert the re-victimization of victims of sexual violence.<sup>193</sup> In addition, in the case of V.K v. Bulgaria, the CEDAW Committee concluded that a state party is responsible for national courts failure to issue an order for permanent protection of victim of domestic violence against an abusive partner because of stereotypes.

Therefore, from cumulative reading of both conventions and jurisprudence of CEDAW committee, we can understand the obligation of states to abolish stereotypes attached to women with disabilities particularly victims of violence. There is a need to take immediate actions to raise the awareness of communities including women with disabilities and service providers about issues concerning women with disabilities and their rights. This is important because the vulnerability of women to violence results from stereotypes and lack of awareness of women with disabilities about their rights and how to access the justice system.

### **2.1.5. Obligation to guarantee effective access to justice**

The right to access to justice for persons with disabilities is provided in article 13 of CRPD. The provision reads as follows

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

Unlike many other international instruments, Article 13 of CRPD specifically addresses the right of access to justice of people with disabilities. The provision obliges State Parties such as Ethiopia and Kenya to take measures to promote access to justice for disabled people “on an equal basis with others”. “Procedural and age appropriate” actions shall be particularly taken to ensure their participation in *all stages* of legal process of access to justice and in *different*

*capacities* such as victims and witnesses.<sup>194</sup> State parties also have the obligation to provide proper training on the rights of persons with disabilities and introduce effective communication mechanisms for professionals who provide services to people with disabilities.

CEDAW does not provide specific provision on access to justice but its general obligation requires states to:

[...] establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.<sup>195</sup>

This provision mainly deals with discrimination and does not directly address violence. However, since violence is manifestation of discrimination, the provision is also applicable to violence against women. The requirements of the provision are establishment of legal protection of women equally with men and effective protection via competent courts and other relevant organizations within the national legal system. As illustration, in the case of A. T.v. Hungary, the Committee urged the state party to act due diligently so as to ensure victims of domestic violence got the “maximum protection of the law” and investigate all cases of domestic violence “promptly, thoroughly, impartially and seriously”.

The CEDAW committee expressly addressed access to justice for women in its General Recommendation 33. In its recommendation, the committee urged states to “exercise *due diligence* to prevent, investigate, punish and provide reparation for all crimes committed against women, whether such crimes were perpetrated by State or non-State actors.”<sup>196</sup> It, in particular, suggested the establishment of a supportive environment including accessible physical

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<sup>194</sup> Convention on the Rights of Persons with Disabilities, Article 19(1).

<sup>195</sup> Convention on the Elimination of All Forms of Discrimination against Women, Article 2(c).

<sup>196</sup> CEDAW Committee, General recommendation on women’s access to justice, (23 July 2015), Para 51(a).

environment<sup>197</sup> for victims of GBV that can encourage victims to report the violence and actively participate in all stages of criminal justice system.<sup>198</sup> Furthermore, the committee recommended that shelters, crisis centers, psychosocial and counseling services should be available for victims of GBV.<sup>199</sup>

The need to give special consideration to access to justice for women with impairments<sup>200</sup> and to eliminate discriminatory legislations, administrative measures, customs and practices particularly regarding access to justice is also emphasized in the General Recommendation.<sup>201</sup> The Committee also urged states to take appropriate measures to abolish gender stereotypes and mainstream gender in all stages of the justice system.<sup>202</sup> Additionally, states should build the capacity of justice sector professionals on international human right standards particularly CEDAW and jurisprudence of CEDAW.<sup>203</sup>

Moreover, the CEDAW Committee in its General Recommendation No. 19, provide obligation for states to assure that laws provide adequate protection for all cases of GBV. Protective measures and support services such as counseling and rehabilitation<sup>204</sup> shall also be provided for victims of GBV and for those who are at risk of violence. States also need to

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<sup>197</sup> Ibid, Para 17(e).

<sup>198</sup> Ibid, Para 51(d).

<sup>199</sup> Ibid, Para 16 (b).

<sup>200</sup> Ibid, Para 17(g).

<sup>201</sup> Ibid, Para 25.

<sup>202</sup> Ibid, Para 28 and Para 29(a).

<sup>203</sup> Ibid, Para 29(f).

<sup>204</sup> CEDAW Committee, General Recommendation 19 on Violence against women, (1992), Para 24(t) (iii).



provide “gender-sensitive training” for justice sector professionals for effective enforcement of the Convention.<sup>205</sup>

In conclusion, women with disabilities who are victims of violence need to be given appropriate legal protection and redress. This should be applicable in all steps of legal proceedings starting from reporting cases of abuse to police. Women with all types of impairments should be able to access rehabilitative and reintegration support services when needed and voluntarily. Also, there should be systematic programs to train legal professionals on GBV against women with disabilities and international legal frameworks such as CEDAW and CRPD.

Access to justice cannot stand alone as explained in the previous chapter. Its enjoyment is dependent on the exercise of other rights; and other human rights are also meaningless without the implementation of access to justice. Therefore, other important rights that are interlinked with access to justice of women with disabilities will be discussed in the next part.

### **2.1.6. Obligation to ensure accessibility and reasonable accommodation**

Accessibility is included as one of the eight general principles enshrined in the convention.<sup>206</sup> This is a manifestation of the social model of disability i.e. to eliminate barriers that made people with impairments disabled.

States are duty bound to take the necessary measures to provide equal access to services and facilities to persons with disabilities on an equal basis with others. These include access “to

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<sup>205</sup> Ibid, Para 24(b).

<sup>206</sup> Convention on the Rights of Persons with Disabilities, Article 9.

the physical environment, transportation, information and communications, including information and communications technologies and systems”. Additionally, these obligations include finding out and abolishing barriers of accessing buildings, information and communication.<sup>207</sup>

States also have obligation

To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms<sup>208</sup>[...] to provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public<sup>209</sup>[...]To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;<sup>210</sup>[...] to promote access for persons with disabilities to new information.<sup>211</sup>

We can conclude that CRPD provision on accessibility (Article 9) illustrates the mechanisms in which accessibility can be achieved particularly access to buildings, information and assistive devices.

A minimum standard is set for the purpose of accessing various services by disabled people depending on the nature of their impairments.<sup>212</sup> Effective protection of women with disabilities from abuse and exploitation requires access to support services and procedures as well as safe houses.<sup>213</sup> The need to address accessibility actions starting from the planning stage

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<sup>207</sup> Ibid, Article 9(1).

<sup>208</sup> Ibid, Article 9(2) (d).

<sup>209</sup> Ibid, Article 9(2) (e).

<sup>210</sup> Ibid, Article 9(2) (f).

<sup>211</sup> Ibid, Article 9(2) (g).

<sup>212</sup> Ibid, Article 30.

<sup>213</sup> CRPD Committee, General Comment 2 on Accessibility, Para 37.

of any program undertaken by either public or private organs is recognized in the convention.<sup>214</sup> Additionally, it is provided in Article 21 of Freedom of expression and opinion, and access to information that information shall be accessible to people with disabilities. Furthermore, Stakeholders shall be trained concerning accessibility of services to persons with disabilities.<sup>215</sup> Article 9 is very important to realize access to justice for people with disabilities. Accessibility of information, buildings, communication will give or facilitate persons with disabilities the opportunity to participate in the justice system and encourage them to claim their right to effective remedy.

States also have obligation to provide reasonable accommodation. To this end, reasonable accommodation means:

[...] necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

Accessibility is the provision of accessible services and goods to the whole population. On the other hand, reasonable accommodation refers to the necessary adjustments that is being made taking into consideration the individual needs of persons with disabilities necessary to exercise their human rights on an equal basis with everyone. Reasonable accommodation implies adjustment on individual basis. The CRPD Committee, on the case of Marie-Louise Jungelin v. Sweden, concluded that states enjoy “a certain margin of appreciation” in analyzing whether accommodation measures are reasonable and proportional. It also determined that national courts

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<sup>214</sup> Ibid, Para15.

<sup>215</sup> Convention on the Rights of Persons with Disabilities, Article 9(2) (c).

have the general mandate to evaluate facts and evidence in a particular case, except for the evaluation is “clearly arbitrary or amounted to a denial of justice.”<sup>216</sup>

Besides, the CEDAW Committee, in R. P. B. v. Philippines, held that failure of the government to protect the victim from GBV particularly by denying accessibility and reasonable accommodation such as sign language interpretation during investigation and court hearing is violation of CEDAW. The committee explained that provision of free sign language at the court hearing is important for guaranteeing effective protection against discrimination. This is because sign language interpretation will enable the victim to fully and equally participate in the court proceeding and conform to the “principle of equality of arms”. Hence, the Committee urged the state to incorporate the provision of free and sufficient sign language interpretation in all stages of legal proceeding and in its laws.<sup>217</sup>

Therefore, states have duty to make the justice system accessible for women with disabilities who are victims of GBV. States also have the duty to make adjustments and modifications to accommodate the individual needs of women with disabilities and provide information in an accessible manner and ensure accessible means of communication such as sign language interpreters and Braille as well as making court rooms, police station and safe houses to be physically accessible.<sup>218</sup>

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<sup>216</sup> Marie-Louise Jungelin v. Sweden, 2 October 2014.

