

Access to Justice for Persons with Hearing Impairment During Criminal Proceeding in Ethiopia: Legal Analysis and Challenges in East Hararge Zone Courts in Oromia Region

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Abstract: Ethiopia ratified Convention on the Rights of Persons with Disability in 2010. The Convention under article 13 provides rights of effective access to justice for persons with disabilities in an equal basis with others. The Ethiopian laws, policies and strategies to ensure the participation of persons with disabilities on an equal basis with others in the justice administration, including in their role as judges, witnesses, jurors, lawyers or any other active party is not effective in light with its obligation under the convention. For instance, the convention provides member states obligation to ensure effective access to justice for persons with disabilities, recognize and promote the use of sign languages. However, there exist no specific statute requiring for the mandatory appointment of sign language interpreters for accused with hearing impairment, they are not guaranteed to exercise their Constitutional right to be informed in their understanding sign language, confrontation and cross examine witness during criminal proceedings in Ethiopia. As Ethiopia has signed the Convention, it must refrain from acts which would defeat the object and purpose of the Convention to 'promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity' as envisaged from cumulative interpretation of preamble, objective, article 13 of CRPDs vis-a-vis Art. 18 of Vienna Convention on the Law of Treaties. The main objective of this article is to evaluate the compatibility of Ethiopian legal frameworks and judicial practices in study area vis-à-vis states obligation under CRPD to ensure effective access to justice for PwHI during criminal proceeding and forward a concrete recommendation. The author has employed doctrinal legal analysis and qualitative method of data collection to complete study in this article accordingly.

Keywords: Access to Justice, Persons with Hearing Impairment, Criminal Proceedings, Rights of Person with Disabilities

1. Introduction

The right of access to justice is explicitly or implicitly recognized under various international and regional human right instruments to which Ethiopia is a party.

The Universal declaration of human right (hereinafter UDHR), though not explicit, impliedly provides an elements of the right to access to justice [1]. The International convention on civil and political right (hereinafter ICCPR) also provides various substantive and procedural rights to ensure individual's right of access to justice in all stages of legal proceedings." [2]. It sets out a wide range of procedural due process rights for all without any kind of discrimination

based on invidious grounds.

Similarly, the African human rights systems also enshrines the fundamental right of everyone to fair trial [3]. All these instruments, related to access to justice, apply equally to persons with disabilities and ensure that they are entitled to the same protections and guarantees in equal basis with others to access justice during all legal proceedings.

Under article 2 para II of Convention on the rights of person with disability (hereinafter CRPD), Person with hearing impairment (hereinafter PwHI) are recognized as persons with disabilities within the contexts of "sensory

impairment" [4]. Access to justice for person with disability is for the first time enshrined under article 13 (2) of the CRDPD. It sets out elements of rights and thereby provides obligation of state parties requiring that "states shall ensure their *effective access to justice*" [4]. It provides a right for persons with disabilities and a duty for criminal justice personnel during enforcement of right holders effective access to justice.

However, bear in mind that the list illustrated in this article is open-ended, and the examples provided are not intended to be exhaustive.

As far as Ethiopian legal system is concerned, Ethiopia ratified Convention on the Rights of Persons with Disability [5]. The FDRE constitution under article 25 states "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law" [6]. It also under article 37 (1) stipulates that: "*Everyone's right to bring a justiciable matter to, and to obtain a decision by, a court of law or any other competent body with judicial power*" [6], being primary legal source to have been cited on the principle of access to justice in the country.

The government of Ethiopia on the report to CRPD committee recognizes that this principle should apply to persons with disabilities too [7]. Moreover, the various components of the rights are found in different sections of the Constitution as are in international human rights instruments.

The right of access to justice imposes upon States the obligation to set up all appropriate legal and institutional frameworks that enforce claims of violations of rights. Specifically, States have the obligation to adopt appropriate legislations; establish competent judicial and quasi-judicial organs; ensure accessibility and effective functioning of those justice organs; and guarantee fair trial rights in all stages of legal proceedings.

The Constitution also regulate various procedural rights of every arrested and accused persons during criminal proceedings under article 19 and 20 respectively [6] to ensure everyone's right to access justice.

The Ethiopian Criminal Procedure law is silent with respect to procedural guarantee of access to justice right for persons with disabilities including those with hearing impairments. There are general provisions that require the court to provide qualified or competent interpreters for those who do not understand the language used in court as enshrined under article 27 (4) and 126 (2) of the code [8]. But, no other laws provide for what does qualified or competent interpreters actually implies. Hence, problems are observed in criminal proceedings across the country including in study areas that impeded person with sensory impairment's right to access the justice system.

This article canvasses the legal analysis and judicial practice of East Hararge Courts on access to justice for person with hearing impairment (hereinafter PWHI) during criminal proceeding, and provides reformative recommendations to Ethiopian criminal justice system from human right point of view.

2. The Right to Access to Justice for Persons with Hearing Impairment in Ethiopian Legal Frameworks

2.1. The FDRE Constitution

The Constitution of the Federal Democratic Republic of Ethiopia was adopted in 1995, and pre-dates the CRPD by several years [6]. It is among the "new generation" of African constitutions, which clearly envisages compatible and pivotal role with international human rights instruments at domestic level. For instance, it provides under article 9 (4) that international agreements ratified by Ethiopia "*are an integral part of the law of the land*" [6]. This provision vividly categorized Ethiopia within the "monist" groups.

Furthermore, it stipulates under article 13 (2) that, provisions of chapter three dealing with human rights and fundamental freedoms must be interpreted "*in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia*" [6]. Ethiopia has international obligation to respect, interpret and enforce human rights following standards set out under these universal and regional human rights instruments.

The enforcement of human rights of access to justice for persons with hearing impairment requires to be interpreted in such a manner that should be compatible with the CRPD provisions adopted and ratified by Ethiopia [5]. Hence, with pursuant to article 13 of the FDRE Constitution, all judicial institutions are obliged to respect, interpret and enforce human rights of person with hearing impairment to access to justice in conformity with CRPD provisions in an equal basis with others during any stages of legal proceedings.

The basic legal principle that '*all persons are equal before the law*' has been incorporated under various international human right instruments to which Ethiopia is a party [9].

FDRE Constitution on equality of everyone before the law under article provides "*All persons are equal before the law and are entitled, equal protection of the law without discrimination, on any ground of language, or any other status*" [6]. The FDRE Constitution didn't contains an equality clause with an anti-discrimination provision that explicitly lists "*disability*" among the prohibited grounds of discrimination.

