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Summary

As one of the first signatories to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and having ratified it on 7 July 2010, Ethiopia is committed to ensuring the rights and well-being of people with disabilities. Nine years after ratifying the CRPD, in 2019, it issued a new electoral law (Electoral, Political Parties Registration and Election's Code of Conduct Proclamation (Proclamation)). However, this new Electoral Proclamation is not in compliance with the CRPD in terms of polling accessibility, accessible voting procedures, and the removal of disability based voting restrictions. Even worse, in terms of discrimination based on psycho-social and intellectual (mental) disability, the Proclamation contravenes the CRPD to a greater extent than legislation that was passed decades before the coming into force of the CRPD, despite being enacted after its ratification. The primary focus of this article is, therefore, to examine the discrepancy between the voting provisions in the Proclamation and the minimum voting standards set forth in the CRPD. The goal is to demonstrate the gaps in the Proclamation that may prevent persons with disabilities from fully participating in the voting process.

1 Introduction

The right to vote is a fundamental political right recognised by international human rights laws, allowing citizens of a sovereign state to participate in their governance. It was initially recognised in the Universal Declaration of Human Rights (UDHR)¹ and later included in the

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1 The UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

International Covenant on Civil and Political Rights (ICCPR).² However, neither the ICCPR nor the UDHR was able to address the right to vote in the unique circumstances of people with disabilities.

On the other hand, with a view to restructuring human rights in the context of people with disabilities,³ the CRPD was adopted by the UN General Assembly in 2006 and took effect in 2008.⁴ Many African countries, including Ethiopia, showed initiative by signing the CRPD on the very first day (30 March 2007) when it became available for signature to all States and regional integration organisations.⁵ The inclusion of the right to vote in the CRPD, described in article 29 as one form of political participation for people with disabilities, thus presented a valuable opportunity for these developing democracies to ratify the CRPD and utilise its standards in constructing an inclusive voting system.

By ratifying the CRPD in 2010 and incorporating it into its domestic law, Ethiopia established the CRPD as an essential element of its legal framework.⁶ Consequently, in 2019, Ethiopia issued a new Electoral Proclamation, which has received considerable praise for its increased disability inclusivity and compliance with the CRPD. However, the Proclamation has not yet been researched to determine the level of inclusion of persons with disabilities in the exercise of the right to vote. In this article, therefore, I will examine the provisions of the Proclamation relating to voting accessibility. I will analyse them against the CRPD standards to determine whether Ethiopia has in fact used the introduction of the CRPD into its domestic law as a golden opportunity to build an inclusive voting system.

The article is composed of four sections. Section 1 serves as an introduction, while section 2 delves into a comprehensive review of the accessible voting standards outlined in article 29 of the CRPD. Section 3 utilises these standards as a reference point to evaluate the voting provisions specified in Ethiopia's Electoral Proclamation. Consequently, section 3 points out the shortcomings found in the Proclamation's provisions relating to the exercise of the voting rights of people with disabilities, highlighting their non-compliance with the CRPD. Finally, the article concludes with section 4, which provides recommendations.

2 UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol 999, p 171.

3 J Lord 'Preamble' in I Bantekas et al (eds) *The UN Convention on the Rights of Persons with Disabilities: A commentary* (2018) 12.

4 The UN General Assembly, Convention on the Rights of Persons with Disabilities, 24 January 2007, A/RES/ 61/106 (2007) (CRPD).

5 UN Treaty Body Database 'Treaty ratification status' https://treaties.un.org/pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-15&src=IND (accessed 30 August 2023).

6 UN Treaty Body Database 'Treaty ratification status of Ethiopia' https://treaties.un.org/pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-15&src=IND (accessed 30 March 2023).

2 The right to vote and the CRPD: Setting the scene

People with disabilities, who make up 15 per cent of the world's population,⁷ have been prevented from exercising the right to political participation, such as the right to vote, due to the accessibility barrier that existed until recently and is still prevalent in many ways.⁸ On the other hand, given that it is the only binding convention covering all people with disabilities, the CRPD forbids any discrimination against or exclusion of people with disabilities based on their disability.⁹ It states that people with disabilities should enjoy all human rights, including their political rights, on an equal basis with people without disabilities, devoid of being discriminated against due to their disabilities.¹⁰ In particular, article 29 is an article that is intended to overcome the barriers of accessibility that people with disabilities face in connection with voting and other types of political participation.¹¹

2.1 Exploring article 29: Insights on the right to vote

The relevant section of article 29 is reproduced below. The chapeau and Paragraph 'a' of article 29 therefore read as follows:

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

- (a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
 - (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
 - (ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

7 World Health Organization 'World report on disability' (2011) <https://apps.who.int/iris/handle/10665/44575> (accessed 20 March 2023).

8 C Pyaneandee *International disability law: A practical approach to the United Nations Convention on the Rights of Persons with Disabilities* (2019) 108.

9 JE Lord et al 'Facilitating an equal right to vote for persons with disabilities' (2014) 6 *Journal of Human Rights Practice* 115 at 118.

10 Arts 3(b), 5 and 29 of the CRPD.

11 As above.

- (iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice.