<sup>217</sup> R. P. B. v. Philippines, February 2014.

<sup>218</sup> Convention on the Rights of Persons with Disabilities, Article 2.

## 2.2.0 Declaration of Elimination of Violence against Women

The declaration recognizes that women with disabilities are among the group of women who are more vulnerable to abuse.<sup>219</sup> The protections accorded under the declaration also cover women with disabilities.

The declaration clearly specifies that states need to take all necessary actions *immediately* to abolish violence against women.<sup>220</sup> This is meant that states are not subject to progressive realization but to immediately implement the rights after adhering to the declaration.

In the declaration, any type of religious practices, culture and custom cannot be justification for states to violate the rights of women.<sup>221</sup> To implement this obligation, states in particular shall among others abstain from violence against women<sup>222</sup>. Additionally, perpetrators shall be punished pursuant to national laws and states are under duty to take '*due diligence*' to this end.<sup>223</sup> Moreover article 4(d) provides access to justice for women who are victims of violence by calling on states to:

Develop *penal, civil, labour and administrative sanctions in domestic legislation to punish and redress* the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with *access to the mechanisms of justice* and, as provided for by national legislation, *to just and effective remedies* for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms.

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<sup>219</sup> Declaration on the Elimination of Violence against Women, Preamble.

<sup>220</sup> Ibid, Article 4.

<sup>221</sup> Ibid, Article 4.

<sup>222</sup> Ibid, Article 4(b).

<sup>223</sup> Ibid, Article 4(c).

This provision has various components. It requires states to take appropriate sanctions for abuse of women. It also clearly provides that victims shall be given the means to get “just and effective” remedy. This provision further incorporates the need for states to educate women on how they can access justice whenever there are violations of their rights.

The declaration not only addresses the legal remedy for victims of violence but also provides most importantly the need to avoid secondary victimization of victims of violence as a result of gender blind laws, policies and practices.<sup>224</sup> This helps in alleviating the trauma and suffering victims face as a result of the violence. It also contributes for the improvement of service delivery of legal sector professionals so as to treat victims of violence in a humane manner without any bias. The need to provide psycho-social support is addressed by the Declaration. Victims not only need legal service, but also need a holistic service so as to aid in their rehabilitation and reintegration. Thus, it is specified that states have the duty to exert their *maximum effort* to provide victims of violence the necessary support so as to ensure their safety, physical and psychological rehabilitation on the basis of their available resource and through international collaboration. Such services include “rehabilitation, treatment, counseling, and health and social services, facilities and programs, as well as support structures.”<sup>225</sup>

States also have the obligation to train professionals on the needs of victims of GBV.<sup>226</sup> States should take all necessary measures so as to avoid harmful traditional practices and

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<sup>224</sup> Ibid, Article 4(f).

<sup>225</sup> Ibid, Article 4(g).

<sup>226</sup> Ibid, Article 4(i).

patriarchal beliefs and attitudes.<sup>227</sup> Hence, taking appropriate measures as stipulated in the declaration such as legal reforms, training, and awareness raising campaigns are vital for addressing the problems women with disabilities are facing.

Therefore, DEVAW clearly provides the need to have effective remedy, rehabilitation and reintegration mechanisms for victims of violence as well as provision of training and awareness raising programs regarding violence against women.

### ***2.3.0 Other Human Right Instruments***

Access to justice is addressed in various international human rights instruments. Access to justice has its roots in preceding international instruments. Previous international instruments do not explicitly address it but incorporate elements that fulfill access to justice. These elements are incorporated in provisions that deal with equality before the law, the right to equal protection under the law and the right to be treated fairly by a tribunal or court.

These rights are dealt with in the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and African Charter on Human and People's Right (Banjul Charter). Convention on the Elimination of Racial Discrimination also addresses access to justice and violence. It is stipulated in the Convention that justice sector organs including courts shall treat people equally,<sup>228</sup> and the state shall protect everyone from all types of violence inflicted by the state, organizations or individuals.<sup>229</sup>

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<sup>227</sup> Ibid, Article 4(j).

<sup>228</sup> Convention on the Elimination of Racial Discrimination, Article 5(1).

<sup>229</sup> Ibid, Article 5(2).

Similarly, gender based violence or violence against women with disabilities is not explicitly addressed by the UDHR, ICCPR and the Banjul Charter. Likewise, prohibition of discrimination on the ground of disability is not expressly mentioned.

Both Ethiopia and Kenya has ratified UDHR, ICCPR, and the African Charter on Human and People's Right. Therefore, the pertinent provisions will be briefly discussed below.

### **2.3.1. Universal Declaration of Human Rights**

Access to justice or gender based violence against women with disabilities is not expressly addressed in UDHR. However, there are various provisions that deal with elements of access to justice.

It is specified in article 2 that the rights incorporated in the UDHR are applicable to everyone irrespective of distinction based on sex and other status. It can be inferred that the term "other status" also includes discrimination based on disability. Furthermore, it stipulates that equal protection of the law shall be applicable to everyone without distinction and prejudice,<sup>230</sup> and protection against discrimination shall be guaranteed by states.<sup>231</sup>

Access to courts is specified under article 8 and Article 5 entitled every human an effective remedy by competent domestic judicial authorities for violation of their rights acknowledged either in a state's constitution or statutory laws.<sup>232</sup>

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<sup>230</sup> Universal Declaration of Human Rights, Article 7.

<sup>231</sup> Ibid.

<sup>232</sup> Ibid, Article 8.



The above provisions, do not deal directly with access to justice for women with disabilities, but provide guarantees for abolition of discrimination and effective remedy for violation of rights on an equal basis with others.

### **2.3.2 International Covenant on Civil and Political Rights**

Similar to other international instruments, the Covenant does not expressly deal with access to justice or gender based violence against women with disabilities. The provisions that address components of access to justice and equality are discussed below.

Article 2 of the covenant guarantees an effective remedy for violation of rights provided under the Covenant. States shall ensure effective remedies provided to victims by competent authorities particularly judicial remedy.<sup>233</sup> Furthermore, Article 14 stipulates that everyone have a right to an effective remedy and entitled to “a fair hearing by competent, independent and impartial tribunal.” The Human Right committee addressed right to equality before courts and tribunals in its General Comment No. 32 and made the following statement.

Article 14 encompasses the right of access to the courts in cases of determination of criminal charges and rights and obligations in a suit at law. Access to administration of justice must effectively be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice. [...]This guarantee also prohibits any distinctions regarding access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds. The guarantee is violated if certain persons are barred from bringing suit against any other persons such as

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<sup>233</sup> International Covenant on Civil and Political Rights, Article 2.

by reason of their race, color, sex, language, religion, *disability*, political or other opinion, national or social origin, property, birth or other status.<sup>234</sup>

States have responsibility to guarantee the equal rights of men and women as regards the enjoyment of the rights provided in the Covenant.<sup>235</sup> It is also stipulated that everyone irrespective of sex, colour, language, race and other status is entitled for legal protection. Discrimination on any of the grounds including disability<sup>236</sup> shall be prohibited and states shall ensure equal and effective protection against discrimination.<sup>237</sup> Moreover, the Human Rights Committee in its general comment 28 has affirmed that all rights under the ICCPR shall be equally exercised by women and men; women are particularly entitled to access justice on equal basis with men.

In conclusion, the Covenant ensures judicial remedy and protection against discrimination for women who are victims of GBV.

### **2.3.3. African (Banjul) Charter on Human and Peoples' Rights**

Similar to ICCPR and UDHR, the African Charter on Human and Peoples' Rights do not deal with access to justice and violence against women with disabilities directly. However, components of access to justice are included in its provisions.

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<sup>234</sup> Human Rights Committee, General Comment No. 32 on the Right to equality before courts and tribunals and to a fair trial, (2007), paragraph 9.

<sup>235</sup> International Covenant on Civil and Political Rights, Article 3.

<sup>236</sup> The term "other status" can be construed to include disability.

<sup>237</sup> International Covenant on Civil and Political Rights, Article 26.

Everyone is entitled to the rights and protections provided in the Charter without discrimination of any kind such as sex and other status. Even though, disability is not mentioned, it is included as it falls under the term “other status”.<sup>238</sup> Further, Article 3 of the Charter provides for equal protection of the law<sup>239</sup> which includes women with disabilities to be accorded with the same rights and protections as others.

Everyone have the right to the respect of dignity.<sup>240</sup> In the case of Purohit and Moore v. Gambia, African commission on Human and People’s Rights has affirmed that “Human dignity is an inherent basic right to which all human beings, regardless of their mental capabilities or disabilities as the case may be, are entitled to without discrimination.” Hence, everyone has the legal obligation to respect the dignity of persons with disabilities. Additionally, all kinds of exploitation and degradation of human beings are prohibited by the charter.<sup>241</sup> In the case of Media Rights Agenda v. Nigeria, the African Commission on Human and People’s Rights held that the phrase “cruel, inhuman or degrading punishment and treatment” in Article 5 should be interpreted broadly to include protection from any abuses such as physical or mental. The provision is unique when compared to other international instruments discussed above as it clearly prohibits exploitation.