At this juncture, it may be argued that absence of explicit Constitutional prohibition of any form of discrimination on persons with disabilities while expressly prohibiting those other discriminatory grounds, should be rectified in such a way enables Ethiopia to enforce its obligation under article 4 of international Convention on rights of persons with disabilities. Yet, the fact that disability is not clearly specified as one possible ground of discrimination does not imply that persons with disabilities are not protected against discrimination under FDRE Constitution.

Further, the CRPD which is special law on disability to which Ethiopia is a party confirms the disability inclusive application of this constitutional clause by prohibiting

disability-based discrimination. As per Article 13 (2) Constitution also obliges those fundamental rights and freedoms to be interpreted in light with international agreements ratified by Ethiopia. This specific Constitutional equality provisions shall be interpreted in such a way that could encompass “disability” among those invidious grounds. Hence, constitutionally, no person with disability deprived his/her right of access to justice on the ground of disability during any legal proceedings.

The FDRE Constitution in cumulative reading of article 37 (1) and 41 (3) recognizes rights of every individual including those with disabilities “access to judicial institution, equal right and opportunity to access public services including judicial sector in his/her country [6]. The Constitution also under article 41 (4) lays down certain obligations for the Ethiopian State in addition to describing these rights. It warns that the State must “*progressively*” allocate increasing funds for the purposes of promoting access to social services [6].

The enforcement of right of access to justice for PWHIs requires both socio-economic as well as civil and political rights which further strength indivisibility, interrelated and interdependent nature of human rights.

The FDRE constitution further under article 41 (5) obliges state, within the limits permitted by the economic capability of the country, care for and rehabilitate “*the physically and mentally disabled*” [6]. The wording condition of this provision seems not inclusive, outdated and reflects a narrow, economical induced and medical model of understanding rights of PWDs. Further, there is no reference to persons with sensory impairments such as persons with hearing impairments. It is uncertain whether sensory impairments should be included under the terminological scope of “*physical disability*” or not.

However, it sets out state responsibility to provide supportive services to enforce access to justice for person with disabilities. Ethiopia has an obligation, under those provisions, to allocate resources for the rehabilitation and assistance for persons with disabilities. The wording of rights for persons with disabilities enshrined under this constitutional provision seems to be incompatible with CRPD.

With regard to procedural guarantees for PWHI, the FDRE Constitution under article 19 (1) provides: “*Persons arrested have the right to be informed promptly, in a language they understand, of the reasons for their arrest and of any charge against them*” [6]. In addition, Art. 19 (2) reads: “*Persons, arrested have the right to remain silent. Upon arrest, they have the right to be informed promptly, in a language they understand, that any statement he/she makes may be used as evidence against them in court*” [6]. The term promptly shall be construed to mean at the early beginning of the trial proceeding that is, upon his arraignment before a court of law.

Furthermore, it is also the cardinal principle of criminal justice that an accused person should have a right to an interpreter. ‘An accused person is entitled to have without payment, the assistance of an interpreter; if he cannot

understand the language and terms used at the trial of the offence. Based on this, Art. 20 (7) of the Constitution provides as rights of accused person “They have the right to request for the assistance of an interpreter at state expense where the court proceedings are conducted in a language they do not understand” [6]. Where the accused does not understand the working language of the court or where he has hearing impairment, a sign language interpreter has to be provided to enable him follow the proceedings in logical manner with other to avail himself the right to fair hearing under the principles of rule of law which is applicable as human rights for all human beings. Furthermore, ability to understand the language used in a legal proceeding is very pivotal in the effective enforcement of an accused person charged with criminal offence. The inability to understand the language of the court could do away with the opportunity to be heard of a parties in criminal proceedings.

The right to an interpreter ensures that the accused who is unfamiliar with any of the working languages of a tribunal will be able to understand the proceedings and properly defend himself. This right is regarded basic for not only referring access to language rights, but also as encompassing the requirement “to be informed of the charges” as enshrined under article 20 (2) of constitution [6]. The issue whether FDRE Constitution in the phrases “language” provided under articles 5, 19, 20, 25, and 39 (1) broadly encompass “sign language” among spoken languages or not begs argumentative interpretation. The minutes of Constitutional assembly and drafting committee arguments only centered diversity of nation nationalities spoken languages.

The author hardly found any spirit on the inclusiveness of sign language during constitutional assembly committee arguments on linguistic provisions. The preamble of the constitution also focus on linguistic rights of nation nationalities and peoples which internalize only spoken language. However, Ethiopia ratified CRPD which broadly define the term “language” to include sign language under its article 2 and hence Ethiopia required to interpret human rights in accordance with CRPD provisions and judicial institutions are obliged to enforce as such with pursuant to article 13 (1) (2) of constitution respectively. Therefore, the right to language include sign language for those with hearing impairments during legal proceedings.

To further strength this line, article 14 (2) (f) of ICCPR provides for minimum guarantees that everyone in criminal proceeding is entitled “...To have the free assistance of an interpreter if he cannot understand or speak the language used in court.” [2].

By being party to the international and regional human rights laws, Ethiopia is required by law to comply with the standards contained in the conventions. These legal frameworks provide that everyone charged with a criminal offence shall enjoy the minimum right to the free assistance of an interpreter if the accused cannot understand or speak the language used in court proceedings.

2.2. The 1961 Criminal Procedure Code of Ethiopia

The criminal procedure is the most relevant law as far as enforcement of rights and duties of every individual during criminal proceeding is concerned in Ethiopia. The Criminal Procedure Code of Ethiopia provides under article 27 (4): “Where the arrested person is unable to properly understand the language in which his answers are to be recorded, he shall be supplied with a competent interpreter who shall certify the correctness of all questions and answers” [8].

Article 126 (2) of Criminal procedure code which talks about opening hearing also provides: “Where an interpreter is required for the purposes of any proceedings, the court shall select a qualified court interpreter. Where none is available, it will select a competent interpreter but no person shall be selected who is relative to the accused or prosecutor or is himself a witness” [8].

In addition to the assistant of interpreter, the Criminal Procedure Code even goes further and requires the court to choose “qualified” or “competent” interpreters to assist individuals with limited language proficiency in criminal proceedings. But there are no other laws that provides for what qualified or competent interpreter actually means.

However, the Convention obliged state parties “to accept and facilitate the use of sign languages, alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions” [4]. Therefore, compatibility of Ethiopian Criminal Procedure with this convention that allows freedom to choose interpreters is in question in spite of states obligation to refine its law in such a way pursuant to article 4 of the same convention. Because they may understand only family/relatives local sign language which is procedurally prohibited. As a result, problems are observed in criminal proceedings that impedes person with hearing impairment to access to justice effectively.