Building on its predecessors the UDHR (article 21) and the ICCPR (article 25), article 29 of the CRPD provides for the right to political participation of persons with disabilities. Of course, one of the guiding principles that permeate the Convention is full and effective participation.¹² Consequently, the right to vote is one of the most important types of political participation. However, the right to vote, unlike those previously recognised by previous human rights instruments, does not exist here in the absence of additional measures tailored to the unique circumstances of people with disabilities. With the right to vote, State Parties are required to ensure that 'voting procedures, facilities, and materials are appropriate, accessible, and easy to understand and use'. They are required to recognise and use alternative voting arrangements, where appropriate. The right for voters with disabilities to be assisted by an assistant of their choice is also widely recognised. Article 29 thus requires member states to establish a system in which people with disabilities can actively participate in politics and other public affairs and ensure that they are able to use their right to vote on an equal basis with others.

The general principles of personal autonomy, non-discrimination, diversity, equal opportunity, inclusion, and participation stated in article 3 are an additional shield against any discrimination and exclusion while exercising the right to vote.¹³ Article 5, which prohibits discrimination and exclusion on the basis of disability, stipulates that the necessary accommodation should be provided to people with disabilities when they exercise any of their human rights, including the right to vote.¹⁴ For example, article 29 of the CRPD requires that a person with a disability should be provided with voting accommodation if they face any impediment to voting due to their disability.¹⁵ In addition to the provision of reasonable accommodation for each voter with a disability upon request, article 9 obliges governments to take preliminary accessibility measures before people with disabilities can exercise their right to vote.¹⁶ To put it another way, a reasonable accommodation must be provided to a voter with a disability if the accessibility measures already taken in accordance with article 9 are not found to be sufficient to solve the voter's impediments.¹⁷

12 For example, arts 3(c) & 4 of the CRPD.

13 Lord et al (n 9) 118-120.

14 Art 5(3) of the CRPD.

15 Art 29(a)(i) and (ii) of the CRPD.

16 Paras 25 and 26 of the Committee on the Rights of Persons with Disabilities, General Comment 2 (2014), Art 9: Accessibility, 11 April 2014, UN Doc CRPD/C/ GC/2 (2014).

17 As above.

As articles 29 and 9 are broad in content, the accessibility measures can range from physical to communicational, from informational to legal.¹⁸ For instance, it is the duty of the governments to ensure that election-related messages, election campaigns, party documents, ballot papers, and others are prepared for the blind and other print-disabled voters in alternative formats.¹⁹ Similarly, in order for voters with hearing impairment to make informed choices about policy options, election messages, party documents, election campaigns, and the like, must be prepared in sign language, and a system must be established that allows a sign language interpreter to be present during voter registration and voting.²⁰ If election-related technologies are employed, it is the government's duty to ensure that the machine is accessible, that any person with a disability can vote in secrecy and so forth.²¹ Not only the location of the polling stations, but also the doors and interiors of the stations, the hallways, the polling booth where a voter can cast his vote secretly, and the height of the writing desk for voters who use a wheelchair, should be totally reachable and accessible.²² Also, given the variety of disabilities and their severity, it may be practically difficult to make all polling stations 100 per cent accessible, so legally designing alternative voting methods, such as the right to vote by mail, is interpreted as another duty.

2.2 The right to vote and legal capacity of persons with disabilities

The right to vote and the right to legal capacity are very closely related. The existence of the former depends on the existence of the latter. Consequently, article 12 recognises that people with disabilities are equal to others before the law, that they have legal capacity, and that they can perform tasks that have legal effects in their capacity.²³ Therefore, since voting is one of the activities that have legal effect, its effectiveness draws on this article.

Unlike the ICCPR,²⁴ the CRPD does not set special circumstances in which a person with a disability's right to be recognised as a person before the law is denied or his right to vote can be limited. In other words, when articles 12 and 29 are read together, people with disabilities, including

18 R Cera 'Article 29 (Participation in Political and Public Life)' in VD Fina et al (eds) *The United Nations Convention on the Rights of Persons with Disabilities: A commentary* (2017) 533-534.

19 Lord et al (n 9) 118-120.

20 As above.

21 As above.

22 As above.

23 Art12(1) and (2) of the CRPD.

24 Para 4 of the Human Rights Committee, General Comment 25 (1996), Art 25: The right to participate in public affairs, voting rights and the right of equal access to public service, 27 August 1996, UN Doc CCPR_C_21_Rev.1_Add.7 (1996).

those with mental disabilities, have the right to vote and be elected on an equal basis with everyone else.

The CRPD Committee also reaffirms that, in its General Comment 1 on article 12, a person's status as a person with a disability, including a mental one, can in no way serve as ground to deny the right to vote provided for in article 29.²⁵ In *Zsolt Bujdosó v Hungary*, the Committee emphasised that article 29 of the CRPD compels State Parties to ensure the effective and full participation of persons with disabilities in political and public life, on an equal basis with others.²⁶ This includes guaranteeing their right to vote. The Committee further highlighted that article 29 of the CRPD does not permit any reasonable restrictions or exceptions for any specific group of individuals with disabilities.²⁷ Consequently, the Committee determined that excluding the right to vote based on perceived or actual mental disabilities, even through individualised assessments, constitutes disability discrimination under article 2 of the CRPD.²⁸

Similarly, the Committee expressed its concerns about such restrictions and their impact on the political rights of persons with disabilities in several concluding observations on initial State Party reports.²⁹ Consequently, it urged State Parties to the CRPD to take necessary measures to eliminate these restrictive practices. Be that as it may, conflating legal capacity with mental capacity, a majority (about 80 per cent) of countries in the world³⁰ have continued restricting or depriving the right to vote of persons with mental disability simply on the basis of the diagnosis of a disability (status approach), where a person makes a decision that is considered to have negative consequences (outcome approach), or where a person's decision-making skills are considered to be deficient (functional approach).³¹ As I will explore in later section, Ethiopia's situation is not different from that of these countries.

