Disability Rights are Human Rights: Pushing Ethiopia Towards a Rights-based Movement

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DISABILITY RIGHTS ARE HUMAN RIGHTS:
PUSHING ETHIOPIA TOWARDS A RIGHTS-BASED MOVEMENT

Sirak Akalu Iyassu & Fiona McKinnon

ABSTRACT—Official estimates suggest that 95 percent of Ethiopia’s disabled live under the poverty line and are unemployed.1 To get by, many must beg or depend on family and friends. The Ministry of Labor and Social Affairs, the ministry responsible for enforcing rights of disabled people, is a paper tiger, toothless at that. Recent data suggest that only one percent of Ethiopian buildings and roads are fully accessible to the disabled.2 Yet accessibility is not only a physical, but also a social, cultural, and political sine qua non—and so a matter of human rights.

Rights of Ethiopia’s disabled have been quashed or ignored for millennia. Generations have grown up in a society shaped by church dogma, which construes disability as the result of sin, a source of shame. Whether disability is physical or cognitive, regardless of an affected person’s courage and capacity to cope, the disabled have been excluded from many aspects of

2 For the purpose of this paper, the term “full access” should be construed as incorporating reasonable accommodations and universal building design standards set out in the CRPD (see CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITY RATIFICATION PROCLAMATION art. 2, opened for signature March 30, 2007, 2515 U.N.T.S. 3, 73–74 (entered into force May 3, 2008) (Eth.) [hereinafter CRPD]). In Ethiopia, people with disabilities face great challenges because of lack of accessible infrastructure. In his 2012 thesis, Amare Sisay mentions an instance where a wheelchair user was asked to go to Piassa, one of the busiest neighborhoods in the capital city, to get his photo taken for a National Identity Card. This person went to 12 photo shops but could not obtain the service he needed because he could not enter any of the establishments due to the fact that there were stairs and narrow doorways. Amare Sisay, Towards Ensuring Accessibility Right to the Built Environment for Persons with Disabilities in Ethiopia: The Case of Addis Ababa (June 2012) (LL.M thesis, Ethiopian Civil Service University).

Data on accessibility is extremely limited in Ethiopia, and indeed across Africa. For this article, an unpublished survey conducted by the US-based organization Self-Determinator was used as an input to determine the full accessibility of schools, workplaces, shopping centers, government offices and hotels. The survey was sent to 20 volunteers with physical disabilities residing in different parts of the country and focused on the volunteers’ day-to-day activities. The participants were given the ADA checklist for existing facilities (available at https://www.adachecklist.org/doc/fullchecklist/ada-checklist.pdf) and an additional questionnaire containing the international design of accessibility, and they were asked to rate the accessibility of their housing, work place, place of worship, transportation, school, parks, roads, hotels and cafes, and parking spots. For the purposes of this article, the average results of the data for the four categories explained above were used to determine the percentage of buildings and roads in Ethiopia that are accessible to people with disabilities.
life. Barring a lucky few (including one author), Ethiopia’s disabled can hope for charity at best, but at worst may be hidden from neighbors, driven from their homes, and forced to beg to survive.

The untapped potential is enormous. Data is deficient, but the World Health Organization (WHO) estimates 17.6 percent of Ethiopians live with disabilities. Most are not helpless, yet an overwhelming majority remain uneducated, unemployed, and so denied the dignified lives that human beings deserve. Given recent changes in Ethiopia, however, all this could change.

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3 The World Health Organization (WHO) estimates that 15 percent of the world’s population is disabled, but estimates that 17.6 percent of Ethiopia’s population lives with a disability. WORLD HEALTH ORG., WORLD REPORT ON DISABILITY 27, 272 (2011).
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I. HISTORICAL CONTEXT

Surely Ethiopians are no less kind than others, but its broad society still accepts ancient ways of understanding disabilities. If in other cultures disability is construed as the deity’s way of protecting the innocent from potentially harmful individuals, the common Ethiopian understanding, reinforced by church teachings, constructs disability as punishment for relatives’ sins or the fault of the disabled person himself, e.g., the manifestation of an “evil spirit” the victim has not been strong enough to resist. For non-disabled Ethiopians, these accounts put the blame conveniently elsewhere, at once exculpating God and implying that disability does not result from arbitrary disease or injury or misfortune that

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might strike good persons (like themselves). However reassuring to the unafflicted, these primitive explanations keep the disabled at a psychological distance, and so often cruelly shunned, particularly in rural communities where illiteracy is still high and information access still low. Ignorant and superstitious families may hide their disabled children, confining them indoors or locking them in animal pens, if they do not murder them at birth or let them die from neglect. The stigma and resulting cruelty still can be profound.