Despite equal protection by constitution and other specific laws to linguistic problems during legal proceedings in the country, there is huge gap with regard to sign language and its interpreters in the law and judicial practice.

Criminal procedure obliges presiding judge to read charge to examine whether accused understands or has objection. It states under article 129 that “The charge shall be read out to the accused by the presiding judge who shall then ask the accused if he has any objection to the charge” [8].

Further in recording plea of guilty or not guilty of accused person, the code is silent on how to record and examine plea of accused with hearing impairment who don’t understand spoken languages. The procedure on plea of guilty stipulates under article 132 (2) and (3) that “After the charge has been read out and explained to the accused, the presiding judge shall ask the accused whether he pleads guilty or not guilty, and the plea of the accused shall be recorded as nearly as possible in the words of the accused” [8]. This provisions and its practice of implementation during criminal proceeding designed in such a way that don’t appear to be inclusive

enough for person with hearing impairment who never understand spoken languages.

The criminal procedure code incorporates the procedural rights of accused or arrested person in general without explicit mention for such person with hearing impairment who use non spoken language to understand and be understood during his/her participation in criminal proceedings.

The Ethiopian criminal procedure has no single provision to enforce accused persons with hearing impairment during participation in proceeding.

3. Challenges on Access to Justice for PWHI During Criminal Proceeding in East Hararge Zone Courts

The effective enforcement of access to justice for PWSI has a pivotal role in the exercise and enjoyment of all other human rights and effective administration of justice. Implementation in the human rights context refers actual enforcement of treaty obligations states promised after its adoption to act accordingly.

In this section the author discusses the judicial practice of enforcing rights of access to justice PWHI during criminal proceedings, whether the courts in study area and Ethiopian legal systems as such effectively implement rights of such persons in a manner compatible with CRPD or not.

3.1. Inadequate Disability Based Laws for Effective Access to Justice in Ethiopia

The CRPD under article 4 (1) (a, b) require states to “adopt all appropriate legislative, administrative and other measures as well as modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities for the implementation of the rights recognized in the present Convention” [4]. Effective access to justice for persons with hearing impairment primarily requires state promulgation of explicit binding laws accordingly.

Various jurisdiction recognizes PWHI’s right to be entitled to provision of sign language interpreters at any stages of criminal proceedings in their disability act laws to enforce effective right to access justice [10]. Ethiopia couldn’t and shouldn’t become exception country to enforce legal recognition of accommodative decision making support for PWHI during legal proceeding.

Nowadays in Ethiopia, the existing generic disability based legislation does make provision for only certain areas of substantive rights such as employment and building. However, it is clear that in order to fully incorporate the CRPD into domestic law, comprehensive disability legislation, and other enforcement mechanism requires to ensure access to justice for PWHI.

Though CRPD are already an integral part of Ethiopian law pursuant to Art. 9 (4) of Constitution, given the obscuring arrangements of constitutional review and the

judicial reluctance to interpret and apply international human rights treaties that have not been articulated in separate statute appear to be challenges in Ethiopia.

3.2. Lack of Uniform, Dignified, and Inclusive Terminology for PWHI in Ethiopia

There is a negative stigma associated with disabilities in Ethiopia that interprets disability as identical to inferiors, isolated, madness, sickness or weakness. Hearing impairment is also seen by some traditional views in study area as a curse or punishment for previously committed sins of the parents. In an Interviewee with one judicial administration worker provides that “People used to call person with hearing impairment as “*duudaa*” (roughly translated as deaf) which is a discriminatory terminology required to be prohibited and there is no legally formulated terminology that oblige people to call PWHI with dignity accordingly” [11].

Neither CRPD nor any the Ethiopian laws formulated uniform and binding name for persons with hearing impairment. The CRPD even uses the term hearing impairment, hearing disability, Deaf and deaf as if to encompass PWHI interchangeably in its various provisions. This open the door for people to call PWHI in any defaming names. The terminologies used for persons with disabilities in general and person with hearing impairment are required to be inclusive and respectful that enforce the human dignity of such person perse. For instances, Deaf, deaf, hard of hearing, unable to hear, mute, deaf-mute, hearing disability, hearing loss, hearing impairment. The descriptiveness or offensiveness nature of terminologies used interchangeably for person with hearing impairment also urge critical legal and practical considerations.

Constitution under article 41 (3) provide only “*physical and mental disability*” excluding *sensory disabilities* [6]. There is hardly found any legislation that explicitly provide person with sensory impairment or person with hearing impairment in Ethiopia. This may shows a hierarchical comparison within disability where “*physical and cognitive disabilities*, are encouraged to be real disability with supposedly more severe impairments than persons with “*sensory impairments*” particularly those with hearing impairment. Besides, this constitutional wording seems outdated and reflects a narrow, economical and medical understanding of disability which are not ally with the object and purposes of CRPDs.

The Committee concerned that legislation and policies continue to employ derogatory terms to refer to persons with disabilities such as “insane”, “infirm” and “deaf” “deaf-mute.” They recommend that the State party should “*eliminate the use of all derogatory language to refer to persons with disabilities and ensure that all existing and new laws and regulations, and definitions used therein, comply with the human rights based model of disability in accordance with the Convention*” [12]. Hence, those terminologies used to refer PWHI indicate the old model of understanding disability.

Legislation that reflects the medical model of disability

uses terminology like ‘*special care*’ or ‘*special treatment*’ for PwDs. In study area, the court in one case involving accused with hearing impairment mentioned that “*himatamaan nama gurra hin qabne*” [13] roughly translated as to say “*accused is a person who has no ear*” (translation mine). The court in this case used defaming terminology which is against human right model of person with hearing impairment. Because person with hearing impairment doesn’t naturally lost ear as court perceived but lost hearing impairment. Hence, any defamatory terminologies used for person with hearing impairment require to be made in a manner conforming the object and purpose of CRPDs.

3.3. Violation of Rights to Equality and Non-discrimination, or Equality of Arms for PWHI During Criminal Proceedings

The principle of equality and non- discrimination that let persons with disabilities be treated in an equal basis with others echoes to be the main object and purpose in the formation of CRPD and acts as inhaling breath of other subsequent human rights for PwDs.

The CRPD under article 5 (1) (2) on equality and non-discrimination principle provides that: “States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. Further it obliges, States shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.” [4]. Hence, any kind of discrimination against PWHI in court proceeding is prohibited.