2.3 The right to receive voter assistance

It is also required of State Parties to facilitate the conditions for any voter with a disability to be assisted by an assistant of their choice during voter

25 Paras 7, 13, 31 and 48 of the CRPD Committee, General Comment 1 (2014), Art 12: Equal recognition before the law, 11 April 2014, UN Doc CRPD/C/GC/1 (2014).

26 Communication 4/2011, views adopted on 9 September 2013.

27 Communication 4/2011, para 9.4.

28 As above.

29 Example CRPD Committee, Concluding Observations on the Initial Report of Ethiopia, 3 November 2016, UN Doc CRPD/C/ETH/CO/R.1 (2016) para 64; CRPD Committee, Concluding Observations on the Initial Report of Uganda, 12 May 2016, UN Doc CRPD/C/UGA/CO/1 (2016) para 56; CRPD Committee, Concluding Observations on the Initial Report of Kenya, 30 September 2015, UN Doc CRPD/C/KEN/CO/1 (2015) para 51.

30 D Bhugra et al 'Mental illness and the right to vote: a review of legislation across the world' (2016) 28 *International Review of Psychiatry* 395 at 396-399.

31 Para 29 of General Comment 1.

registration or on voting day.³² The assistant chosen by the voter may be the one assigned by the government or brought by the voter themselves, depending on the voter's preference.³³ This is an extension of the supported-decision making recognised in article 12 of the CRPD, which presumes that 'all people enjoy legal capacity and governments must take actions to provide people with access to the supports they need and want to make their own life decisions'.³⁴

Neither the text of the CRPD nor the Committee in its General Comment 1 on article 12 defines 'supported' decision-making; nor does it introduce an acceptable type thereof, reflecting the fact that there is no single agreed-upon definition of the concept.³⁵ As Kanter rightly put it, supported decision-making recognises that

all people have the right to make decisions and choices about their own lives, while also acknowledging that, at times, people with disabilities, just like anyone else, may seek and need help from family and friends in making their decisions.³⁶

Hence, in supported decision-making, the assistant helps the person come to a decision and/or carry it out on their own, but they are not allowed to make the decision on their behalf.³⁷ In supported decision-making, the person seeking support is always the primary decision maker.³⁸ It should be emphasised, however, that regardless of the degree of support required, supported decision-making enables the individual to maintain legal capacity.³⁹

Support can be provided in a number of ways and forms.⁴⁰ Family members and friends of the person with a disability, organisations of and for persons with disabilities, government employees, private agreement, volunteers, and many other alternatives to substituted decision-making will likely be the appropriate sources of support.⁴¹ It is therefore up to State Parties to develop a variety of models of supported decision-making with special attention to different disability types and local contexts.⁴²

32 Cera (n 18) 534-535.

33 As above.

34 D Plessis & J Njau 'Article 29 participation in political and public life' in I Bantekas MA Stein & D Anastasiou (eds) *The UN Convention on the Rights of Persons with Disabilities: A commentary* (2018) 858.

35 T Ryan, A Henderson & W Bonython 'Voting with an unsound mind: A Comparative study of the voting rights of persons with mental disabilities' (2016) 39 *University of New South Wales Law Journal* 1038 at 1042.

36 AS Kanter *The development of disability rights under international law: From charity to human rights* (2015) 266.

37 As above.

38 Ryan, Henderson & Bonython (n 35).

39 As above.

40 NA Kohn 'Supported decision-making: A viable alternative to guardianship' (2016) 117 *Pennsylvania State Law Review* 1111 at 1121.

41 As above.

42 Ryan, Henderson & Bonython (n 35) 1043.

Article 29 of the CRPD addresses the right to vote by all persons with disabilities and the right to be provided with support in exercising the right. No person with a disability, because of their disability type, is discriminated against from enjoying the right to vote.⁴³ Hence, people with disabilities have an unencumbered right to vote on an equal basis with others, and all the necessary support should be provided for them to exercise their right to vote and access all voting procedures on an equal basis with others.⁴⁴ To this end, article 29, para (a)(iii), of the CRPD reiterates the concept of support from the perspective of voting, which has to be allowed, where necessary, to facilitate the exercise of the right to vote.⁴⁵ This reiteration is consistent with the idea of supported decision-making under article 12, which, by acknowledging the legal capacity of people with disabilities on an equal footing, calls on State Parties to take the necessary steps to assist people in using that capacity.⁴⁶

A person's support for exercising the right to vote by persons with disabilities must be based on their own will and preferences, not on what the support provider perceives to be in their own best interests.⁴⁷ States parties have a duty to take into account the support provider a voter chooses to use in exercising their right to vote and to put safeguards in place to make sure that person follows the individual's will and preferences.⁴⁸ The next section will assess the degree of inclusivity of the Ethiopian Electoral Proclamation with regards to voters with disabilities in comparison to these CRPD standards.