History may have contributed to mistreatment. Until now, people suffering from leprosy and disabilities are segregated in settlement neighborhoods like Gebre Kristos, and 40 other neighborhoods in the capital city.\textsuperscript{5} It may be true that this began as a quarantine to contain an outbreak of disease, but communicable disease became confounded with other sources of disability and served as the precedent for dealing with disability in general, which has had a strong impact on the way disabled people are treated to this day. The Ethiopian government and the nation’s citizenry still consider it acceptable, even beneficial and healthy, to repudiate and cast out those fellow citizens having to endure disabilities.

II. CONCEPTUAL MODELS

The salient models for making sense of disability in the West have been medical and social constructs.\textsuperscript{6} Given the potent religious influence in Ethiopian society, we must add a third, “dogmatic” model, which acknowledges the infallible authority accorded to Ethiopian priests in interpreting scripture. In brief, the Ethiopian Orthodox Church and related institutions have bolstered ancient law, reinforcing negative beliefs about disabled people. It portrays disabled people as helpless and pitiable, but also as moral “lessons” to warn followers tempted to go astray. Inasmuch as challenges to church teachings are not permissible, Ethiopians tend to believe what they are told. This dogmatic teaching still plays a major role in determining the place of the disabled in Ethiopian society.

A social model of disability was codified early, and long remained in effect. The 15th century Fetha Negest (Law of the Kings), Ethiopia’s first legal code,\textsuperscript{7} barred disabled people from holding public positions and limited

their social interactions. Like the Church, it recognized disability as a basis for charity, but also framed disability as just punishment for failure to follow the rules of the eucharist, for breaking an oath, or for demonstrating insufficient loyalty to the monarch. This blaming and exclusionary approach long endured. Even when Ethiopia’s legal system was updated in the first written Constitution in 1931, it included no new conceptualization for disability.\(^8\) The Fetha Negest continued to determine how the disabled were treated until social attitudes softened as the country recuperated from war. After the Italians’ occupation ended in 1943, and soldiers returned from Korea in 1951, there was a recognized need to accommodate victims and wounded veterans, and the first rehabilitation center was established in Addis Ababa—a signal of a shift toward a medical perspective.\(^9\)

More scientific than its precursors, the medical model still fails to acknowledge the wider social and personal experience of disability, which is seen to result from injury or illness, and so to require treatment and cure, repair and rehabilitation, but nothing more. Its blinkered vision ignored the role the state can play in creating a conducive context in which disabled people may flourish in broad social and economic terms.\(^10\) Some years later, it may be acknowledged, well-intentioned proclamations in 1971 and 1994 seemed to encourage disabled people to join the workforce.\(^11\) But to reserve employment vacancies exclusively for the disabled implied that they were not capable of competing for jobs on their own merits. Moreover, without a right to reasonable accommodations, non-discriminatory consideration of potential employees remained implausible. Nor were there legal protections from discrimination. However well-intentioned, in short, these proclamations proved to be hindrances rather than boosts to disabled rights.

These approaches having failed, the medical model was written into Ethiopia’s FDRE Constitution of 1995, which guarantees equality and protection from discrimination for all citizens.\(^12\) However, although the

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9 The Cheshire Ethiopia rehabilitation center was established in the vicinity of what is now Menagesha in 1962, when Group Captain Leonard Cheshire was invited by two of Emperor Haile Selassie’s grandchildren to set up a home for post-polio rehabilitation. See Robert Waterhouse, Gebremedhin Bekele Obituary, THE GUARDIAN (Apr. 21, 2019), https://www.theguardian.com/world/2019/apr/21/gebremedhin-bekele-obituary.


document lists various categories in need of explicit protection—race, nationality or social origin, color, sex, language, religion, political or other opinion, property and birth—it neglects disability as a basis for collective rights or enhanced protection. The only mention comes in article 41, where government responsibility is limited to allocating some resources, if and when available, to provide “rehabilitation and assistance” to the disabled. Article 41, in sum, is an exemplar of the medical model, labelling disability as a health problem, and limiting the remedy to attempts to restore “normal.”