The principle of “Equality before courts has two aspects” [14]: The first is equal treatment of parties which refers to equality before the law of parties and non-discrimination. It includes prohibition of distinctions regarding access to courts that are not based on law and cannot be justified on objective and reasonable grounds (like, on language..., or other status). The second is equality of arms which require enjoyment of same procedural rights by all parties in the same proceedings which include guarantees related to access to evidence, opportunity to contest arguments and evidences adduced by other party, equal right to appeal and guarantees equal participation of parties in the court such as, free legal aid and assistance of an interpreter.

The CRPD under article 13 (1) provides the rights of persons with disabilities to effective access to justice “on an equal basis with others” during judicial proceeding.

The CRPD Committee in its observation in Ethiopia reported that “the concept of reasonable accommodation enforced is only related to employment and its denial is not recognized as a form of discrimination in all areas, including access to justice. There is no effective complaint mechanism or remedies for disability-based discrimination and various forms of discrimination are neither recognized nor sanctioned in law” [15].

The practice of judicial sector in study area shows unequal treatment and judicial workers paying deaf ear regarding

enforcement of procedural due process guarantees for parties with hearing impairment appearing before the court. In an interview with accused with hearing impairment against whom sentences passed via using his father as translator states that:

“No one in the court understand my intention and hear my silent voices. The court is deaf to hear me and I am not capable to hear the court. We both fail to understand each other. But, the judge and prosecutor understand and discuss each other effectively. The court only heard the single proceeding side of prosecutor. Hearing and hearing impairments are not equal before this court” [16].

This judicial practice exacerbate principle of equality and non-discrimination and equality of arms which eventually exclude persons with hearing impairment from rights of effective access to justice in an equal basis with other persons.

The justice administration workers of East Hararge Zone Judges [17], Prosecutors [18] and public defense lawyer [19] uniformly pointed out that:

“Accused person with hearing impairment lacks procedural accommodations, supportive decision making like sign language interpreters, effective participation, constitutional right to be heard and cross examine adverse witness, and generally denied effective rights of access to justice in an equal basis with others during criminal proceedings.”

Hence, in study area the right of effective access to justice for PWHI appearing before the court during criminal proceeding is not equally enforced on an equal basis with others.

3.4. Lack of Effective Decision-making Support or Procedural Accommodation for PWHI During Criminal Proceedings in the Court

In practice, written and oral communication are ineffective for persons with hearing impairments. They are usually competent in communicating via sign language of their choice.

In contrast, judicial institutions though they have resources not to raise progressive realization defense, failed to hire sign language interpreters during criminal proceedings for PWHIs.

The Committee on the Rights of Persons with Disabilities has consistently recommended to States parties that “they should review their legislation, including criminal legislation, in order to explicitly include the duty to provide procedural accommodations in all legal proceedings” [20]. Effective access to justice for persons with hearing impairment can be achieved if states discharge its obligation to provide accommodative sign language translation of their choice.

Based on an interview made with Bukhari Kadiro, the criminal proceeding group process owner in East Hararge High Court suggested that:

“I have been working in criminal bench for more than 5 years, during my work as criminal bench judge, I have meet some three cases involving person with hearing impairment. The court has no any language translating service worker’s

leave alone sign language interpreter staff. We have encountered both legal and practical problem as there is no explicit criminal procedure reference granting how sign language interpreters can be accommodated for those parties with hearing impairment. We have tried to request both Haromaya University special needs sign language school and Harari Regional States sign language interpreters group in which all parties with hearing impairment appearing before our criminal proceeding can’t understand those sign language as they use only family sign and never learned formal sign language. Both accused with hearing impairment and professional sign interpreter fail to understand each other during the proceeding. The court proceeded the case without respect to due process of law and right of effective access to justice right like the right to understand charge in their sign language, the right to cross examine prosecutor witness, the right to give testimony, the right to request interpreters, the right to access legal representation effectively. We simply tried to use father and wife of accused with hearing impairment in one case to interpret the language. Hence, the right to effective access to justice for person with hearing impairment is at its dangerous stake which needs government intervention for legal, policies and practical enforcement” [Translation Author] [21].

The use of sign language interpreters are not available in judicial sectors of study area. In the study area, all persons with hearing impairment do not have uniform sign language proficiency and may rely signs that are unique, and local family based. In such instances, a professional sign language interpreter is unable to either make him/herself understand or interpret the statement by the individual who could be party to a case. This practical problems critically raised by interviewed judicial workers that hinder them from enforcing rights of person with hearing impairment to access justice effectively.

The Convention under article 21 (b) also oblige state parties to “Accept and facilitate the use of sign languages, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions” [4]. It is the main purpose of CRPD that the term communication of their choice in official transaction encompasses facilitation of sign language of their choice by person with hearing impairment during court proceedings.

The ‘official context’ of article 21 (b) CRPD is of particular importance, as an effective implementation of this provision would provide deaf people with ‘the right to submit a document in sign language and receive a response in that language, receive information in court, transact in [public] offices and departments and receive consumer information in sign language’ [22]. Hence, reading article 21 (b) in light of the Convention’s purpose, general principles Art. 3 and 4, and obligations, general duty on accessibility Art. 9 and specific provisions on, inter alia, access to justice, under Art. 13, would suggest a plausible understanding of how provision of sign language enforce effective access to justice for person with hearing impairment.’

The form of support may include, inter alia, assistance in

communicating with service providers, including through the provision of sign language interpretation, or the acceptance of accompanying support persons when this is preferred by the persons with disabilities [23]. It empowers PWHI to choose sign interpreter that enforce his/her preferences.

The committee in interpreting article 12 (3) of CRPD provides “States parties must recognize the social networks and naturally occurring community support (including friends, family and schools) of persons with disabilities as key to supported decision making [24]. This is consistent with the Convention’s emphasis on the full inclusion and participation of PWDs.

The other critical point that yells loud consideration during supportive decision making under article 12 of CRPD is: First: The main objective and whole spirit of CRPD is to let person with disabilities make choices by themselves. This cumulative reading of other provision of the convention with article 12 of the same. For instance (though they are directly related with other rights), Article 19, recognizes “the right of choice”; Article 25, requires ensuring “free and informed consent of persons with disabilities”; Article 27, “freely chosen or accepted”, and article 13 “in an equal basis with others and procedural accommodation” terms among other provisions ensure freedom of choice for person with hearing impairments during enjoyment of their access to justice through supportive services. Further, the CRPD in its preamble aims at “Recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices” [4]. Therefore, there is no plausible justification to exclude Art. 13 of CPRD on access to justice for PWHI to freely choose any supportive decision making including family sign language interpreters as part of their effective access to justice and procedural accommodation during criminal proceeding.