3 Voting accessibility in Ethiopia's new electoral proclamation: A critical assessment

As mentioned earlier, Ethiopia is among the first countries to sign and ratify the CRPD. However, it currently lacks a comprehensive disability law similar to Kenya or Uganda's 'Persons with Disabilities Act',⁴⁹ which would facilitate the effective implementation of the CRPD. Presently, it only has two smaller laws, namely The Right to Employment of Persons with Disability Proclamation 568 of 2008, and The Exemption of Vehicles' Custom Duty for Persons with Disabilities Directive 41 of 2007, which address specific issues pertaining to disability rights. Except these two

43 Para 44 of General Comment 1.

44 As above.

45 Plessis and Njau (n 34).

46 As above.

47 Articles 12(4) and 29(A)(III) of the CRPD; Cera (n 18) 534-535.

48 As above.

49 Kenya's Persons with Disabilities Act 14 of 2003 and Uganda's Persons with Disabilities Act 3 of 2020.

specific laws, provisions related to people with disabilities are found scattered throughout various proclamations, regulations, and directives.⁵⁰

Scattered provisions that seem to address persons with disabilities can even be found in earlier laws enacted in the 1960s, such as the Civil Code of 1960 (articles 339 to 379, article 2437 and article 1728(3)), which specifically address the issue of legal capacity for certain categories of individuals with disabilities. In a similar vein, recent laws, if not all, also include one or two articles or sub-articles that touch upon disability rights. The Electoral Proclamation, along with its implementing directives, falls under this category of laws.

This Proclamation is one of the laws drafted by the Advisory Council on Justice and Legal Affairs established by Directive 1/2018 under the former Federal Attorney General and current Ministry of Justice, following the coming to power of the current Prime Minister Abiy Ahmed. Compared to previous similar laws, the Proclamation has gone a long way in considering people with disabilities in a number of provisions. It contains more than ten articles that try to address the issue of persons with disabilities in voter registration and voting provisions. The participation of representatives of people with disabilities in the drafting process of the Proclamation, as evidenced by the minutes and explanatory notes of the law, has contributed to this outcome. However, it is important to note that the articles within the Proclamation that pertain to persons with disabilities may not fully encapsulate the intended inclusivity. Therefore, in the following discussion, I will first assess whether accessible polling places and alternative voting arrangements have been fully established and mandated. Secondly, I will investigate whether the right to obtain a voter's assistant is incorporated in alignment with the CRPD. Lastly, I will analyse the removal of disability-based voting restrictions.

3.1 Access to polling stations and alternative voting methods

The Proclamation currently has no provisions in place that specifically address alternative voting arrangements for persons with disabilities. Furthermore, the provisions addressing polling accessibility are insufficient in both number and content. Article 15(1) of the Electoral Proclamation reads: 'The Board shall establish polling stations at locations that take into consideration the special conditions of the disabled and other factors.'

This provision was on which many hopes were placed at the time of drafting, in terms of making polling stations fully accessible for people with

50 In Ethiopia, 'Proclamations' are laws issued by the parliament, while 'Regulations' are issued by the Council of Ministers, and 'Directives' are laws issued by ministerial offices or other enforcing bodies.

disabilities. However, the provision does not meet the minimum standard set by the CRPD.

First, the content of the provision is just about the location of the polling stations and not about their overall accessibility. The purpose of the provision is to allow polling stations to be established on the sides of major roads or to be opened in facilities such as 'Kebeles (the lowest administration point)' that are frequently used by the public. Of course, polling places are usually set up along roads and close to, or within, public institutions, even though the provision does not make it mandatory.

But the biggest barrier for voters with disabilities is not getting to the polling station. The biggest barriers lie at the entrance and interior of the stations. The entrance to the stations may be too rocky and bumpy, with one or more flights of stairs devoid of an elevator, an open canal in the midst, or too narrow to accommodate a wheelchair. Somehow, even if the entrance barrier is overcome, the interior may be rugged, the hallways may be rife with columns and unduly stationary staff; polling booths may not be wheelchair accessible; the voter may not be able to move their wheelchair in it; the ballot-writing desk may exceed the height of the wheelchair user; or the booth may be too narrow for the voter to enter and vote with an assistant. All these barriers are not contemplated by article 15(1).

Second, this provision, apart from looking at accessibility of polling places only in terms of location, seems to be permissive, not mandatory. The phrase, 'take into consideration the special conditions of the disabled' is itself indicative of the non-commitment of the Proclamation. It should have clearly used terms that denote obligations such as, 'guarantee or ensure' instead.

'Accessibility' is one of the principles of the CRPD that has a strong foundation in the Convention.⁵¹ By contrast, the use of the phrase 'take into consideration the special conditions of the disabled' not only dilutes the force of the law to comply with the principle of accessibility, but turns out to be a phrase open to different interpretations.

The Sixth National Election in 2021 served as a clear indication of the inadequacy of this provision. Polling places were found to be inaccessible in many electoral districts, regardless of whether they were urban or rural. Many of these locations required navigating strenuous stairs, crossing dangerous pits, or traversing rugged terrain. Additionally, most voting booths were not suitable for disabled voters to stand alone, let alone with an assistant.