States shall publicize and raise awareness of the public and responsible professionals so as to ensure the full implementation of the rights and duties enshrined in the Charter.<sup>242</sup> It is

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<sup>238</sup> African Charter on Human and Peoples’ Rights, Article 2.

<sup>239</sup> Ibid, Article 3.

<sup>240</sup> Ibid, Article 5.

<sup>241</sup> Ibid, Article 5.

<sup>242</sup> Ibid, Article 25.

further provided in article 26 that there should be independent national courts and strong national institutions that are established for the purpose of promoting and protecting the rights enshrined in the charter.

In conclusion, the Charter recognized protection from discrimination and exploitation of women with disabilities and guarantees effective remedy for violation of their rights enshrined in the charter.

## **Chapter Three:**

### **National Legal System of Ethiopia and Kenya**

#### ***3.0.0 Introduction***

This chapter assesses the legal framework of both Ethiopia and Kenya in realizing the rights of women with disabilities in light of the international standards. The practical implementation of Ethiopia's international and national obligation will also be discussed.

#### ***3.1.0 Kenya***

This section looks at the legal framework on Kenya, its compliance in relation to the state's obligation to equality, access to justice, accessibility, intersectionality and awareness raising.

#### **3.1.1 General Framework of Human Rights**

The Constitution is the major document that promotes the rights of women with disabilities. It is the supreme law of Kenya and every person and all state organs have the duty to obey and defend it.<sup>243</sup> Laws which are not consistent with the Constitution are void to the extent

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<sup>243</sup> Constitution of Kenya, Article 2(1) and Article 3(1).

of the inconsistency and the Constitution shall prevail in such matters.<sup>244</sup> Moreover, every person and state organs are bound by the bill of rights.<sup>245</sup>

Chapter V of the Constitution deals with bill of rights and Article 21 sets out the duty of the State and all state organs “to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights.” The state is also required to take legislative actions to realize its international human rights obligation and address the needs of vulnerable groups particularly the needs of disabled people. Additionally, the rights of persons with disabilities are specifically stated in Article 54 of the Constitution.

Further, internationally accepted general rules<sup>246</sup> and international instruments which are ratified by Kenya are part of the law of the land.<sup>247</sup> Hence, as Kenya has ratified CRPD,<sup>248</sup> it has obligation to take all necessary measures to implement the Convention. The international treaties or conventions will be directly applicable by the courts, police, prosecutors and other responsible organs.

The 2003 Persons with Disabilities Act (PDA) of Kenya is enacted to exclusively safeguard the rights of persons with disabilities which came into effective in June 2004 before the coming into force of the CRPD. Among the main objectives of the Act are the provision of rights and ascertainment of equal opportunities for disabled people. However, due to the failure of this act to fully protect the rights of persons with disabilities, the Persons with Disabilities

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<sup>244</sup> Ibid, Article 2(3).

<sup>245</sup> Ibid, Article 20(1).

<sup>246</sup> Ibid, Article 2(5).

<sup>247</sup> Ibid, Article 2(6).

<sup>248</sup> Kenya signed the Convention on the 30<sup>th</sup> of March 2007 and ratified it on the 19<sup>th</sup> of May 2008.

(Amendment) Bill is drafted to make it up to par international standards and the Constitution of the country. Even though the amendment is drafted by 2007, it is yet to be concluded.

### **3.1.2. Equality and non-discrimination in Kenya**

Particular safeguard is available for the protection of marginalized and disadvantaged group in Kenyan Constitution. The preamble recognized the principles of “social justice, human rights, equality and freedom” and lists equality as one of the six essential values upon which governance should be based. It is recognized in Article 20(4) (a) that equality and equity shall be taken into account in interpreting the Bill of Rights. The need to address vulnerable groups including women with disabilities is also acknowledged in Article 21(3).

The right to equality is enshrined in Article 27 of the Constitution which guarantees equal protection, equality before the law,<sup>249</sup> enjoyment of all fundamental rights,<sup>250</sup> equality between men and women in all spheres of life,<sup>251</sup> prohibits direct and indirect discrimination on basis of sex and disability.<sup>252</sup>

The Kenyan government is expected to take measures to protect individuals from discrimination and provide redress. However, both direct and indirect discrimination are not

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<sup>249</sup> Constitution of Kenya, Article 27(1).

<sup>250</sup> Ibid, Article 27(2).

<sup>251</sup> Ibid, Article 27(3).

<sup>252</sup> Ibid, Article 27(4) and (5)

defined by the Constitution and the right to reasonable accommodation is not provided nor defined in the Constitution.<sup>253</sup>

It is acknowledged that everyone including women with disabilities are entitled to the rights and protections provided in the bill of rights of the Constitution,<sup>254</sup> and people with disabilities to be treated in a dignified manner.<sup>255</sup>

The PDA on the other hand clearly provides the need to protect persons with disabilities from discrimination on the basis of their impairment.<sup>256</sup> Discrimination in the Act means “to accord different treatment to different persons solely or mainly as a result of their disabilities and includes using words, gestures or caricatures that demean, scandalize or embarrass a person with a disability”<sup>257</sup>

The PDA further specifies that persons with disabilities need to enjoy human rights and freedoms on equal basis with others,<sup>258</sup> and in its Article 12(2) women with disabilities enjoy equal protection of the law. The PDA established the National Council for Persons with Disabilities<sup>259</sup> to prevent discrimination against persons with disabilities.<sup>260</sup>

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<sup>253</sup> Committee on the Rights of Persons with Disabilities, *Concluding Observations in relation to the initial report of Kenya*, (4 September 2015), p. 2; Disabled People’s Organizations in Kenya, *Submission to the CRPD Committee of the response to the List of Issues – LOI 2015 Implementation of the UN Convention on the Rights of Persons with Disabilities in the Republic of Kenya*, (8 July, 2015), p. 12; United Disabled People of Kenya and Handicap International, *The status of human rights of persons with disabilities in Kenya, A shadow report to the initial report on the United Nations Convention on the rights of Personswith Disabilities (CRPD) to the UN Committee on the Rights of Persons with Disabilities*, (2015), p. 16.

<sup>254</sup> Constitution of Kenya, Article 3(a).

<sup>255</sup> *Ibid*, 54(1) (a).

<sup>256</sup> Persons with Disabilities Act, Article 11(1).

<sup>257</sup> *Ibid*, Article 2.

<sup>258</sup> *Ibid*.

<sup>259</sup> *Ibid*, Article 3(1); It is composed of representatives from disabled people’s organizations, people with different types of impairments, and other representatives of which 20 of them should be people with disabilities.



All in all, Kenya government has taken a good step in giving legal protection for people with disabilities from discrimination. However, the laws do not incorporate a right on reasonable accommodation, do not take into account the multiple form of discrimination of women with disabilities, and does not have specific provision on the rights of women.

### 3.1.3. Access to Justice in Kenya

Access to justice is guaranteed by the Constitution. Article 48 provides that “The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice”. Further, it established an independent judiciary that is only subject to the constitution and other laws,<sup>261</sup> and woman with disabilities whose rights has been infringed or violated can apply to High court for remedy.<sup>262</sup> Law makers can adopt legislation to give original jurisdiction to lower courts in some cases.<sup>263</sup> The victim, representative, interested parties, a person acting for public interest or association acting for its members can institute court proceedings.<sup>264</sup> Justice shall be administered to everyone irrespective of their status and expeditiously without being restricted by procedural technicalities.<sup>265</sup>

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<sup>260</sup> Persons with Disabilities Act, Article 7(1) (b) (iv).

<sup>261</sup> Constitution of Kenya, Article 160(1).

<sup>262</sup> Ibid, Article 22 (1), Article 23(1) and 165(2) (b).

<sup>263</sup> Ibid., Article 23(2).

<sup>264</sup> Ibid, Article 22(2) and 258.

<sup>265</sup> Ibid, Article 159.

A milestone case decided by the Kenya High Court for proper investigation of cases of sexual violence is C.K. (A Child) & 11 others vs. The Commissioner of Police & 3 others. The applicants sought a declaration that the failure of police officers to conduct “prompt, effective, proper and professional investigations” to the applicants’ complaint of defilement is in violation of their fundamental rights and freedoms guaranteed under international and national laws. The Court held:

Having considered the evidence in the petitioners' affidavit and the petition herein, the relevant articles in the Constitution of Kenya, 2010, the general rules of international law, treaty or convention ratified by Kenya and other related and relevant laws applicable in Kenya, I am satisfied that the petitioners have proved their petition and that the failure on part of the respondents to conduct prompt, effective, proper and professional investigations into the petitioners complaints of defilement and other forms of sexual violence infringes on the petitioners fundamental rights and freedoms, under Articles 21(1), 21(3), 27, 28, 29, 48, 50(1) and 53(1) (d) of the Constitution of Kenya, 2010.<sup>266</sup>

This is an important case as it made police accountable for violation of human rights enshrined in various Kenya national laws and international instruments. The applicants in the case are not women with disabilities; however women with disabilities face challenges in accessing courts to complain for violation of their human rights. This is to mean that even though there is system in place to make justice sector organs responsible for their failure to comply with human right standards, accessing courts is also a challenge for women with disabilities.