Second: The CRPD recognizes the fundamental rights of persons with disabilities “on an equal basis with others”, a phrase which is found in its various provisions and prohibits any differential treatment in the enforcement and enjoyment of access to justice for person with hearing impairment. Besides, the Convention must be read and interpreted from its object and purpose “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity” and from its general principles “to respect of inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons” which are enshrined under article 1 and article 3 of the same convention respectively.

However, coming to Ethiopian jurisprudence, the Ethiopian law and practices on supportive decision making for PWHIs during criminal proceeding is challengeable and mesh with the overall spirit, purpose and general principles of CRPD discussed above. The issue is article 126 (2) of Ethiopian Criminal Procedure Code provides “where an

interpreter is required for the purposes of any proceedings, the court shall select a qualified court interpreter. Where none is available it will select a competent interpreter but no person shall be selected who is a relative to the accused or prosecutor or is himself a witness” [8].

Based on interviews made with various criminal bench judges, they uniformly expose problem of enforcing interpreter for PWHIs that:

“Leave alone provision of interpreter for such persons, the court have even no worker for any spoken language interpreter. All of PWHI who appeared so far before our court understand only local/family sign language. There is no recognized uniform or standard sign language for all PWHI in study area. Even if the court appoint sign language interpreters from other institution, person with hearing impairment appearing before the court cannot understand those professional sign language. The court simply employ relative interpreters for accused with hearing impairment in violation of this criminal procedures due to the reason that there is barely found any alternative or procedural accommodation to this party. Even their family cannot translate accused with hearing impairments sign language appropriately” [21].

Even-though PWHI choose their family as sign interpreter, the criminal procedure prohibited and devoid their effective procedural accommodation to enforce their access to justice via family supportive decision making. Further, the code grants interpreters for only accused person. Person with hearing impairments participating in criminal proceeding in their different capacities like judge, prosecutors, lawyers, witness, victim, experts etc. are not considered in this procedure.

In an interview with High Court judge in Criminal Bench provides:”

The family sign interpreter also face difficulty in interpreting some legal terminologies like preliminary objections; plea of guilty; self-defense; access and question witness; cross-examination; court ruling; defense witness; defense lawyer; mitigation circumstances and appeal etc.[21]

Hence, practice of using relative of parties with hearing impairment may suffer inability to translate some legal jurgons due to their lack of legal knowledge. This would later has a tremendous effect on the right to speedy trial of PWHI as justice delayed is justice denied.

The East Hararge High Court, in one relevant criminal case, [13] has proceeded without arranging any family, competent, qualified or professional sign language interpreter who can properly translate accused’s sign to the court, and violated his human right of effective access to justice, fair trial and hearing in his understanding sign language.” There is such a barrier whereby person with hearing impairment appearing before court who only understand home family sign language denied the right to fair hearing and be heard during criminal proceeding.

There exist obscuring legal and practical dilemmas in Ethiopian criminal justice system and judicial sectors in

particular with regard to procedural accommodations, provision of preferable decision making sign language interpreter and enforcement of access to justice for person with hearing impairment during criminal proceedings in study area.

Hence, amendment of criminal procedure in such a way that provide procedural accommodation, legal recognition and enforcement of uniform sign language that all PWHI understand can reconcile the gap between Ethiopia's CRPD obligation and judicial sector's domestic duty of enforcing legality principle.

The Convention as per article 12 (3) further requires States to take all appropriate measures "to provide access by persons with disabilities to the support they may require in exercising their legal capacity." [4]. Therefore, the Code should have been provided at least the means whereby person himself or relatives demand the court on the arrangement of support, considering the basic will and preferences. The criminal procedure under article 126 (2) in prohibiting accused with hearing impairment (who understand and requires only relatives to interpret his communication to court) from access to procedural accommodation of his/her choice would amounts to violation of his/her human right to liberty which later results in denial of freedom of expression during criminal proceedings.

The absence of sign interpreters in criminal proceedings for PWHI, not only violate such accused's right to interpreters and to be informed of charge in own understandable language, but also violate their rights of access to justice and other fundamental right to fair trial in proceeding.

During supportive decision-making, the presumption should always be in favor of the person with a hearing impairment who will be affected by the decision. The individual with hearing impairment is the decision maker and the support person only interprets the signs and their preferences. Provision of sign interpreter of his/her choice for PWHI during criminal proceeding is mandatory accommodation without which their effective access to justice can be violated.

The frequent adjournment of criminal cases involving PWHI in search of sign interpreters who understand and interpret accused's sign language has also pose a challenge that inevitably pause the court from disposing case within reasonable time and violate their right to speedy trials.

The main thing that require worth considering at this juncture is, As Ethiopia has signed the Convention, it must refrain from acts which would defeat the object and purpose of the Convention as per article 18 of Vienna Convention [25], which is to 'promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity as enshrined under article 1 of CRPD.' [4]. Hence, states are required to amend its criminal procedure and provide sign language interpreters of their choice that can best enforce right of access to justice for PWHI during criminal proceedings.

3.5. Ineffective Access to Legal Aid and Representation for PWHI in the Courts

Members of the legal profession may have no understanding or may lack the skills to communicate with people who have particular disabilities. Lawyers receive no training in law schools in issues relating to disability. It has also been argued that Article 13 of the CRPD 'should be interpreted to provide that persons with disabilities have a general right to legal aid' [26]. Hence, person with hearing impairment have the right to access legal aid and representation before proceedings as part of their effective right to access justice on which states are obliged to abide as such under CRPD.

The Ethiopian Criminal Procedure Law seldom provides the clearest legal aid requirements with the highest level of legal validity to access various procedural requirements including provision of sign language interpretation for persons with hearing impairments when participating in criminal proceedings. This study has also identified judicial practice that sign language interpretation is still relatively marginalized in justice administration in study areas.

Without access to justice, persons with disabilities cannot challenge deprivation of their legal capacity or the denial or restrictions of their rights that ensue as a result [27].

In an Interview made with Zonal high court public defense counselor states that:

"As far as representation for persons with hearing impairment is concerned, we simple represent to fulfill procedural formality without effectively communicating with such person as there is no sign interpreter hired in our court. Though made attempt to communicate through their relative, still due to various reason like family's unfamiliarity with some legal and procedural information face barriers to interpret clearly. There is no effective communication, representation and involvement of PWHI in our court in the similar manner with other hearing persons" [19].

The author identified that seldom effective legal representation and access to justice for clients with hearing impairment in court proceedings on equal basis with others.