A conversation to consider disability as a broader social construct appeared to begin in Ethiopia with the ratification of the Convention on the Rights of Persons with Disabilities (CRPD) in 2010. Even prior to that, the country’s GTP I and II and other policy documents urged that disability should no longer be regarded solely as a medical condition. Proclamation no. 568/2008 on the Right to Employment of Persons with Disabilities complimented the labor law, ensuring the right to employment. So when the CRPD came two years later, many believed it signaled a shift in the government’s approach, at least in the workplace. The proclamation introduced a non-discrimination clause, a provision that allowed a disabled person to institute a case and put the burden of proof on the employer. But in 2014 when the first plaintiff brought his claim in *Administration Justice Bureau vs. Mekonen Teklu*, the court refused to hear his claim that, as a blind prosecutor, he’d been discriminated against when his employer cut his pay and transferred him to another position. Instead, the cassation court ruled in favor of the defendant, holding that discrimination clauses under

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13 “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 guarantees 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.” *Id.* at ch. 3, art. 25.

14 “The State shall, within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guardian.” *Id.* at art. 41(5).

15 *See Convention on the Rights of Persons with Disability Ratification Proclamation No. 676/2010* pmbl. (Eth.).

16 Ethiopia’s Growth and Transformation Plans I and II are intended to meet the Sustainable Development Goals (SDGs) and to serve as a springboard towards realizing the national vision of becoming a low-middle-income country by 2025.

17 *See Ministry of Labour and Soc. Affs., National Plan of Action of Persons with Disabilities (2012-2021)* iv (2012), [http://www.molsa.gov.et](http://www.molsa.gov.et) (select “Resources” from menu bar; then go to page eight of the results and click on “National plan of action on Persons With Disabi](http://www.molsa.gov.et)ty [sic] (2012-2021)”)(stating that disability is an impairment, recognizing that society is organized in a way that assumes everyone can perform in the same way, and acknowledging the challenges posed by traditional beliefs, prejudice and discrimination).

18 *Right to Employment of Persons with Disability Proclamation No. 568/2008* (Eth.).

19 *See Administration Justice Bureau vs. Mekonen Teklu* (file no. 75034) cassation decision, volume 14, Sept. 2014.
proclamation no. 568/2008 could not be invoked by government-appointed employees.\textsuperscript{20} The case simply could not be brought. The message to disabled persons was crushing. So it has proved that where they should expect the most protection, disabled Ethiopians have found the least.

If that were not enough, the prescribed penalties were paltry. Even if the plaintiff had prevailed, the penalty for discriminating against a disabled person cannot exceed 2000-5000 Ethiopian birr (roughly $75-150 USD),\textsuperscript{21} a penalty too trivial to deter employers from wrongdoing. More than that, the law failed even to aim to do more than penalize an employer. It should also employ a more effective way to incentivize employers, e.g., through taxes, to hire disabled people. If the law were to be improved, punitive damages ought to compensate a successful plaintiff justly for the discrimination he has endured. The authors recognize that Ethiopian law does not as yet allow punitive damages, that in fact the maximum “moral” damages a person may claim under the civil code is 1000 Ethiopian birr (roughly $30 USD).\textsuperscript{22} The authors submit, however, that to make laws of inclusion meaningful, they must be strict, enforceable, and the damages proportionate.

III. CRPD AND CSO LAWS

The CRPD, signed in 2007, was ratified by the Ethiopian government in 2010, and so became the law of the land.\textsuperscript{23} It brought hopes that soon were dashed. The convention recognized disability not merely as a medical fact or stigma but, like the multiple ethnicities in the country, an identity that deserved human rights protection. This monumental win for Ethiopia’s disabled would transform disability rights. We believed we all would benefit. But the government merely used ratification of the CRPD to enhance its image. A year before its ratification, the government’s Charities and Societies Proclamation no. 621/2009 (CSP) clamped down on foreign financial support for NGOs working for disability rights,\textsuperscript{24} among other things, and so disenfranchised many in a community that was dependent upon foreign support. There is little Ethiopian tradition of collecting donations to promote rights, and so this severance of access to foreign funds shut off opportunities for the disabled to involve themselves in decision-