51 Arts 3(f) and 9 of the CRPD.

Fortunately, a non-governmental organisation for persons with disabilities, through a project coordinated by the author, made ten polling places accessible and handed them over to the Electoral Board as samples. However, due to various reasons such as time and budget constraint, the board could not use the samples and replicate this accessibility in other polling places. To make matters worse, since most of the polling places were located in facilities owned by civil societies (both formal and informal), schools, and the like, they did not allow modifications for accessibility purposes. The lack of a strong and binding provision made it difficult to take specific action to address these issues.

Article 15(5) of the Proclamation reads: ‘hospitals shall not serve as a place where voter registration and voting take place.’

As per this provision, polling places cannot be located within medical institutions. Indeed, it may not be odd to declare that medical institutions are not used as polling stations. However, there are a number of considerations such as introduction of alternative voting methods that must be taken into account when imposing such a ban on medical institutions.

During voter registration and on election day, thousands of patients spend the night in hospitals.⁵² For example, in Ethiopia, where there is a severe shortage of hospital beds, there were 26 725 total hospital beds in March 2021, which is immediately before the sixth national election of June 2021. Within this patient population, it is essential to recognise that individuals with disabilities may be present, necessitating ongoing follow-up for their specific disabilities or seeking treatment for common illnesses. Assuming that all beds were occupied and that all patients were eligible to vote, it implies that the 26 725 patients, including patients with disabilities, were unable to exercise their right to vote, thus creating a de facto disability-based voting restriction.

Equally problematic are the provisions of the Proclamation that make physical presence mandatory for voting and registration. As stated in articles 5(4), 20(1) and 50(1) of the Proclamation, registration and voting can only be done in person. This type of provision excludes from voting hospitalised patients and people with severe disabilities who do not travel far from their homes.

Although the alternative voting method would be a feasible solution, it seems that such methods are not currently permitted in the Proclamation. In many countries that have ratified the CRPD, alternative voting methods are allowed, so in-patients and people with disabilities, irrespective of the type or severity of their disability, can exercise their right

52 Federal Ministry of Health of Ethiopia ‘Total number of beds’ (March 2021).

to vote on an equal basis with others. Unfortunately, the Proclamation does not provide for such alternative voting arrangements.

Article 17(1) and (2) provides that:

The [Board may decide that] military who live in camps; civil servants and their family members; citizens attending higher learning institutions; internally displaced citizens; incarcerated citizens whose voting rights have not been stripped off ... to allow them to register and vote earlier than the election day ...

Basically, this type of alternative voting method is known as early voting.⁵³ Other countries use it more widely for voters with disabilities.⁵⁴ A voter with a disability may not be able to go to the polling station on the very election day and vote due to the absence of a voting assistant or other reasons related to the disability. In particular, a person with a disability who requires medical attention may have a medical appointment on election day. Many people with disabilities may choose not to vote because of the limitations imposed by their disability, even if they have an incumbent right to vote. With this in mind, early voting is used as one of alternative voting methods for people with disabilities, but it is not designed to serve people with disabilities in the Ethiopia's voting law.

Article 17(3) provides that:

The Board shall conduct a study and submit same to the House of Peoples' Representatives for a decision on a special procedure to enfranchise citizens residing abroad or for those who cannot vote in their residence for other reasons.

The alternative voting method contemplated by this provision is known as absentee voting.⁵⁵ This type of alternative method allows voting through methods such as the mail and the Internet. In countries such as the United States, the majority of voters with disabilities cast their votes through this method.⁵⁶ However, it is unclear whether the provision in our case also applies to people with disabilities who are living near polling places but cannot reach these due to their severe disabilities.

This provision will be implemented by issuing an implementation directive after the Board has conducted the necessary research and submitted it to Parliament for approval. Since the directive has not been issued yet, it may be a good option to pressurise the board to unequivocally

53 H Wass et al 'Voting while ailing? The effect of voter facilitation instruments on health-related differences in turnout' (2017) 27 *Journal of Elections, Public Opinion and Parties* 503 at 504-508.

54 As above.

55 As above.

56 L Schur, M Ameri & M Adya 'Disability, voter turnout, and polling place accessibility' (2017) 98 *Social Science Quarterly* 1374 at 1375.

include people with disabilities when it will introduce the method of absentee voting.

Moreover, polling stations are usually numerous in nature. They are usually temporary and variable. Worse yet, in many countries, they are not owned or controlled by the election administering institutions, such as the National Electoral Board of Ethiopia.⁵⁷ These features present a challenge to countries seeking to simultaneously ensure accessibility across all polling stations. Because of this, other countries have designed alternative methods of voter registration and voting and incorporated them into their voting laws to allow their citizens with disabilities to participate in elections on an equal basis with their citizens without disabilities.

Among these alternative voting methods are curbside voting, proxy voting, absentee voting, homebound voting, and phone voting.⁵⁸ None of these alternative voting methods, or other methods not mentioned in this piece, are recognised by the new Electoral Proclamation for voters with disabilities. As a result, it is currently less likely for Ethiopians with disabilities to be able to vote on an equal basis with others, which is against the CRPD.

Ensuring the accessibility of the ballot paper and voting technology is another crucial aspect that enables voters with disabilities to cast their votes effectively, independently, and confidentially. Various ways can ensure ballot paper accessibility, including the use of high-contrast colors between the background and text or employing large fonts and clear fonts to make ballot papers easier to read for voters with visual impairments.⁵⁹ Tactile ballot papers can also be created for blind or visually impaired voters, and audio assistance can be provided to help them cast their votes independently by using an audio player to hear instructions and ballot choices.⁶⁰ Accessible electronic voting machines such as 'Express Vote' in the United States and online voting systems are other examples.