3.6. Lack of Access to Legal Information and Understand Legal Rights for PWHI

Access to justice for PWHI's are seriously undermined by the lack of awareness of, or knowledge about, the law, procedures or the formal legal system. They have difficulties accessing relevant laws, regulations and other relevant legal information.

The Convention under article 4 (3) states "*In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, or through their representative organizations*" [4]. Hence, person with hearing impairment require effective participation in development of laws, access to laws and embrace effective right of access to justice perse.

In this case, proclamation No. 3/95 obliges every citizen of Ethiopia to know laws published under Federal Negarit Gazetta [28]. However, Federal laws published as such are made only in Amharic and English language to which all PWHI can't understand. Reading article 1 (2) and 2 of this law, it is the purpose of criminal law to let ever person know what commission or omissions constitute crime, with its penalty before declaring ignorance of law has no excuse principle [28]. However, it tends to be difficult for the Government to apply this principle without letting PWHI aware laws in their understandable manner. Accommodating legal knowledge as to rights and duties are designed right for everyone equally. In Ethiopia, PWHI are not legally and practically accommodated to know laws on an equal basis with others which constitute its breach of reasonable accommodation, equality and non-discrimination and effective access to justice obligation under CRPD provisions.

Further, in study areas almost all of justice administration officials and employees declares that: *"Judicial workers have no adequate awareness and training on the rights of PWD, in general and PWSI in particular to effective access to justice"* [21].

The CRPD is not published in the working language of judicial sectors in study area (Afan Oromo) to which they are obliged domestically to take due notice of laws so that they can understand meaning, scope, contents, obligations and purposes of rights under the convention to ensure rights of persons with hearing impairment effectively.

Ignorance of the laws, policies, legal procedures due to lack of availability of information and modes of communication in their understanding modes are a crucial factor that keep person with hearing impairment out of the legal system.

There is no evidence showing availability of legal instruments in accessible formats, in user friendly formats in sign language in Ethiopia. Poor legal information, poor understanding of systems and procedures are the main challenges for persons with hearing impairment around study area. Even when an interpreter is provided to them, it is not a *"level playing field"* to satisfy effective enforcement of access to justice on an equal manner with other hearing persons.

PWHIs are neither aware of the mechanisms available or procedures to follow to obtain legal redress during violation of their human rights. If persons with hearing impairments are unable to make contact with legal professionals, lawyers or find legal resources, they denied access to justice. Therefore, when providing legal information and resources for PWHIs, Ethiopian governments might primarily ensure broad accessibility standards which do not account for an individual with hearing impairment. It has in principle, an obligation to accommodate special interest of PWHI.

3.7. Lack of Training for Judicial Workers on Right of Access to Justice for PWDs

The CRPD Committee has recommended that training programmes address such areas as barriers faced by persons

with disabilities in accessing justice and the rights enshrined in the Convention, including participation on an equal basis with others [29]; to effectively enforce human rights of PWHIs during criminal proceedings.

While evaluating and recommending Ethiopia's role on enforcement of access to justice for persons with disabilities as per article 13 of CRPD, Committee concerned that the training of justice staff, lawyers, court and police on rights of persons with disabilities is neither compulsory nor made regularly. The procedural accommodations are not effectively available in law at all stages of investigations and court proceedings [12].

The justice sectors training programs haven't yet been demonstrated in such a way that Art. 13 (2) of CRPD can be implemented for PWHI during criminal proceedings in courts of study area.

The Interviewee judges similarly affirms that:

"The courts haven't taken any access to convention on the right of person with disabilities, no legal information whether Ethiopia ratified CRPD and made part of the legal system or not; the court has no access to any international treaties ratified in its working language, and there is no any training so far on CRPD at the regional justice sectors training institution" [21].

Further, the researcher made interview with one official from Oromia justice sector professionals and legal research institute whereby points out that:

"The institution has never prepared materials and conducted training for justice sector workers on the rights of persons with disabilities in general and persons with hearing impairment in particular as to how the legal and justice system effectively enforce their rights to access justice during proceedings" [30].

There is an extreme lack of awareness of the rights of PWHIs among law enforcement, judicial as well as training institution officials. Enforcement of access to justice for PWHI presupposes legal recognition and training on their rights. The Institute hardly train a disability component in programs designed to strengthen justice sector institutions, including the judiciary, and provide effective compulsory training program on CRPD and rights of access to justice for person with hearing impairment during legal proceedings.

There is no enforcement on coverage of disability law in judicial professional development and access to the law programs, ensuring that disabled lawyers and judges are part of such programs.

The Ethiopian legislative framework currently contains no provision for such training, and this is another factor that may negatively impact on the right of PWHIs to effectively access justice.

3.8. Lack of Effective Participation for PWHI During Criminal Proceedings

The CRPD Committee on its observation and recommendation in Ethiopia criticized that *"Access to legal participation for persons with disabilities on an equal basis with others has been identified as a problem in Ethiopia and*

Persons with hearing impairment have often been excluded from key roles in the justice system as lawyers, judges, witnesses or members of a jury” [12]. Accordingly, any legal framework or practice that imposes limitations on PWDs and excludes them from such role constitutes violation of the right to legal capacity and effective access to justice.

The Criminal cases in East Hararge Zone High Court further evidences legal and practical challenges in enforcement of effective access to justice for PWHIs during criminal proceedings. In the case between General Attorney vs Abadir Usman, the Court and prosecutor has excluded and felt impossible to record any statement of victim and denied his participation as witness due to communication problem for his hearing impairment. Hence, the right of participation in criminal proceedings, the right to be informed of charge and be heard in language s/he understand and the right to effective access to justice in equal manner with others were violated in this criminal file [31].

The Court in another case between General Attorney vs Hussen Mohammed ruled out and denied the right to participate in proceeding in his own understanding language and request interpreter arguing that as long as the cause of hearing impairment of the accused is after the suspect have been beaten by the police in custody, and providing him sign language interpreter is not valid as he cannot communicate with them effectively [32].

The Court in these two cases proceeded the proceeding without briefly determining identity of accused, reading charge to accused, examining whether he understand and objection to the charge or not, taking plea/not of guilty, right to cross examination prosecutors witness, and hence, violated procedural fair trial guarantees in a contrary to right of effective access to justice for PWHI during criminal proceedings under CRPD.

The Researcher fortunately accessed and interviewed one person with hearing impairment serving sentences in prison through using his father as sign interpreter whereby he stated that:

“I never communicated anything with my lawyer and judges during criminal processes, I simply got myself in prison without accessing my right to be heard. No one in the court understand my intention and hear my silent voices. Hearing and hearing impairments are not equal before this court” [16].