Furthermore, the PDA obliges the Chief Justice to prepare rules for the provision of free sign language interpretation, Braille service and physical guidance assistance to people with disabilities.<sup>267</sup> It is also the duty of the Chief Justice to make sure that all suits involving people

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<sup>266</sup> C.K.(a child) through Ripples International as her guardian and Next friend) & 11 others v Commissioner of police/inspector general of the national Police service & 3 others, (2013).

<sup>267</sup> Persons with Disabilities Act, Article 38(2) (b).

with disabilities are decided speedily taking into account the situation of the persons concerned.<sup>268</sup>

The constitution fails to provide “procedural and age appropriate accommodations” in accessing justice.<sup>269</sup> Access to justice shall not be construed narrowly; it should also incorporate the services of the police and public prosecutors. The duty to build the capacity of professionals working in the legal system on gender based violence and access to justice for women with disabilities is not incorporated in the laws.

### **3.1.4 Accessibility and reasonable accommodation in Kenya**

Accessibility in terms of the physical environment, information and communication is ensured in the laws of Kenya.

Accessibility to the physical environment is guaranteed under Article 54(1) c of the Constitution which entitles persons with disabilities “reasonable access” to all places<sup>270</sup> and information.<sup>271</sup> Article 33 and 35 of the Constitution give everyone the right to seek and receive information including information held by the state and recognize the need to “promote the

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<sup>268</sup> Ibid, Article 38(4).

<sup>269</sup> Committee on the Rights of Persons with Disabilities, *Concluding Observations in relation to the initial report of Kenya*, 4 September 2015), p. 6.

<sup>270</sup> Constitution of Kenya, Article 54(1) (c)..

<sup>271</sup> Ibid.

development and use of Kenyan sign language, Braille and other communication formats and technologies accessible to persons with disabilities.”<sup>272</sup>

The PDA obliges the state to progressively realize some of the rights enshrined in the Act such as the right to employment, education, accessibility and mobility.<sup>273</sup> It is provided in Article 21 that “Persons with disabilities are entitled to a barrier-free and disability-friendly environment to enable them to have access to buildings, roads and other social amenities, and assistive devices and other equipment to promote their mobility.”

Public buildings need to adapt to the needs of persons with disabilities as specified by the council.<sup>274</sup> Moreover, the council can give adjustment order for services or amenities which are inaccessible for people with disabilities.<sup>275</sup> The order is given to safeguard reasonable access by people with disabilities to the premises and services.<sup>276</sup> The PDA requires all public buildings to be disability friendly within five years after the coming into force of the Act,<sup>277</sup> which means by the year 2010. However, public buildings including courts are still not accessible to people with disabilities. A case of Paul Pkiach Anupa and Timothy Wanyonyiwetangula V. The hon. Attorney General and Judicial Service Commission successfully challenged the inaccessibility of court facilities. The applicant was unable to attend court proceedings due to the inaccessibility of the court building i.e. absence of ramps that can ease access to court. Accordingly, the court in

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<sup>272</sup>Constitution of Kenya, Article 7 and 54 (1) (d).

<sup>273</sup> Persons with Disabilities Act, Article 11, and 2.

<sup>274</sup> Ibid, Article 22(1).

<sup>275</sup> Ibid, Article 24(1) (b) and 24(2).

<sup>276</sup> Ibid, Article 24(3) (b).

<sup>277</sup> Ibid, Article 22(2).

its judgment held that the building of the court is not accessible to people with disabilities. It further held that all institutions including courts need to upgrade their facilities to conform to the obligations enshrined in the PDA and redress the disadvantage suffered by people with disabilities.

Furthermore, all television stations need to put a sign language in all their news, education and other nationally significant programs.<sup>278</sup>

The Persons with Disabilities (Access to Employment, Services and Facilities) Regulation requires public buildings to have convenient ramps, accessible toilets, and provision of Braille symbols and audio signals in elevators.<sup>279</sup> Besides, the regulation provides that all public broadcasting stations shall mainstream sign language in their TV programs.<sup>280</sup> The private broadcasting stations, on the other hand, shall include sign language in their television programs that address the general public including news and educational programs.<sup>281</sup> The regulation also provides that newspaper and other print media shall make their publications available in electronic format.<sup>282</sup>

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<sup>278</sup> Ibid, Article 39.

<sup>279</sup> The Persons with Disabilities (Access to Employment, Services and Facilities) Regulation, Article 15.

<sup>280</sup> Ibid, Article 16(1).

<sup>281</sup> Ibid, Article 16(2).

<sup>282</sup> Ibid, Article 17.

### 3.1.5. Gender Based Violence and Intersectionality in Kenya

The constitution has provisions that protect women with disabilities from violence and exploitation and affirms the inherent dignity of everyone,<sup>283</sup> protection against all types of violence<sup>284</sup> or inhuman treatment.<sup>285</sup> The protection is applicable to everyone including women with disabilities. .

Moreover, the Sexual Offences Act has specific provisions on sexual offence, prevention and protection from the effects of sexual abuse. It covers sexual offences such as trafficking in children which are not covered by the penal code of the country.

The Act criminalizes rape, sexual assault, defilement, indecent acts, trafficking, and other sexual offences. Women with disabilities also get protection from these crimes. Additionally, the Act has some crimes that are specifically applicable to women with mental disability. Among such offences are the criminalization of prostitution of persons with mental disabilities which is punishable with imprisonment for a term of not less than ten years.<sup>286</sup>

It is further provided in article 30 that

A person who has been convicted of a sexual offence and who fails to disclose such conviction when applying for employment which places him or her in a position of authority or care of children or any other *vulnerable person* or when offering or agreeing to take care of or supervise children or any other vulnerable person is guilty of an offence and liable upon conviction to imprisonment for a term of not less than three years or to a fine of not less than fifty thousand shillings or to both.

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<sup>283</sup> Constitution of Kenya, Article 28.

<sup>284</sup> Ibid, Article 29(c).

<sup>285</sup> Ibid, Article 29(f).

<sup>286</sup> Sexual Offence Act, Article 19.

The Act protects vulnerable witnesses and defines “vulnerable person” as “a child, a person with mental disabilities or an elderly person”. However, women with disabilities who are not mentally impaired are not included. It is a gap not to consider other women with disabilities as vulnerable despite the recognition by CRPD that all women with disabilities are vulnerable for abuse. Nonetheless, the Act requires court to declare a witness as vulnerable after considering various factors including the physical, intellectual, or psychological disability of the person concerned.<sup>287</sup>The protection of vulnerable witnesses may include an order to testify with the assistance of an intermediary.<sup>288</sup>

Additionally, the Penal Code protects women with disabilities from exploitation and violence and criminalizes abduction,<sup>289</sup> physical violence<sup>290</sup> and other types of GBV.

Similar to the constitution, the PDA does not touch on intersectionality and violence against women with disabilities. The Persons with Disabilities Amendment (Draft) Bill recognizes the vulnerability and multiple discrimination of women with disabilities.<sup>291</sup> It obliges state to take appropriate measures including legislative, administrative and judicial measures to protect women with disabilities from inhuman treatment, exploitation, violence and abuse.<sup>292</sup>

Besides, the Witness Protection Act (Chapter 79 of the Laws of Kenya) establishes Witness Protection Unit that should take into account the particular needs of persons with disabilities.

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<sup>287</sup> Ibid, Article 31.

<sup>288</sup> Ibid, Article 31(4).

<sup>289</sup> Penal Code, Article 142 -143.

<sup>290</sup> Ibid, 250-253.

<sup>291</sup> Persons with Disabilities (draft) Amendment Act, Article 11(2) (b).

<sup>292</sup> Ibid, 11 (2) (g) and (h).

Nonetheless, special protection for women victims of gender based violence is not addressed in the laws and the need to establish special investigation, prosecution, court proceedings and psycho-social support is not incorporated.<sup>293</sup> No law provides for the rehabilitation and reintegration of victims of violence.<sup>294</sup>

### 3.1.6. Awareness Raising in Kenya

Neither the constitution nor the PDA oblige the Government to engage in awareness raising activities on gender based violence against women with disabilities, their rights and how to access justice in cases of violation.

The Persons with Disabilities (Access to Employment, Services and Facilities) Regulation requires government organs to disseminate the PDA and engage in extensive nationwide public awareness raising campaign.<sup>295</sup> The government also has the duty to provide training to professionals including justice sector professionals.<sup>296</sup> However, the Regulation does not make specific reference to the obligations to undertake awareness raising campaigns to prevent stereotypes and harmful practices concerning women with disabilities.

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<sup>293</sup> Committee on the Rights of Persons with Disabilities, *Concluding Observations in relation to the initial report of Kenya*, (4 September 2015), p. 7.