The Proclamation does not provide provisions for the development of accessible ballot papers or the immediate implementation of accessible voting technology. While it promised the possibility of issuing directives regarding the use of technology for voter registration, voting, and vote counting in the future,⁶¹ it totally lacks provisions that address the accessibility of the ballot paper. At the very least, the Proclamation ought to have included a provision authorising the board to create an accessible

57 See eg United States Government Accountability Office 'Voters with disabilities: Observations on polling place accessibility and related federal guidance' (2017) <https://www.gao.gov/assets/gao-18-4.pdf> (accessed 21 August 2023).

58 Wass et al (n 53) 504.

59 US Electoral Commission 'Ensuring that voting is accessible' <https://www.electoralcommission.org.uk> (accessed 28 August 2023).

60 As above.

61 Arts 29(3) and 51(8) of the Electoral Proclamation.

ballot paper in upcoming elections, as it promised with regards to the use of voting technologies.

The expected directives concerning the use of voting technologies have not been issued yet, before issuing those directives, it's crucial to raise awareness among all involved parties, including the board, and educate them about inclusive and accessible voting technologies. This awareness campaign will enable the board to issue inclusive directives, taking into account accessible voting technology, that adhere to the minimum standards set by the CRPD.

3.2 Giving priorities and voter's assistants

The Proclamation includes a provision granting priority to disabled voters in case of line-ups during voter registration or voting. Furthermore, it states that voters with disabilities are entitled to receive support from a Voters' Assistant whenever needed.

Article 52. Voters Who Need Assistance

- (1) The disabled ... shall be given priority during registration as well as voting. 2/ Any voter who needs assistance to put a mark on his ballot paper and insert it into the ballot box has the right to select his own assistant. 3/ Notwithstanding the provision of Sub-Article (1) of this Article, the person selected by the voter requiring assistant shall be of 18 years old or above ...

This provision is an admirable provision in many respects. Depending on the type of disability they have, saving a voter or registrant with a disability from waiting in line will have numerous affirmative effects. On the one hand, there are many people with disabilities whose disabilities do not allow them to stand for extended periods of time. These people will be placed under pressure to relinquish registering or voting when they are kept in a line for several minutes or hours. Priority, on the other hand, encourages volunteers who are driven to genuinely assist the voter or registrant with a disability. As a result, it encourages people to continue lending hands and to quickly reach out to a number of people who seek assistance. By contrast, it is equivalent to telling a volunteer not to offer voluntary assistance if they are instructed to wait for hours with the individual they are assisting.

Using assistance of their choice by voters with disabilities, as described in sub-article 2, is one of the electoral period accommodations emphasised in the CRPD.⁶² However, I find this provision problematic in many ways.

62 Article 29(a)(iii) of the CRPD.

The first problem is that sub-article 3 states that the assistant must be at least 18 years of age. Except for those, such as election officers, who are legally bound to execute additional responsibilities, the assistant is solely responsible for providing support and is not involved in any decision-making on the voter's behalf. According to article 12 of the CRPD, supported-decision-making arrangements are necessarily based upon and guided by the individual's will and preference in the context of particular circumstances.⁶³ Subsequently, the assistant is not to decide or suggest the voter's preference or to analyse the policy beyond facilitating the situation. A voter needs an assistant just to provide him with support against the barriers he encounters in his efforts to exercise his right. It is the voter himself who knows and decides who to vote for. The assistant's job is to provide support under the direction of the voter or to facilitate the conditions for the voter's decision. It is not appropriate to stipulate 18 years of age as a minimum age requirement for this type of support, which does not require the assistant to choose and decide.

Second, establishing a minimum age of 18 to provide assistance could prevent voters with disabilities from seeking assistance from their 16- or 17-year-old children, who could otherwise help them feel more confident about maintaining the secrecy of their vote. Voting is confidential in nature. A person trusts his 16- or 17-year-old child more than their 30-40-year-old social friend. Furthermore, 'trust' of the assistant by the party seeking the assistance serves as the foundation for supported decision-making under article 12(3) of the Convention.⁶⁴ Hence, by barring a voter from receiving assistance from their 16- or 17-year-old child solely based on age requirements, they may be deprived of the opportunity to rely on someone they trust deeply to safeguard the secrecy of their vote.

A related problem with this is that there is no provision to prevent a voter's assistant from divulging voting secrets after providing voting assistance. Article 12(4) of the CRPD provides that states parties must provide appropriate and effective safeguards to prevent abuse in supported decision-making.

The voting assistant should be prohibited from disclosing who the voter voted for inside or outside the polling place. Otherwise, the right of a voter with a disability who needs voting assistance to cast a secret ballot will remain at risk.

For example, some countries, such as Uganda, have adopted strong safeguards in their voting laws. According to the Ugandan Parliamentary Elections Act of 2005, a person who assists a blind, illiterate, or other voter with disability to vote shall not communicate at any time to another person

63 P Blanck 'Supported decision-making: emerging paradigm in research, law, and policy' (2021) 34 *Journal of Disability Policy Studies* 3 at 2.