This shows that judicial administration and public counselor workers in study area are not enforcing effective access to justice for person with hearing impairment during criminal proceeding in a manner compatible with article 13 of CRPD.

PWDs face legal and practical barriers for their participation in legal proceedings in court. Domestically, in study area legislation, regulations, policies, or practices challenges persons with hearing impairment from serving as a witnesses or jurors. Participation can also be severely limited by lack of accessible information or communications in sign language for PWHIs.

3.9. Non Integration or Domestication of CRPD into Ethiopian Law and Working Language of the Courts in Study Area

The mode of incorporation of an international agreement in Ethiopia are regulated under chapter two of the FDRE Constitution. The FDRE Constitution under article 9 (4) recognizes the automatic standing incorporation of international instruments ratified to form “*an integral part of the law of the land*” [6].

However, except for the CRC, many international and regional agreements have not been published in the official Federal Negarit Gazeta. The Ratification Proclamation No. 10/1992 for the Convention on the Rights of the Child incorporates an article with a succinct statement about the treaty (in its full name) [33]. Other ratification proclamations never reproduced the full text of the treaty in question and translate the treaty provisions into the working languages of the country. The CRPD is also not translated in working language of study area (Afan Oromo) to the knowledge of this researcher so far.

Further, the criminal justice policy provides that International treaties ratified by Ethiopia are not published, their consistency with domestic legal norms is not checked systematically, and nobody knows for sure if they are indeed an integral “part of the law of the land”, as stated by article 9 (4) of the Constitution [34]. In Ethiopia, signing and ratification of international treaties are not always the problem but it is the effective implementation of the treaties that matters most. Ethiopia signed and ratified the CRPDs but it is yet to have been domesticated in working language of study area which is the only legitimate avenue for the effective enforcement of the Convention in judicial sectors of study area.

The general-obligations provision of the CRPDs in Article 4 may be implemented through a variety of methods beyond the enactment of legislative measures. The method of translating international legal obligations into national law depends on the nature of domestic legal system.

Although the international agreements ratified by Ethiopia are an integral part of the law of the land, it appears that they are not published, nor made available outside the concerned ministries in working language of justice administrations in study area. The vast majority of them, if not all of them, including CRPD are not yet translated into the working languages of judicial sectors. Only the instruments of ratification are being published in the Negarit Gazeta as for instance proclamation No. 676/2010 for ratification of CRPD ratified, without having any meaning, scope, content of rights and other substantive provisions.

The principle of legality in domestic instrument and international treaties obligations” requires further conformity reconciliations. International human rights instruments impose obligation upon state parties to ensure compatibility of domestic legal instruments and thereby prohibits states from raising their domestic application, publication and enforcement procedures as a defense for not enforcing treaty

obligations. The law of treaty under article 18 and 31 (1) obliges that “International treaties shall be interpreted in accordance with its object and purpose” [25].

The House of Federation under article 11 (1) of its establishment law, has the final constitutional adjudicator to interpret the provisions of Constitution in conformity with treaties ratified by Ethiopia [35]. The court has also obligation to enforce human right provisions and interpret them via ratified international treaties with pursuant to article 13 (1) and (2) of FDRE Constitution respectively. As long as Constitution and ratified treaties don't mesh each other, the researcher argue that any other subsequent legislations that contradicts such treaty, by necessary implication contradicts constitution and would effect in null and void as per Art. 9 (1) of the FDRE Constitution.

Again, looking the spirit of Art. 9 of FDRE Constitution on its supremacy, treats the validity status and position of domestic laws and international treaties ratified by Ethiopia under different provisions. Under Art. 9 (1) Constitution takes validity or life of “*any laws, practice, custom and decisions that contradicts constitution.*” However, it separately stipulates the issue of international treaties under Art. 9 (4) which shows Constitutional peculiar feature of treating different norms differently. It gives a clear language that international treaties ratified by Ethiopia are excluded from the ambit of Art. 9 (1) stating “*any law*” and Ethiopia has obligation to amend, repeal and promulgate its legislations in such a way that enables to ensure its obligation under international human right treaties especially with concern to CPRD accordingly.

Article 13 (2) of FDRE Constitution also provides mandatory canon of interpretation that can particularly be applicable to international human rights treaties to which Ethiopia is a ratified party stating that “*Fundamental rights and freedoms guaranteed therein, shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia*” [6].

It echoes that Chapter three of FDRE Constitution regulating fundamental rights and freedoms shall be interpreted in a position to conform enforcement of Ethiopian obligation under ratified international human right treaties. Minutes of Constitutional assembly also strengthen that “*there wouldn't be non-conformity barriers between international treaties and domestic legislations*” [36]. This line of interpretation has also deserve more robust applauses with pursuant to Art. 7 (2) and 11 (1) of Proc. No. 251/2011 as thoroughly discussed above.

Eventually, Ethiopia as a member to CRPD and other international human rights instrument, “it cannot invoke the provisions of its internal law as justification for its failure to perform a treaty as envisaged from article 27 of Vienna convention” [25] or for it's not publishing under negarit gazeta and other domestic law making procedures. Under article 26 the principle of *Pacta Sunt Servanda* [26], warns a country may not invoke its domestic law provisions as

justification for failure to comply with its international law or treaties obligations. Hence, CRPDs ratified by Ethiopia is binding and bears international obligation albeit consideration of its self-execution, or hasn't yet been implemented by legislation but for the purpose of international law.

From the cumulative reading of Art. 9 (1), 9 (4) and 13 (1), (2) of Constitution and Art. 7 (1) of Proc. No. 251/2011; Art. 1 and 13 of CRPD and Art. 18, 31 and 27 of VCLT, the researcher hermeneutically interpret that Constitution doesn't recognize validity for any subsequent laws and judicial practices that mesh with CRPD provisions and as such exclude PWHI from their effective right of access to justice during criminal proceeding. Hence, the FDRE constitution and other legislations relating with the rights of access to justice for PWHI during criminal proceedings shall be interpreted in a manner compatible with object and purpose of CRPDs.

3.10. Limited Compliance Mechanism for PWHI to International Tribunal in Ethiopia

Ethiopia is not a party to optional protocol to CRPD, PWHI suffers from limited procedural fair guarantees like right to appeal, to bring compliant and seek remedy from extended stages of proceedings up to the Committee. It has a tremendous implication in enforcing their rights of access to justice. Because the Protocol recognizes the competence of the Committee on the Rights of Persons with Disabilities to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention [37]. Only persons with disabilities whose Convention rights allegedly violated by his/her State that have ratified the protocol can petition the Committee, after exhausting domestic remedies. Individuals with disabilities in such states will have no international remedy and hence, may abhor the potential effect of the rights under CRPD.