<sup>294</sup> Dr. Ruth Aura, *Situational Analysis and the Legal Framework on Sexual and Gender-Based Violence in Kenya: Challenges and Opportunities*, p. 26.

<sup>295</sup> Persons with Disabilities (Access to Employment, Services and Facilities) Regulations, Article 3(1).

<sup>296</sup> *Ibid*, Article 3(3).



### **3.2.0. Ethiopia**

This section discusses the legal framework of Ethiopia, its conformity to states obligation regarding equality, accessibility, access to justice, intersectionality, and awareness raising. Additionally, some of the analyzed field data are discussed in this section.

#### **3.2.1. General Framework of Human Rights**

There are laws that protect the rights of persons with disabilities in Ethiopia. The foundation for the respect and enforcement of human rights of individuals in Ethiopia is the Constitution. It is the supreme law of the country<sup>297</sup> and source of legality of all other laws. Legislation, practice, and decision of government organs that violate the constitution have no effect.<sup>298</sup> It clearly set out that all federal and regional branches of the government i.e. legislative, executive and judiciary as well as citizens and associations have the obligation to obey, respect and implement the human rights of individuals enshrined by the constitution.<sup>299</sup>

Almost one third of the provisions of the Constitution deal with fundamental rights and freedoms of individuals. Article 10 affirms the inviolability and inalienability of human rights by stating that “Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable.”<sup>300</sup> The Constitution also safeguards the principles set out in the universal

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<sup>297</sup> Constitution of Ethiopia, Article 9(1).

<sup>298</sup> Ibid.

<sup>299</sup> Ibid, Article 9(2) and 13(1).

<sup>300</sup> Ibid, Article 10(2).

declaration of human rights by stipulating that every individual has the right to human dignity,<sup>301</sup> and to be recognized as a person everywhere.<sup>302</sup> These rights apply to persons with disabilities and are in line with the human rights based approach of disability.

International instruments ratified by Ethiopia are part of the law of the country.<sup>303</sup> Human rights recognized in the Constitution should be interpreted in conformity to the principles set out in ratified international instruments.<sup>304</sup> Since, the CRPD is part of the law of Ethiopia,<sup>305</sup> human rights of persons with disabilities should be construed in line with CRPD which further puts the duty to enforce the provisions of CRPD on judges, prosecutors and police have the duty to enforce the provisions of the CRPD.

There are no efforts by the Ethiopian government to enact new laws to modify existing discriminatory laws and to incorporate rights included in the CRPD in its domestic laws. The Ministry of Justice has the duty to conduct legal reform but this is yet to happen.<sup>306</sup>

Article 10 of the Proclamation issued to determine the powers and duties of the executive organs of the government obliges all ministries to mainstream gender and disability in all their activities and engage in capacity building. This law is important for women with disabilities since it impliedly requires the inclusion of the rights of women with disabilities in plans, programs and activities of various ministries depending on their mandate. However, most

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<sup>301</sup>Ibid, Article 24(1).

<sup>302</sup> Ibid, Article 24(3).

<sup>303</sup> Ibid, Article 9(4).

<sup>304</sup> Ibid, Article 13(2).

<sup>305</sup> Ethiopia signed the Convention on the 30<sup>th</sup> of March 2007 and ratified it on the 7th of July, 2010.

<sup>306</sup> Interview with judges, prosecutors, Coordinator of Women, Children and Youth Affairs Office of and Expert of Human Rights Action Plan Coordination Office of Ministry of Justice, Addis Ababa, Ethiopia, November 2 – 6, 2015.

Ministries with mandate to work on gender based violence and awareness raising, do not have programs that target women with disabilities.

The Ethiopian government enacted a two year (2013 -2015) human rights action plan for the protection and promotion of human rights of individuals envisaged in international and national laws in a structural and comprehensive way.<sup>307</sup> Accordingly, some protections are provided to Persons with disabilities in the action plan but there is no mention of women with disabilities in the document. The ongoing National Plan of Action of Persons with Disabilities (2012 – 2021) aims to create a more inclusive society, but mainly incorporates socio-economic rights. This is probably because the mandate for coordinating disability issues is given for Ministry of Labour and Social Affairs whose main focus is social issues.<sup>308</sup> The Disability Action Plan covers women with disabilities but is silent on gender based violence against women with disabilities or access to justice.

The relevant pieces of legislation and the practical application of the existing legal framework is discussed below.

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<sup>307</sup> The Coordination Office for the Human Rights Action Plan is currently drafting a revised Human Rights Action Plan to be effective 2016-2010.

<sup>308</sup> Interview with a judge, Addis Ababa, Ethiopia, November 5, 2015; Interview with Mr. Henok Tesfaye, Vice Board Chair of Ethiopian Young Lawyers Association, Addis Ababa, Ethiopia, November 6, 2015.

### 3.2.2. Equality and non-Discrimination in Ethiopia

The preamble of the Constitution affirms the exercise of rights and fundamental freedoms equally and without discrimination.<sup>309</sup> The constitution is equally applicable to women pursuant to Article 24(1).

The constitution clearly prescribes that everyone including women with disabilities are equal before the law and are protected from any kind of discrimination.<sup>310</sup> Sex is a prohibited ground for discrimination while disability is not expressly stated. However, it can be inferred from the word “other status” that disability is also a prohibited ground for discrimination. The constitution does not talk about direct and indirect discrimination and does not specify that failure to provide reasonable accommodation amounts to discrimination.

Article 35 of the constitution is exclusively devoted to the rights of women. It provides social, economic, civil and political rights of women. Article 35(1) (k) of the constitution stipulates women have the right to enjoyment of the rights provided in the constitution equally with men.<sup>311</sup> The particular needs of women with disabilities and their particular inequality as compared to women without disabilities is not addressed in the laws.

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<sup>309</sup> Constitution of Ethiopia, Preamble.

<sup>310</sup> Ibid., Article 25; “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or *other status*.”

<sup>311</sup> Constitution of Ethiopia, Article 35(1) (k).

### 3.2.3. Access to justice in Ethiopia

Access to justice is guaranteed in the constitution and is also applicable to persons with disabilities. It is impliedly acknowledged that women with disabilities can seek justice by bringing their case to appropriate justice organs.

The constitution has an exclusive provision on access to justice. Article 37 of the constitution reads as

1. Everyone has the right to bring a *justiciable matter* to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.
2. The decision or judgment referred to under sub-Article 1 of this Article may also be sought by:
  - (a) Any association representing the Collective or individual interest of its members; or
  - (b) Any group or person who is a member of, or represents a group with similar interests.

The provision allows women with disabilities to seek remedies in case of violation of their rights. Contrary to CRPD, it does not provide “age and disability specific” accommodation. The process of investigation, prosecution, hearing and judgment of cases of GBV against women with disabilities are not based on the needs of people with disabilities. For example, there is investigation and prosecution guideline for cases of GBV that is prepared by the Ministry of Justice but it does not mention women with disabilities or the needs of women with disabilities. Hence, the justice system tries to make women with disabilities fit to the system which is designed for people without disabilities

Both federal and regional courts have judicial powers.<sup>312</sup> The judiciary is independent<sup>313</sup> and is deemed to be free from any interference.<sup>314</sup> However, it is the House of Federation that is given the power to settle constitutional disputes and interpretation.<sup>315</sup>

The Federal Courts Proclamation gives federal courts jurisdiction to entertain cases that arise under the constitution and international treaties<sup>316</sup> and Federal courts take into account international instruments in entertaining cases.<sup>317</sup> Nevertheless, it is not clearly specified which level of court among the federal courts have the jurisdiction to entertain cases concerning human rights violations. For this reason, women with disabilities may not know which court to take their case. Moreover, data collected during my field interviews reveals that international instruments particularly CRPD is not used by legal professionals in their works.

Moreover, the criminal justice policy specifies the need to train public prosecutors and police on investigation.<sup>318</sup> All justice organs also have the responsibility to create conducive and enabling conditions for participation of women with disabilities as witness, parties, and in other capacity.<sup>319</sup>

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<sup>312</sup> Constitution of Ethiopia, Article 79(1).

<sup>313</sup> Ibid, Article 78(1) and 79(3).

<sup>314</sup> Ibid, Article 79(2).

<sup>315</sup> Ibid, Article 83.

<sup>316</sup> Federal Courts Proclamation, Article 3(1).

<sup>317</sup> Ibid, Article 6(1) (a).

<sup>318</sup> Criminal Justice Policy of Ethiopia, P. 14.

<sup>319</sup> Ibid., P. 51.

According to the National Plan of Action of Persons with Disabilities, it is the Ministry of Labour and Social Affairs that is given the responsibility to engage in extensive human resource development regarding disability.<sup>320</sup> However, the Ministry has not given training on GBV against women with disabilities and their access to justice for professionals working in the justice system. The Ministry does not have any program that exclusively target women with disabilities particularly on their access to the justice system.<sup>321</sup>

Further, none of the legal professionals interviewed got training on GBV against women with disabilities, and their access to justice. The respondents said it is important to provide such trainings to professionals working in the justice system. The reasons provided are to treat women with disabilities in the appropriate manner; to give due recognition to their individual needs; to adjust the infrastructure; to improve knowledge and attitude; to understand their rights and make professionals ready for implementation of international and national standards; and to know the role and obligation of each professional when it comes to the rights of women with disabilities.

