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The Right to Access to Justice of persons with hearing impairment in criminal cases: The case of Jimma Zone, Oromia region of Ethiopia

A THESIS SUBMITTED TO JIMMA UNIVERSITY COLLEGE OF LAW AND GOVERNANCE IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE LL.M DEGREE IN HUMAN RIGHTS AND CRIMINAL LAW

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Declaration

I hereby declare that, this paper prepared for the partial fulfillment of the requirements for LL.M Degree in Human Rights and Criminal Law entitled **‘the right to access to justice of person with hearing impairment in criminal cases: the case of Jimma zone, Oromia region of Ethiopia’** is my own work and that it has not previously been submitted for assessment to another University or another qualification. I also declare that any source used in the paper has been duly acknowledged.

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Acronyms and Abbreviations

ACHR African Charter on Human and Peoples' Right

Art. Article

CAT Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CRC Convention on the Rights of the Child

CRPD Convention on the Right of Person with Disability

ECHR European Convention on Human Right

FDRE Federal Democratic Republic of Ethiopia

ICCPR International Covenant on Civil and Political Rights

ICESCR International Convention on Economic, Social and Cultural Rights

No. Number

P. Page

Proc. Proclamation

PWD Person With Disability

Res. Resolutions

UDHR Universal Declaration of Human Right

UN United Nation

UNGA United Nations General Assembly

UNHCHR United Nations Higher Commission on Human Rights

UNPD United Nation Development Program

V. Versus

Vol. Volume

WHO World Health Organization

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Abstract

The right to access to justice of person with hearing impairments is a series problem in criminal cases because liberty of human dignity at stake unlike civil case of pecuniary matters. According to Ethiopia's third National Population and Housing Census which was conducted on May and November 2007, number of person with disability is high in Oromia region. From Oromia region the number of person with hearing impairments are high in Jimma zone. Person with hearing impairment faces various obstacles to access justice in criminal case in Jimma zone. This paper was basically conducted using both doctrinal and qualitative methodology. Doctrinal I tried to assess the legal gaps exist in our country starting from policy up active laws and legislation in line with CRPD that our country ratified. Under qualitative method I have tried to assess the practical barriers of person with hearing impairment in Jimma zone to access justice in criminal cases on equal basis with other person through using case analysis and conducting interview with justice sector professionals. Accordingly the major finding of this paper makes clear as to existence of series problem on the right to access to justice hearing impaired person in this zone in criminal cases.

Key words

Access to justice, person with disability, hearing impairments, reasonable accommodations, sign language, primary considerations.

CHAPTER ONE

1. INTRODUCTION TO THE STUDY

1.1 BACKGROUND OF THE STUDY

The term ‘disability’ is not defined in international law and it is a complex and evolving concept. Due to this reason definition accorded to disability originates from different views and model developed over a time. These models are charity model, medical, social and human rights models.¹ These models have served as a basis for the definition of disability and PWDs in international legal instruments and pertinent domestic law. Both international legal instruments and domestic laws enacted before the UN CRPD used the traditional charity and medical models for this purpose, but, those that have been passed since the CPRD’s enactment apply the social and human rights models in combination.² For this reason, the definition varies depending on the purpose of international and domestic legislation, as well as its timeframe.

To overcome these problems Convention on the Right of Person with Disability (CRPD) adopted in 2006 gives most recent and common definitions which says “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”³ This definition shifts the focus away from a clinical label of an impairment towards recognizing that people are ‘disabled’ from accessing the world through environmental, attitudinal, financial, social and legal barriers. Accordingly we can conclude that disability is the ‘social effect of the interaction between individual impairment and the social and material environment’.⁴

Out of total global population approximately one billion people, or 15 percent of the global population, experience some form of disability, and disability prevalence is higher for

¹ Ministry of Labor and Social Affairs of the Federal Democratic Republic of Ethiopia, “National Plan of Action of Persons with Disabilities, 2012-2021”, Addis Ababa, published by the Labor and Social Affairs, p 4-5.

² Belayneh Admasu, Legal Protections Accorded to Persons with Disabilities under Ethiopian Laws 2013, BDU Journal of law, vol.3 no 2, p 302.

³ Convention on the Right of Person with Disability 2008, article 1.

⁴ United Nations Committee on the Rights of Persons with Disabilities, General Comment No 3 on women and girls with disabilities , 26 August 2016, article 6, para 5.

developing countries.⁵ One fifth of the estimated total global population or between 110–190 million experience significant disabilities. According to World Report on Disability, published jointly by the World Bank and WHO in 2011, estimated that there were 15 million persons with disabilities in Ethiopia, representing 17.6% of the total population at the time.⁶ According to the Ministry of Labour and Social Affairs, 95% of persons with disabilities in the country live in poverty - the vast of majority in rural areas, where basic services are limited and the chances of accessing rehabilitative or support services are remote.⁷ Disability issues become an integral part of relevant development strategies, such as the 2030 Sustainable Development Agenda (the ‘Agenda’) in which the UN General Assembly unanimously adopted in September 2015 bears strong potential to contribute in practical ways to the protection of the rights of persons with disabilities and to the enhancement of their welfare.⁸ More of the goals of this Agenda focus on the need to remove obstacles and constraints, and strengthen support for persons with disabilities and also includes a goal on the rule of law and access to justice specifically under Goal 16,⁹ which recognizes the important role that law and justice have to play in promoting poverty reduction and sustainable development.