It is a simple, cheap and only paper process that require neither the complainant nor the State appears before the CRPD Committee physically. By simply ratifying this optional protocol, Ethiopia would better enforce rights of PWHI to access justice and enhance wide range of judicial mechanisms during violation of their alleged human rights.

Generally, the protocol under article 6 enables the Committee to undertake two additional forms of monitoring: an individual communication procedure, through which the Committee receives communications (complaints) from an individual claiming that the State breached his/her rights under the Convention; and an inquiry procedure, through which the Committee investigates gross or systematic violations of the Convention [37].

Furthermore, VDPA of 1993 World Conference on Human right, under article 90 calls all states that “The World Conference on Human Rights recommends that States parties to human rights treaties consider accepting all the available optional communication procedures” [38].

As Ethiopia is not signed optional protocol to CRPD, the harmonization of domestic laws and judicial practices with its promised agreement under Vienna conference as well as in CRPDs, begs human rights question that yells at insisting on immediate intervention. To this end, formal commitments has not yet effectively carried out and there are still institutional, practical, legal and policy gaps to enforce effective access to justice for PWHI during criminal proceedings.

4. Conclusion

The right of access to justice is a basic human right which persons with hearing impairments must enjoy in an equal basis with others during all stages of criminal proceedings.

The human right model of understanding disabilities coupled with the object and purpose of CRPD ensures equal dignity, equal legal recognition; equality before the law and effective access to justice for PWHI during participation in any legal situations.

In Ethiopian legal and justice system, accused persons with hearing impairment denied various constitutional and human rights to access justice inter alia right to be treated in an equal basis with others; right to be informed in their understanding language due to lack of sign language interpreters as procedural accommodation; the right to effectively communicate with defense lawyer; the right to access evidence and cross examine adverse witness; the right to request interpreter of their own choice; the right to liberty; right to speedy trials; lack of effective participation in their different capacities before the court; lack of judicial workers training on the rights and extreme failure to enforce other due process guarantees and principle of equality of arms for them during criminal proceedings.

The 1961 criminal procedure is silent on how participation, accommodation and other effective enforcement of access to justice be ensured for PWHIs during trial.

The Draft procedure and rule of evidence tried to provide sign language interpretation which seems to accommodate persons with hearing/speech impairment but, failed to regulate manner, means and kinds of interpreters as well as no mention for parties with hearing impairments.

The Ethiopian criminal procedure and court in study area violated its international obligation on enforcement of the right of access to justice for PWHI in refusing to provide sign interpreter of their choice for PWHI as their supportive decision making under CRPDs.

The Court also violated principle of legality under criminal procedure article 126 (2) in using relative of accused with hearing impairment as interpreter during proceedings.

Judicial sectors are not designed in such a way that inclusively promote dignity, autonomy, and participation of PWHI in accommodating expression of their own will, and preferences during trial. The duty of reasonable accommodation is available only in case of employment right, however absent during rights of access to justice in courts. The procedural accommodations are not effectively

available for PWHI in law and practice during proceedings.

The legal and practical enforcement on the rights of access to justice for persons with hearing impairment during criminal proceeding in study area are by and large do not comply with the requirements provided under articles 1, 2, 4, 5, 9, 12 and 13 of the CRPD provisions to which Ethiopia is a ratified member state and has international obligation to enforce accordingly. Hence, Ethiopia in general and judicial practice in study area violated international obligation under CRPD provisions and constitutional duty with regard to enforcement of effective access to justice for PWHI during criminal proceeding.

The Ethiopian legislation also fails to make provision for the training of judicial personnel, and this further violated proper enforcement of access to justice right by judicial workers for persons with hearing impairment during judicial proceedings. The judicial administration workers and other judicial staffs have not yet taken effective training on the rights of persons with disabilities in general and access to justice right for person with hearing impairment in criminal proceeding.

For the right to effective access to justice for PWHI is procedural human rights that urge immediate application during legal proceedings, Ethiopia as member states to CRPD and judicial sectors in study area as constitutionally obliged to enforce implementation of such right, they cannot raise resource constraint defense to exonerate liability for failure to provide rights of effective access to justice for PWSI and implement this obligation.

5. Recommendation and Ways Forward

- 1) The House of peoples' representatives of Ethiopia and Chaffee (Oromia legislative organ) should take legislative initiatives to abolish or modify the laws, or practices that contradict with the object and purpose of CRPDs and enact specific laws for PWDs in general and PWHI in particular on right of access to justice during criminal proceeding in a manner compatible with CRPDs. Ethiopia should specifically amend article 126 (2) of criminal procedure that prohibit family of accused with hearing impairment from providing sign interpreter and supportive decision making of their choice.
- 2) Ethiopia should have precise approach on domestic application of international human rights treaties and the CRPD instrument shall be published and domesticated explicitly with all its meaning, scope and contents in a working language of the court in study area to give effective judicial notice or due notice of law for every persons.
- 3) Ethiopia should ratify Optional Protocol to CRPD to enforce access to justice for PWHI.
- 4) Ethiopian government and courts in study area should ensure accessible support and procedural accommodation in whole stages of judicial proceeding in compatible with CRPD. They should ensure that court stations and information are accessible to PWHIs.

- 5) *The Oromia Justice Sector Professionals Training and Legal Research Institute* should conduct a training program to all justice administration workers and its other staffs on the enforcement of right to access to justice and legal protection of persons with disabilities in general and persons with hearing impairments in particular to ensure states obligation and such parties equal participation during criminal proceedings. The judicial practice should be compatible with obligation under Art. 13 (2) of CRPD and FDRE Constitution.
- 6) Participation in professionals of Judges, prosecutors, defense lawyers and as other staff capacities and indirect participation as accused, witness, complaint etc. in judicial institution shall be effectively guaranteed by explicit criminal procedural laws for PWHI.
- 7) Ethiopia should establish independent institution to ensure the provision of legal aid and procedural accommodations for PWHI's at all stages of the criminal justice process. There should be institution of National and Regional Legal Aid and Access to Justice Awareness Center for persons with disabilities during legal proceedings.
- 8) Ethiopia and judicial practice in study area should do away with defamatory terminologies to refer for persons with hearing impairment and come up with dignified names made in a manner conforming with the object and purpose of CRPD.

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- Art. 14 (1) of ICCPR, Art. 15 (2) of CEDAW and Art. 5 (a) of CERD clearly stipulate the notion of "equality before the courts as a subset of equality before the law."
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