One of the respondents said “The way you treat people is according to your knowledge; if you do not know the needs of women with disabilities and their rights, the way you provide the service will also be affected. It cannot take into account their needs and rights.” Because service providers are not trained on the rights and needs of women with disabilities and particularly regarding GBV, the service delivery varies according to the personality of the professional. Mostly, it is based on sympathy and not based on human rights based approach. There is also a tendency only to consider the rights of women with disabilities as economic and social rights and

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<sup>320</sup> National Plan of Action of persons with disabilities of Ethiopia (2012 – 2021), P. 54.

<sup>321</sup> Interview with officials from Ministry of Labour and Social Affairs, Addis Ababa, Ethiopia, November 4, 2015.

access to justice is not given due attention. However, it must be stressed that all rights are inseparable and access to justice is a basic right in which all rights can be enforced.

Additionally, it was found out that there are professionals who have never heard of the CRPD. Except for two professionals, other respondents are unaware of the content of the CRPD; why it was enacted and the rights incorporated in the convention. The convention is not well disseminated and people are not sensitized. It is disabled people organizations and other stakeholders who are much engaged in sensitizing legal professionals on CRPD than the government. Ministry of Labour and Social Affairs, coordinating Ministry of disability, is not properly training professionals and the public about the convention.

It was found out that Ministry of Justice in collaboration with Handicap International gave a two days training on disability, rights of women and children with disabilities and gender based violence for 35 prosecutors on 2012. The Ministry of Justice also gave a two days training on disability and people with disabilities, rights of persons with disabilities, role of the Ministry and how to provide service to 52 head and vice head of Justice Offices and different departments of the Ministry on 2014.<sup>322</sup>

### **3.2.4. Accessibility and Reasonable Accommodation in Ethiopia**

In this part, accessibility and reasonable accommodation in terms of information, communication and physical accessibility will be discussed.

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<sup>322</sup>Interview with Miss Wesenyelesh Admassu, Head of Coordination Office for Women, Children and Youth Affairs, of Ministry of Justice, Addis Ababa, Ethiopia, November 2, 2015; Annual Report of 2012 and 2014 of Ministry of Justice.



## Information

No legislation is specifically passed on access to information for persons with disabilities. However, persons with disabilities have a constitutional right to freedom of expression without any interference which allows them “to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.”<sup>323</sup> The right to obtain information is guaranteed by the Constitution which fails to expressly guarantee information in accessible format and means such as Braille, easy to read and understand, and sign language. However, it can be argued that the Constitution impliedly incorporate the right to seek and receive information mindful of accessibility and reasonable accommodations. The National Action Plan of Persons with Disabilities mandates the Ministry of Labour and Social Affairs to prepare information booklet about laws, policies, strategies, the National Plan of Action and CRPD and disseminate it to various stakeholders and the society.<sup>324</sup> The Ministry should also find out key government services and make them accessible to people with disabilities,<sup>325</sup> especially as information about all government services should be available in accessible formats for people with disabilities.<sup>326</sup> Also, domestic legislation and ratified international human rights standards, particularly laws related to persons with disabilities should be available in accessible formats to all persons with disabilities,<sup>327</sup> and in a conducive environment.<sup>328</sup> Practically, national laws such as the Constitution and Civil Code

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<sup>323</sup> Constitution of Ethiopia, Article 29(2).

<sup>324</sup> National Plan of Action of persons with disabilities of Ethiopia (2012 – 2021), P. 16.

<sup>325</sup> Ibid, P. 41.

<sup>326</sup> Ibid, P. 54.

<sup>327</sup> National Human Right Action Plan of Ethiopia, P. 150.

<sup>328</sup> Ibid, P. 59.

have been transcribed in Braille and available in some universities and ministries for students, employees and researchers. However, not all interested blind people can access the Braille copies since it is always limited in number, lack information on existing legal framework and how the justice system functions, the role of each justice organ and where clients can get the services.

The Human right Action Plan requires sign language to be used in media broadcasting to ensure freedom of expression of people with disabilities. Accordingly, Ethiopian television has a weekly 30 minute regular program broadcasted in sign language for people with hearing impairment because of their inability to access public information presented by radio. Proceedings of annual plan and report sessions of the parliament are also broadcasted in sign language. However, the daily news on national TV is not broadcasted in sign language and there is no explicit binding law that obliges media to use sign language in all their broadcastings. This is a violation of human rights as far as people with hearing impairment are concerned. My interviews in Ethiopia reveals that no broadcasted programs address GBV against women with hearing impairment and how they can access justice.

## **Communication**

There is no law or policy that clearly requires justice sector professionals to make sign language interpreters available for communication with victims that have hearing impairment.

Justice organs are not obliged to hire sign language interpreters but mostly request sign language interpreters from disabled people organizations or use victim's family members who can communicate with the victim. This is burden for people with hearing impairment since they do not get equal services with others as they sometimes have to revisit offices if they went to offices of justice organs without being accompanied by sign language interpreter. It discourages

persons with disabilities from reporting. One respondent who was a police officer said “once a woman with hearing impairment came to my office. There was no one who can use sign language in the office. I tried to communicate with her in writing but it was not successful because she was illiterate. Finally, because we were unable to communicate, she left and did not show up again”.

Sometimes, the interpreter sent from the disabled people organizations and the victims do not understand each other due to the illiteracy of the hearing impaired people as most people with hearing impairment may have no access to education<sup>329</sup>, nor knowledge of sign language since they communicate with their families and relatives by the language created within the family. Frequently, when only the family member can interpret what the victim communicates, victims are sideline and their testimonies to police. This ignores that at times the victims might not be interested to narrate their story in the presence of their care taker. Additionally, there is no payment for interpreters at police and public prosecutor’s office; this also discourages the interpreter from cooperating. Only court interpreters are paid. Bekelech<sup>330</sup> a 9 year old child was sexually assaulted and was taken to the One Stop Center for victims of sexual Violence<sup>331</sup> by her aunt. The police obtained testimony of her aunt and neglected to listen to the victim because the police was unable to understand what the victim was saying. Later, the public prosecutor intervened and tried to understand the circumstance of the case. The prosecutor found out that the girl can hear if people talk to her

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<sup>329</sup> Recent report of the Ministry of Education has shown it is only 4% of people with disabilities that have access to education.

<sup>330</sup> The real name of the interviewee has been changed for the purpose of the research

<sup>331</sup> One stop center that give legal, medical and counseling service for survivors of gender based violence is established in Mahteme Ghandi Hospital. There are police, public prosecutors, social workers, doctors and nurses that are assigned to work in the center.

loudly and can also speak very slowly; what was needed was patience and understanding of her situation.

There are efforts to train police and public prosecutors on basic sign language communication. Ministry of Justice has trained 11 prosecutors and social workers on sign language for 6 months on 2015. The Ministry of Justice has started giving the second round sign language training for 52 prosecutors and social workers from November 2015. The sign language training cost is fully covered by the government.<sup>332</sup>

### **Physical Accessibility**

The Ethiopian Building Proclamation is the major law that safeguards the right to physical accessibility of people with disabilities. This proclamation sets standards in constructing a building including public buildings such as courts, prosecutors and police. Its provisions address accessibility for people with disabilities.

The designs of both public and private buildings shall be in accordance with acceptable building design rules and hence shall be comfortable.<sup>333</sup> It specified that buildings shall be accessible to physically impaired including wheelchair users and those who are unable to negotiate steps.<sup>334</sup> The building officer can reject a building construction plan that does not

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<sup>332</sup> Interview with Miss Wesenyelesh Admassu, Head of Coordination Office for Women, Children and Youth Affairs, of Ministry of Justice, Addis Ababa, Ethiopia, November 2, 2015.

<sup>333</sup> Ethiopian Building Proclamation, Article 30.

<sup>334</sup> Ibid, Article 36.

comply with the relevant laws of Ethiopia,<sup>335</sup> and plan that is not disability friendly shall be rejected, even after construction has started it can be demolished<sup>336</sup> or stopped..<sup>337</sup>

After the coming into force of the proclamation, a Regulation and Directive were enacted by the Council of Ministers and Ministry of Urban Development and Construction, respectively. The Regulation enacted by the council of Ministers enforces the provisions stipulated in the Building Proclamation. The Regulation requires any building that have more than 12 meters height to have accessible stairs, parking lots, and toilets for people with disabilities,<sup>338</sup> including suitable lifts.<sup>339</sup> The Directive is a detailed implementation guide of the proclamation and requires buildings to be disability friendly.<sup>340</sup>

As mentioned earlier, Ministry of Labour and Social Affairs is mandated to ensure accessibility of government services to people with disabilities.<sup>341</sup> Ministry of Labour and Social Affairs and Ministry of Urban Development and Construction are responsible to ensure that public buildings meet standards of the Building Proclamation and other laws.<sup>342</sup> Buildings that are not accessible should be adjusted by taking into account the needs of people with

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<sup>335</sup> Ibid, Article 8(1).