64 Kanter (n 36) 237.

information as to the candidate for whom the assisted voter intends to vote or has voted, or as to the number, if any, on the ballot paper given for the use of that voter.⁶⁵ An assistant who contravenes this provision is punishable by a fine not exceeding 24 currency points, imprisonment not exceeding one year, or both.⁶⁶

Given its recent adoption and the lessons it could draw from its preceding counterparts, the Proclamation must have contained provisions similar to those in Uganda's voting laws that prevent voting assistants from divulging the secrecy of votes cast by voters with disabilities. Unfortunately, however, no provision of the Proclamation provides similar protections for voters with disabilities who require assistance.

Thirdly, as argued above, the task of a voter assistant is to provide the support needed for the voter with a disability to exercise his/her right to vote. They are not authorised to make decisions or enter into contracts on behalf of the voter. They are only responsible for providing support at the polling station.

On the contrary, The Ethiopia's Labour Proclamation stipulates that children can be employed from the age of 15.⁶⁷ Those minority children who are employed pursuant to this law are here concluding a contract and making an independent decision on behalf of another. Therefore, there is no legal justification for prohibiting a child who, according to the Labour Proclamation, has the capacity to make independent decisions or represent an employer in a contract, from providing support during an election, as it only reflects the inconsistencies in the country's laws.

Fourth, as stated in article 26(4) of the Voting, Counting and Result Declaration Directive 14/2013, one assistant can only assist one voter.⁶⁸ This in itself is contrary to the right of using an assistant of one's choice under the CRPD and is a provision that has not been considered very well. According to this provision, two blind couples are forced to use a third party instead of their 20-year-old son. In terms of sharing secrets, maintaining trust, being comfortable with the support, freely requesting what they want, and so on, voters with disabilities may not experience, from third parties, the level of independence and comfort they may get from their own children. However, under this provision, voters with disabilities who are family members cannot exercise their right to vote with the assistance of their mutual sibling, child, or close mutual friend.

65 Art 7(3) of The Uganda's Parliamentary Elections Act of 2005.

66 Art 7(5) of The Uganda's Parliamentary Elections Act of 2005.

67 Art 89 of The Ethiopia's Labour Proclamation 1156 of 2019.

68 There are around 30 directives issued to enforce various provisions of the electoral proclamation. They contain certain provisions related to voting accessibility.

Fifth, according to the Voter Registration Implementation Directive 6/2013, article 22(4), if a voter with a disability needs assistance, the chief election officer must recruit a volunteer from among the voters who came for registration to assist the voter. This provision makes the voter's right to register dependent on the propensity and will of a third party to assist or not to assist. Such a type of discharge of one's duty by a State Party under a human rights convention is unacceptable under any human rights justification.

First, there may not be another registrant at the time of the voter with a disability seeking support. Second, even if there is another registrant, they may not be willing to support it for various reasons. Third, since the source of the support obtained in this way is not a right but a grace, it will inevitably cause a psychological wound to the recipient. Fourth, as per article 26(5) of the Voting, Counting and Result Declaration Directive 14/2013, if the support seeker does not bring his assistant during the voting day, it is only the chief election officer who is required to provide support. No justification can be given as to why the officer who provides support on voting day should not provide the same support during registration. Furthermore, granting the right to choose an assistant akin to the voter with a disability to an election officer or a third party poses concerns and may contradict the CRPD.

3.3 Disability-based voting restrictions

The Proclamation has also included several provisions pertaining to individuals with mental disabilities and their capacity to vote. Articles 18(3)(a), 28(1) and 31(1)(f) of the Proclamation stipulate that a person with mental disorder or who is 'insane' (the language used by the Proclamation) does not have the right to vote or be elected. Such a prohibition not only contradicts the CRPD but also causes many problems of interpretation and implementation.

Chapter three of Title II of the Civil Code (a proclamation enacted in 1960) addresses the capacity of, using the law's terminology, 'insane persons and infirm persons'.⁶⁹ This chapter is, however, rife with provisions, concepts and terms that directly run afoul of the CRPD.

Although all people with disabilities, including those with mental disabilities, have a complete and unencumbered right to legal capacity, the Committee makes it clear that State Parties unduly conflate the concept of legal capacity with that of mental capacity and deny people with mental disabilities their rights, including the right to vote.⁷⁰ The denial may take any of the following forms:

69 Art 339 of the Ethiopia's Civil Code Proclamation 165 of 1960.

70 Para 15 of General Comment 1.

Diagnosis of a disability (status approach), or where a person makes a decision that is considered to have negative consequences (outcome approach), or where a person's decision-making skills are considered to be deficient (functional approach).⁷¹

The Civil Code adopts outcome and functional approaches for 'notorious' and 'not notorious' persons with mental disabilities respectively as the principal modes of restricting their right to legal capacity⁷² while status approach is adopted as exceptions to the two principal approaches to be employed by court only where their health and their interest so require.⁷³ All of them are, however, replaced by 'a universal approach' and a 'supported decision-making model', with the latter taking different forms.⁷⁴ Furthermore, the Code employs outdated and derogatory terms to refer to persons with various disabilities.⁷⁵