\textsuperscript{20} Id.
\textsuperscript{21} Right to Employment of Persons with Disability Proclamation No. 568/2008 art. 11 (Eth.).
\textsuperscript{22} Civil Code, art. 2116(3) (Eth.).
\textsuperscript{23} Convention on the Rights of Persons with Disability Ratification Proclamation No. 676/2010 pmbl. (Eth.).
\textsuperscript{24} See Charities and Societies Proclamation No. 621/2009 arts. 2(3), 14(2)(I), 14(5) (Eth.) (stating that promotion of the rights of people living with disabilities can only be undertaken by Ethiopian charities and societies, which may only receive ten percent of their funds from foreign sources).
making about policies and programs that directly affect them. The CSP revealed the government’s fear that NGOs would fund a political agenda the government itself had not sanctioned. And so the government contravened the CRPD, carrying out acts or practices inconsistent with the convention through the CSP, which remained in effect until repealed last year.\textsuperscript{25}

In effect, the government thus relegated disability to its ancient social and dogmatic models, i.e., to charity work. The designation of the Ministry of Labor and Social Affairs (MOLSA) to implement the convention made this obvious,\textsuperscript{26} for that ministry had little budget and less expertise relevant to disabled people’s fight for their rights. Without foreign funding, organizations dealing with the disabled had to reduce services or close their doors. The CSP halted the conversation on disability rights as human rights, and gave tacit approval for disability to remain merely a charitable matter or a narrow medical issue, nothing more. When asked about vulnerable group rights for disabled persons, officials noisily encouraged religious charity.

The CSP itself was a breach of the CRPD.\textsuperscript{27} This being so, the government’s recent repeal of the CSP, as part of a major reform effort, renews hope for an elevation of the conversation—through increased involvement of civil society. We regard this move as an opportunity to revive a movement that challenges that ancient societal attitude, demands enforcement of anti-discrimination laws, and fights for the rights of disabled people as human rights.

IV. PRACTICALITIES

For decades empty policies have been introduced, laws enacted but never enforced. On a practical level, the situation is not improving. Building Proclamation no. 624/2009, for instance, requires public offices to be accessible,\textsuperscript{28} but most government offices are not.\textsuperscript{29} A disabled person who wishes to authenticate a business document, for instance, must climb four flights to reach the Documents Authentication and Registration office. There

\footnotesize
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\textsuperscript{25} Organizations of Civil Societies Proclamation No. 1113/2019 art. 87(1) (Eth.).
\textsuperscript{26} Convention on the Rights of Persons with Disability Ratification Proclamation No. 676/2010 art. 3 (Eth.).
\textsuperscript{27} The cumulative reading of article 4(a) and (d) of the convention stipulates that state parties undertake to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the convention and also requires states to refrain from engaging in any act or practice that is inconsistent with the convention and to ensure that public authorities and institutions act in conformity with the convention. CRPD art. 4, ¶ 1(a), (d), ¶ 1, supra note 2.
\textsuperscript{28} Ethiopian Building Proclamation No. 624/2009 pt. 4, art. 36(1).
\textsuperscript{29} Amare Sisay, Towards Ensuring Accessibility Right to the Built Environment for Persons with Disabilities in Ethiopia: The Case of Addis Ababa (June 2012) (LL.M thesis, Ethiopian Civil Service University).
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are few elevators; often they do not work. This is a human rights issue for a
disabled person needing to access government services. Unenforceable laws
make a mockery of disabled peoples’ rights.

Accessible housing remains another Ethiopian challenge. Having few
resources, the disabled often look to “condominiums,” affordable housing
provided by the government, but even those built after the Building
Proclamation have design flaws that make them de facto inaccessible. The
majority of buildings do not have elevators, and power cuts immobilize those
that are in place.\(^{30}\) The government tries to provide ground-floor apartments
for disabled people, but even these have stairs. To these fundamental access
problems there are no solutions on offer. Less than 0.5 percent of the disabled
enjoy independent living.\(^{31}\)

The CRPD also calls for accessibility to transportation, information,
and communications.\(^{32}\) Yet in Ethiopia, where government-owned buses and
privately-owned taxis and tuk-tuks (bajaj) provide most transportation for
the general public, these providers are permitted to deny services to the
physically impaired, giving the excuse, “Ayemechim,” which means “it’s
not comfortable for you.” A disabled person may be left standing uncomfortably, sometimes for hours, until he can convince some (paid) good
Samaritan to provide him transport. Surely access to transportation should
be guaranteed, for its lack limits a disabled person’s social and economic
life. But access to online information is critical, too, particularly as more is
now posted. Without it, the disabled cannot find job postings or descriptions
of their rights. Again, although this matter was addressed in the CRPD,\(^{33}\)
ratified a decade ago, even government websites, including MOLSA’s, are
for many not yet accessible. In sum, if we continue to tolerate buses, taxis,
cafes, hotels, courtrooms, banks, and government offices that are out of reach
for them, we make millions of people second-class citizens—no less so than
apartheid. Surely these exclusions should be condemned with much the same
indignation.