<sup>336</sup> Ibid, Article 14 .

<sup>337</sup> Ibid, Article 16(3).

<sup>338</sup> Building Regulation, Article 28(8).

<sup>339</sup> Ibid, Article 33(3).

<sup>340</sup> Building Directive, Article 33.

<sup>341</sup> National Plan of Action of persons with disabilities of Ethiopia (2012 – 2021), P. 41.

<sup>342</sup> National Human right action plan of Ethiopia, P. 149.

disabilities.<sup>343</sup> However, nothing is done by the Ministry to identify and rectify the problem regarding accessibility of justice organs to people with disabilities.<sup>344</sup>

Most of the buildings of courts, public prosecutors and police are not accessible for physically impaired except for some newly constructed buildings which have ramps. Nonetheless, some of the ramps are very narrow to hold a wheelchair, very sloppy and unusable by wheelchair users. These buildings have been used for over a year but have no functional lifts and the numbers inside the lifts are not available in Braille. One of the respondents (public Prosecutor) said she saw a person with physical impairment who uses a wheel chair, because there is no lift in the building, she pushed out of her wheelchair and crept up the stairs to the fourth floor to get service from Public prosecutor's office. What is more, the premises of most police stations are not conducive for people with physical and visual impairment. The same applies for toilets.

### **3.2.5. Gender Based violence against women with disabilities and Intersectionality in Ethiopia**

Protection of women from any kind of physical and psychological abuse is specified in the Constitution. The Constitution safeguards the security of individuals by providing the right to protection against any kind of bodily harm.<sup>345</sup> It also protects individuals including people with

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<sup>343</sup> Ibid.

<sup>344</sup> Interview with professionals of Ministry of Labour and Social Affairs, Addis Ababa, Ethiopia, November 9, 2015.

<sup>345</sup> Constitution of Ethiopia, Article 16.

disabilities from inhuman treatment.<sup>346</sup> It is further provided that the state shall respect the right of women to be free from harmful traditional practices; “The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited.”<sup>347</sup> Hence, women are protected from harmful traditional practices, physical and psychological violence by the Constitution. Even if there is no explicit provision on the rights of women with disabilities and protection from violence, women with disabilities also benefit from the above protections because of their gender. Nevertheless, the Constitution does not take into account the double discrimination women with disabilities are facing.

The Ethiopian Criminal law protects individuals from exploitation, violence and abuse. It criminalizes early marriage, abduction, trafficking in women and children, sexual, psychological and physical violence and other GBV and specifically criminalizes acts against women with disabilities. For example, rape is punishable from five to twenty years with rigorous imprisonment if the rape is committed against women “incapable of understanding the nature or consequences of the act, or of resisting the act due to physical or mental illness or other reasons.”<sup>348</sup> There is punishment of life imprisonment if the rape against a woman has resulted in grave physical or mental injury.<sup>349</sup> It is also a crime to cause bodily or psychological injury.<sup>350</sup> Further, committing willful injury against a person who is incapable of defending himself/herself

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<sup>346</sup> Ibid, Article 18.

<sup>347</sup> Ibid, Article 35(4).

<sup>348</sup> Criminal Code, Article 620.

<sup>349</sup> Ibid, Article 620(1) (c).

<sup>350</sup> Ibid, 553, 555 and 556.

including people who have impairment is punishable with simple imprisonment from six months to three years.<sup>351</sup>

Moreover, Article 623 and 588 of the criminal code provides as follows

**Article 623 on Sexual Outrages on Unconscious or Deluded persons, or on Persons Incapable of Resisting**

Whoever, knowing of his victim's incapacity, but without using violence or intimidation, performs sexual intercourse, or commits a like or any other indecent act, with an idiot, with a feeble-minded or retarded, insane or unconscious person, or with a person who is for any other reason incapable of understanding the nature or consequences of the act, is punishable, according to the circumstances of the case, with simple imprisonment for not less than one year, or with rigorous imprisonment not exceeding fifteen years.

**Article 588 Abduction of an Unconscious or Defenceless Woman.**

Whoever knowing her conditions, intentionally carries off an insane, feeble-minded or retarded woman, one not fully conscious, or one who is incapable or has been rendered incapable of defending herself or of offering resistance, is punishable with rigorous imprisonment from five years to fifteen years.

Even if the provisions protect women with intellectual and mental disabilities, they used derogatory words which should be revised.

It is provided in Article 84(e) of Criminal Code that disability is an aggravating factor at the time of imposing sentence for all crimes.<sup>352</sup>

The Criminal Justice Policy demands special protection for women who are victims of GBV and calls for special investigation, prosecution, court proceeding and psycho-social support mindful of vulnerability of women with disabilities to violence.<sup>353</sup> Justice organs, psycho-social service providers, national and international organizations should coordinate their activities,<sup>354</sup> strengthen the capacity of organizations that give support for victims and protect the security,

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<sup>351</sup>Criminal Code, Article 556(2)(c).

<sup>352</sup>Ibid, Article 84(e).

<sup>353</sup> Criminal Justice Policy of Ethiopia P. 50 -51.

<sup>354</sup> Ibid, P. 51.



confidentiality and identity of victims..<sup>355</sup> Public prosecutors should give priority to grave crimes including violence against women whenever there is workload,<sup>356</sup> and establish witness protection systems.<sup>357</sup> The Human Right Action Plan demands that at least one shelter for victims of GBV established during its implementation period by the Ministry of Women, Children and Youth Affairs.<sup>358</sup> Yet, no shelter is established.

The need to provide psycho-social services to aid in rehabilitating and reintegrating victims of GBV is missing in the laws of the country.

My interviews in Ethiopia, found the following: GBV against women with disabilities is very much prevalent due to intersection of disability and gender. A huge number of people with disabilities including women live in the streets and are very much vulnerable to abuse. The majority of women with mental and intellectual impairment have been sexually assaulted for various reasons, including beliefs that they are safe from sexually transmitted diseases. Additionally, women with intellectual disabilities are more vulnerable to abuse since it is believed they cannot explain what happened to them in a proper manner and justice organ professionals do not find their testimonies credible. Also, a girl who was raped in day light while she went to toilet at a wedding ceremony reported, “I was not able to scream for help because of my speech impairment”.

I found that men with disabilities are among the perpetrators of the violence. One of the interviewees reported that many women with disabilities dropped out of school due to pregnancy

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<sup>355</sup> Ibid, P. 49.

<sup>356</sup> Ibid, P. 20.

<sup>357</sup> Ibid, P. 27.

<sup>358</sup> National Human right Action Plan of Ethiopia, P. 135 and 136.

from rape committed by men with disabilities during their study at the boarding school of the blind. The women do not report the case to the police because of their low level of awareness and belief that the justice system is not responsive to their needs. One of the interviewees said “I remember a case where a visually impaired woman who was victim of intimidation went to police station to report her case. The perpetrator had impairment. The response of the police was “do you guys also sue one another?”

Despite the high level of prevalence of violence against women with disabilities, the reporting level is very low. The majority of respondents stated that only women who know where to seek justice or have caring families that reported the case. Among the reasons given by the interviewees for low level of reporting are inaccessibility of the justice organs, unresponsiveness of the justice system, the victim’s dependency on family, perpetrators and the society, fear of losing support, fear of being harassed and stigmatized by the community because of the filed complaint, lack of knowledge about how to access justice and lack of knowledge of who committed violence against them. One of the respondent said “it is a miracle for me when I see a women with disability who reported violence inflicted against her”.

Even though there is no domestic law that addresses the provision of psycho- social support, the service is being provided by governmental and non-governmental organizations in the country though not adequate. Nevertheless, there is no psycho-social services institution designed only for women with disabilities.

Police and public prosecutors refer victims to organizations that provide psycho-social support including shelter depending on the circumstance of the case. However, it was found out that some of the organizations do not give support for women with disabilities who need to be

accompanied by their caregiver. The organizations mostly want victims with disabilities to leave the temporary shelter homes earlier because they are inaccessible; do not have sign language interpreters and do not know how to treat and guide blind women. They sometimes do not engage women with disabilities in various activities thereby making the women to be dormant and inactive. For example, a woman with intellectual disability became obese due to excessive sitting during her stay at shelter.

During the victims' stay in the shelter, they are not allowed to meet or have much interaction with their families, leave the centers, go to school, or forced to drop out of school mostly to prevent the victims from disappearing, or protect them from further abuse or bribery to drop the case. They will stay in the centers until they give their testimony to court or verdict is passed by the courts. There is no law that obliges victims to stay in shelter without their consent; however they are forced to stay in the shelters by being referred by police and prosecutors.