The Proclamation, enacted in 2019, conflicts with the CRPD even more than the Civil Code does. It is more stringent than the Civil Code when it comes to prohibiting individuals with mental disabilities from exercising their right to vote. Worse than the Civil Code, it prohibits persons with mental disabilities from voting or running for office, on the basis of their diagnosis.⁷⁶ Only judicial interdiction results in the automatic denial of rights under the Civil Code.⁷⁷ According to the Proclamation however, anyone, for example, who is medically diagnosed as mentally ill, has no right to vote or run for office.⁷⁸

The Committee, in its Concluding Observations on the Initial Report of Ethiopia in 2016, recommended that the Ethiopian government take all legislative and other measures to guarantee the political rights of persons with disabilities, in particular persons with mental disabilities, including by removing any restrictions on the exercise of political rights, in law or in practice.⁷⁹ However, in its second and third periodic report submitted to the Committee on 9 January 2023, the Ethiopian government reiterated what the Proclamation provides under articles 18(3)(a), 28(1), and 31(1)(f), that persons with mental disabilities are still not able to vote or be voted for if proven unfit by medical evidence.⁸⁰

71 As above.

72 Arts 343 and 347 of Ethiopia's Civil Code.

73 Art 351 of Ethiopia's Civil Code.

74 Paras 8 and 25 of General Comment 1.

75 See for example arts 339-379 of Ethiopia's Civil Code.

76 Arts 18(3)(a), 28(1) and 31(1)(f) of the Electoral Proclamation.

77 Art 351 of Ethiopia's Civil Code.

78 Art 31(1)(f) of the Electoral Proclamation.

79 Concluding Observations on the Initial Report of Ethiopia (n 29).

80 CRPD, Combined Second and Third Report of Ethiopia submitted by Ethiopia under article 35 of the Convention, due in 2020, 9 January 2023, UN Doc CRPD/C/ETH/2-3 (2023) para 54 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FETH%2F2-3&Lang=en# (accessed 21 August 2023).

Moreover, the Proclamation, worse than the Civil Code, employs outdated and derogatory terms to refer to persons with mental disabilities.⁸¹ The CRPD does not recognise nor accept this denial of right to vote and derogatory terms to refer to persons with disabilities.⁸²

The Committee, in its Concluding Observations on the Initial Report of Ethiopia, had recommended that derogatory terms, such as ‘insane’ as provided by the Civil Code, be avoided when referring to people with disabilities in existing and new laws.⁸³ Consequently, in its Second and Third Periodic Report of 2023, the Ethiopian government reported that although the civil code has not yet been fully revised due to technical reasons, the use of these derogatory terms to identify people with disabilities has been avoided in current policy documents and legislation.⁸⁴ However, as can be seen in articles 18(3)(a), 28(1), and 31(1)(f), the new Electoral Proclamation continues to use derogatory terms such as ‘mental disorder’ or ‘insane’ to identify people with mental disabilities.

4 Conclusion

Ethiopia currently lacks a comprehensive disability law to aid in the implementation of the CRPD. Nonetheless, it is worth noting that numerous proclamations in the country, if not all, incorporate one or two articles or sub-articles that address disability issues. The Electoral Proclamation is one such law, as it includes over ten articles or sub-articles specifically related to voters with disabilities. The Proclamation regarding the right to vote is thus a step in the right direction for ensuring that people with disabilities have full and equal access to the electoral process. However, there are still many loopholes that need to be addressed in order to fully comply with the CRPD and ensure full inclusion.

Specifically, the Proclamation has no provision requiring polling places to be fully accessible. Moreover, the Proclamation does not guarantee accessible ballot papers or voting technologies. This can create significant barriers for people with disabilities, who may not be able to vote independently or in secret.

Worse yet, alternative voting methods, which are asserted to be the choice of most disabled voters, are totally banned. The voting assistance provisions are poorly thought out and contradictory. This may ultimately lead to a de facto disability-based voting restriction.

81 Arts 28(1) and 31(1)(f) of the Electoral Proclamation.

82 Paras 7, 13, 31 and 48 of General Comment 1.

83 Concluding Observations on the Initial Report of Ethiopia (n 29) para 6.

84 Combined Second and Third Report of Ethiopia (n 80) para 6.

Additionally, some provisions impose disability-based voting restrictions on individuals with mental disabilities, which is discriminatory and violates the CRPD. The Proclamation even employs derogatory terms to refer to persons with disabilities. In order to be in compliance with the CRPD, it is, therefore, necessary to reform voting laws and policies to ensure they are inclusive and do not impose unnecessary barriers for people with disabilities. The reform may include:

- (i) Requiring polling places to be fully accessible;
- (ii) Introducing a variety of alternative voting arrangements;
- (iii) Guaranteeing accessible ballot papers and voting technologies;
- (iv) Removing disability-based voting restrictions;
- (v) Eliminating derogatory terms from voting laws and policies; and
- (vi) Reformulating the provisions of the voter's assistant to align with the will and preferences of the voter.

It is also important to ensure that people with disabilities are involved in the design and implementation of these reforms. This will help to ensure that the reforms are truly inclusive and meet the needs of people with disabilities. By taking these steps, it is possible to ensure that people with disabilities have full and equal access to the electoral process, and that they can participate fully in building process of inclusive democracy, as required by the CRPD.

Finally, this piece is not expected to uncover all the gaps in the Proclamation that violate the CRPD. Instead, it is intended to serve as a catalyst for further research in order to identify and address additional inconsistencies between the Proclamation and the CRPD.