None of these constraints are more portentous than widespread
exclusion from education. If admitted to the classroom, the disabled face
negative attitudes, a presumption that their education is a waste of time and
resources, and, particularly in rural areas, they may be denied entry entirely.
If permitted to enroll, they may quit before finishing elementary school,

\(^{30}\) Id; see also supra note 2.
\(^{31}\) Id.
\(^{32}\) CRPD art. 9, ¶ 1, supra note 2.
\(^{33}\) The CRPD requires accessibility to websites, apps and other information sources. Article 9(2)(g)
requires state parties to promote access for persons with disabilities to new information and
communications technologies and systems, including the internet. CRPD art. 9, ¶ 2(g), supra note 2.
because of bullying, teacher abuse, and a lack of accommodations. This social stigma has repercussions at home. Out of shame and disappointment, parents refuse to let disabled children leave the house. Disabled children have been chained in dark huts for years for asking to go to school.

Even if a determined few get through high school, further obstacles prevent access to higher education. Given a student’s particular impairments, capable young people may simply be refused a shot at certain highly-valued fields of study, e.g., engineering or medicine, by officials without the expertise needed to gauge these options, and when there are not actual medical bases for such denials. These barriers also may have less to do with a student’s capacity than with a university’s incapacity, or unwillingness, to commit resources for accommodation.

At the national policy level, some official efforts remain misguided, or merely express good intentions, but lack follow-through. Under the GTP II, Ethiopia proposes to build more special schools for disabled children, but this is not the solution most disabled children need or want. Rather than special schools that segregate the disabled from mainstream society, the plan should include them, putting the resources into accommodation in regular schools. The government’s 50 billion birr budget implies a serious intention to improve Ethiopian education, but the goal should not be separate facilities. Available materials and technology should be used to make buildings and toilets accessible. The goal should be to make any willing student welcome and enabled to attend public schools.

Beyond schools and universities, the government has set out to build rehabilitation centers, but serious obstacles thwart these good intentions, too. Those centers already built are barely functional. Disabled citizens report that at centers lacking sufficient materials and expertise there are demands for bribes for services or prostheses. In the face of corruption and mismanagement, honest artisans and experts look for employment elsewhere. Local media have described these problems, which also have been reported through proper channels, but to no avail. Nothing has been done. The lack of action compels the inference that MOLSA is inept and toothless, and that, for all the good intentions, government officials simply do not make the disabled a priority.

V. BUILDING A MOVEMENT

Anyone can become disabled. Anyone may encounter an accident, disease, genetic vulnerability or stroke, or simply age, and the consequences may transform their world. Stairs become mountains, a stroll to the café a marathon. To carry a coffee mug to the table may require an Olympian floor exercise. One out of five Ethiopians now suffers a disability, which makes
the disabled the nation’s largest minority—millions included in these ranks.\textsuperscript{34} Still the disabled face persecution and exclusion. They are the least employed, often the poorest. Politically they are voiceless. Enacted laws and published policies have turned out to be wishful thinking or false promises. These are jabs at old wounds.

Faced for years with this serious problem, the country has looked the other way. The disabled community is chronically frustrated by this inattention, by a lack of opportunity, and by ongoing exclusion. This being so, a political movement must be created to demand disability rights as human rights and insist that negative, ignorant attitudes change. A new awareness cannot come without effort. Civil society organizations and activists must bang the drum for equal rights. The voices of the disabled must be heard, so as to demolish the negative, insulting social construct that has persisted for too long. Media and business must be pushed to hire the disabled, and to put them front and center. In Ethiopia we must take every opportunity to expose rights violations, to call attention to lack of access, to shame those who mistreat the vulnerable, and to rid society of the exclusions, humiliations and constraints that disabled citizens face every minute of every day. Only by making sustained efforts will we bring needed change.

\textsuperscript{34} Their caregivers also suffer as a result, adding millions more to the number of affected persons.