There are instances where victims stayed in such shelters for more than a year without any contact with families and the outside world. I found out that a victim stayed in shelter for two years because the perpetrator disappeared and hence the court did not pass a verdict. Some victims are involuntary admitted in the shelters without their informed consent. Most often, justice sector professionals do not send the victims to government run institutions as they are not considered safe to the survivors. There are instances where children disappeared and suffered abuse in government run institutions.

Currently, there is an informal referral system between psycho-social service providers and justice organs. However, there is effort by the Ministry of Justice to establish a well

structured and formal referral system. Government and non-government institutions have plans to sign a Memorandum of Understanding to formalize the referral system.

### **3.2.6. Awareness raising in Ethiopia**

There are various ministries with mandate to engage in awareness raising campaigns. Ministry of Justice is given the duty to provide public legal education on human rights.<sup>359</sup> Since protection from GBV and access to justice are components of human rights, the Ministry has duty to raise the legal consciousness of the community particularly women with disabilities on such issues. Furthermore, Ministry of Women, Children and Youth Affairs has the responsibility to raise awareness about women issues which include women with disabilities.<sup>360</sup> This Ministry is expected to engage in extensive awareness raising about harmful traditional practices and the rights of women.<sup>361</sup> As mention earlier, the, Ministry of Labour and Social Affairs is mandated to conduct awareness raising to reduce discrimination against people with disabilities,<sup>362</sup> especially using the media and other mechanisms to sensitize society about various laws of the country.<sup>363</sup> Practically, I know of only two awareness raising activities that have targeted the rights of women with disabilities. The Ministry of Justice in collaboration with Handicap International organized awareness raising campaign for representatives of different segments of the

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<sup>359</sup> Proclamation to provide for the Definition of powers and duties of the Executive organs of the federal Democratic republic of Ethiopia, Article 16(15).

<sup>360</sup> Ibid, Article 32(1).

<sup>361</sup> National Human Rights Action Plan, p. 135.

<sup>362</sup> National Plan of Action of persons with disabilities of Ethiopia (2012 – 2021) P. 14; National Human right action plan of Ethiopia, P. 149.

<sup>363</sup> National Human right action plan of Ethiopia, P. 52.

community about the rights of people with disabilities, GBV and how to access justice during the white ribbon campaign on the year 2012. This awareness raising campaign did not specifically address women with disabilities. Additionally, awareness raising campaign was organized on “GBV, disability and HIV/AIDS as cause and effects, its coverage under Ethiopian law” to 1000 participants including women with disabilities. The exact number of women with disabilities who participated in the awareness raising event was not known because the data was not disaggregated by disability.<sup>364</sup>

Among the 17 justice sector professionals I interviewed, only three have the proper and current understanding of persons with disabilities. The rest defined disability and persons with disabilities with understanding of medical model that focus on impairment. The three interviewees got the knowledge of disability because one of them conducted his graduate thesis on rights of persons with disabilities while the other two got it from the training they received on concepts of disability and disability inclusion.

Even though there are some protections provided by the laws of Ethiopia, women with disabilities are practically facing challenges in accessing justice. The rights of women with disabilities are not being effectively mainstreamed in all justice organs. Court rooms, police stations and prosecutor’s office do not meet accessibility standards. The barriers create inconvenience and obstacles in accessing justice for victims of violence and contribute to the low level of reporting violence and the poor administration of justice.

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<sup>364</sup>Interview with Miss Wesenyelesh Admassu, Head of Coordination Office for Women, Children and Youth Affairs, of Ministry of Justice, Addis Ababa, Ethiopia, November 2, 2015.

Similarly, even though there are efforts to provide counseling, rehabilitation and social services, the services are not designed to fit the needs of women with disabilities. Hence, *maximum effort* should be taken to ensure the safety, physical and psychological rehabilitation of women with disabilities by establishing special investigation, prosecution, court proceeding and psycho-social support system.

Despite the low level of awareness of judges, prosecutors and police about disability and access to justice for women with disabilities, there are no systematic training programs about the rights of women with disabilities, GBV and how to interact with victims that target legal professionals. Most women with disabilities and their caregivers do not understand what is GBV, their rights and the mechanisms to prevent, identify and report gender based violence.

Legal professionals are not using international instruments particularly CRPD, CEDAW and DEVAW in their work even if they are part of the law of the country. Legal professionals should be sensitized regarding Ethiopia's obligation under CRPD, CEDAW and DEVAW and the contents of the instruments so that they can start using them in their works.

Legal and practical actions should be taken to implement Ethiopian criminal justice policy, since it incorporates better safeguards for women with disabilities.

## Conclusion

Violence against women with disabilities is an interaction of gender and disability based violence. Women with disabilities are more vulnerable to GBV than women without disabilities and men with disabilities which makes it a real problem that needs to be addressed.

Both Ethiopia and Kenya has ratified the CRPD but there are no laws that are enacted to make domestic laws regarding access to justice par up with CRPD in both jurisdictions. Kenyan government has prepared draft National Disability Policy (2006) and Persons with Disabilities Amendment Act (2007), yet to be passed by parliament. There are no efforts by the Ethiopian government except for the Criminal Justice Policy that has incorporated some rights of women with disabilities.

Several laws deal with the rights of persons with disabilities in both Kenya and Ethiopia. These laws were enacted before the coming into force of CRPD and do not explicitly address women with disabilities. Unlike Ethiopia, Kenya has a specific provision on disability in its Constitution and has a specific law that is designed for the rights of persons with disabilities. The laws of both countries provide equality and protection from discrimination, protection from GBV, access to justice and physical accessibility of justice organs.

Kenya's legal framework is one step ahead compared to Ethiopia regarding accessibility. The laws clearly recognized equal protection of persons with disabilities by the law and protection from direct and indirect discrimination on the basis of their disability. There is a council that is exclusively established for the purpose of protection of the rights of persons with disabilities. The laws clearly put an obligation on government to provide free sign language

interpretation, use of sign language by the media, and availability of information in Braille. Ethiopia should take a lesson from the legal system of Kenya and emulate the safeguards to Ethiopian laws.

Nonetheless, there are problems in the legislation of both countries. The definition of disability and persons with disabilities do not take into account the social and human rights models of disability. Kenya's laws only defined disability in the way that manifest the medical model. Moreover, there is no general and binding definition given for persons with disabilities in Ethiopia.<sup>365</sup> Hence, there is need to have a definition in the laws of both countries that incorporate the interaction of impairment and barriers which bar people with impairment from participating in society on equal basis with others.

Additionally, the laws do not take into account: the specific circumstance of women with disabilities and their vulnerability to multiple forms of discrimination; denial of reasonable accommodation as discrimination; requirement of justice organs to raise the awareness to women with disabilities and their caregivers about GBV against women with disabilities, their rights and the mechanisms to prevent, identify and report GBV; the obligation on government to provide training to legal professionals on disability, rights of women with disabilities and accessibility of their services; gender and age sensitive rehabilitation and reintegration measures for victims of violence; the provision of procedural and age-appropriate accommodations in accessing justice; and the use of derogatory words. Hence, all this gaps should be filled by undertaking legal reform.

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<sup>365</sup> There is definition provided in the Right to Employment of Persons with Disability Proclamation but only applies to employment cases of persons with disabilities



## Recommendation

The researcher would like to recommend that legal, administrative and practical measures should be taken to enforce international human rights legal frameworks and remove barriers regarding access to justice for women with disabilities who are victims of violence. Particularly, the following key measures should be taken;

The rights of women with disabilities should be mainstreamed in all activities, programs and projects of responsible organs particularly justice organs for realizing access to justice of women with disabilities. The justice systems should be designed mindful of the needs, circumstances and factors for the vulnerability of women with disabilities to violence.

Existing laws should be revised to ensure their compliance to international human rights standards. Particularly, a comprehensive policy and law that expressly addresses women with disabilities should be enacted. The law should take into account the situation of women with disabilities and factors that make women with disabilities vulnerable for violence; and ensure accessibility; procedural and reasonable accommodation in accessing justice.

A comprehensive, well coordinated and integrated service delivery system that includes legal, health, and psycho-social services should be established. *Maximum effort* should be taken to ensure the safety, physical and psychological rehabilitation as well as integration of women with disabilities by establishing special investigation, prosecution, court hearing and psycho-social support system. Particularly, legislative, administrative and practical measures shall be taken to enforce the safeguards provided by the Criminal Justice Policy of Ethiopia.

Mandatory and systematic training programs should be designed to build the capacity of justice organ professionals on relevant international human standards such as CEDAW and CRPD, concept of disability, GBV and rights of women with disabilities as well as how to interact with women with disabilities who are victims of violence.

Various awareness raising events should be organized to raise the awareness of women with disabilities and their caregivers about their rights, GBV, and how to access justice as well as make justice sector organs and officials responsible for their failure to comply with access to justice safeguards.

Ethiopia should take a lesson from the case law of Kenya by holding justice system organs to account regarding their inaccessibility and the failure of justice organs to deal with reported cases effectively.

Last but not least, an in depth study should be conducted on the challenges of women with disabilities to develop and introduce disability friendly and accessible justice system for women with disabilities who are victims of GBV.

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