Persons with disabilities are marginalized members of society who do not fully and effectively participate in socio-economic activities on an equal basis with others due to various barriers in the environment. They face disproportionate socio-economic marginalization, resulting in poorer health and medical treatment, lower quality of education, limited employment prospects and generally broad-ranging restrictions on their community participation.¹⁰ These negative

⁵ World Bank, Disability: Overview, Oct.2 2019, available at <https://www.worldbank.org/en/topic/disability> accessed on 10 January, 2020, p 1.

⁶ World Health Organization & World Bank (2011), *World Report on Disability*. Geneva: WHO. Available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=2ahUKEwjttZrl6L7nAhWK2KQKHYYHBDgQFjABegQICxAE&url=https%3A%2F%2Fwww.ilo.org%2Fwcmsp5%2Fgroups%2Fpublic%2F%40ed_emp%2F%40ifp_skills%2Fdocuments%2Fpublication%2Fwcms_112299.pdf&usq=AOvVaw2D0fe6fXhGa_gtsVhLzOGW, accessed on January 10, 2020.

⁷ Report of Ministry of labour and Social affair 2010, available at <https://www.google.com/search?client=firefox-bd&q=Ministry+of+Labour+and+Social+Affairs+%28MOLSA%29+2010+report+on+disability&channel=crow2>, accessed on January 10, 2020.

⁸ United Nations, Transforming our world: the 2030 Agenda for Sustainable Development, Resolution adopted by the General Assembly on 25 September 2015.

⁹ Ibid Agenda 2030, goal 16 which says promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

¹⁰ J Beqiraj, L McNamara and V Wicks, Access to justice for persons with disabilities: From international principles to practice, International Bar Association, October 2017, p. 10.

outcomes are exacerbated by barriers to access to justice specifically experienced by persons with disabilities.

Access to justice is one of the fundamental rights that the citizens of a country are entitled to.¹¹ Yet the term “access to justice” may mean different things in countries with different legal traditions. Generally, access to justice is considered “a broad concept encompassing people’s effective access to the systems, procedures, information, and locations used in the administration of justice.”¹² Access to justice is a core element of the rule of law.¹³ It is a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights.¹⁴ In addition to being a fundamental right in itself, access to justice is also essential in terms of development and poverty reduction,¹⁵ as well as in the protection and enjoyment of all other rights.

The notion of access to justice is based on the proposition that each person should have effective means of protecting his rights or entitlements under the law. This ideal in turn emanates from the fundamental principle that all people should enjoy equality before the law, which itself is based on the notion of human dignity as the foundation of justice.¹⁶ Because a system for dispensing justice is so central to any society, states put in place a system by which people may vindicate their rights and/or resolve disputes under the general auspice of the state. When people are denied access to justice, they cannot petition their country’s courts for redress of their grievances; they cannot participate in the administration of justice as judges, lawyers, witnesses, or defendants; they are limited in their ability to benefit by or contribute to the administration of justice; and they are not allowed to vote or participate in the civic life of their respective countries. Ideally it is assumed that such a system is equally accessible and fair to all members of the society and leads to results that are individually and socially just. However person with disability especially hearing impaired person face significant obstacles in accessing justice in equal manner with other person.

¹¹ Anbesie F. Gurmessa, the Role of University-Based Legal Aid Centers in Ensuring Access to Justice in Ethiopia, *Beijing Law Review*, 2018, p 357.

¹² Stephanie Ortoleva, *Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System*, 17 *ILSA J. Int’l & Comp. L.* 281, 284, 2011.

¹³ See General Assembly resolution 67/1, paras. 14 and 16.

¹⁴ See A/HRC/25/35, para. 3.

¹⁵ *Ibid*, Stephanie Ortoleva, p.3.

¹⁶ Sackville R., *Some thoughts on Access to Justice*, *New Zealand Journal of Public International Law*, Vol. 2, 2004, p. 86.

The right to access to justice of person with disability before the adoption of CRPD has no self-standing provisions under international instruments. But indirectly these rights were first enumerated in the Universal Declaration of Human Rights (UDHR) in 1948,¹⁷ and subsequently reiterated in core human rights treaties such as the International Covenant on Civil and Political Rights,¹⁸ and expanded on in General Comments of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights.¹⁹ Traces of these rights, and other rights closely connected to accessing justice (such as the right to complain to an independent authority and to receive adequate redress for violation of rights) are found in all core UN human rights treaties—including the Convention on the Elimination of All Forms of Racial Discrimination (CERD),²⁰ the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),²¹ the Convention Against Torture (CAT),²² the Convention on the Rights of the Child (CRC),²³ the Convention on the Protection of the Rights of All Migrant Workers,²⁴ and the Convention for the Protection of All Persons from Forced Disappearance.²⁵ These references reinforce the notion that without effective access to justice, particularly at the domestic or local level where remedies are most meaningful to the individual, the strength of universal human rights is weakened, and their content devalued.²⁶

CRPD is the first international law that establishes a comprehensive set of rights and minimum guarantees that are specifically tailored to the needs and conditions of persons with disabilities. It clearly establishes that actual access to justice is important for persons with disabilities and stipulates that states must ‘ensure effective access to justice for persons with disabilities on an equal basis with others.’²⁷ Convention on person with Disability (CRPD) incorporates a more expansive notion of equality which goes beyond simply ensuring formal equality for people with disabilities within the justice system.

¹⁷ Universal Declaration of Human Right 1948, article 8.

¹⁸ International Covenant on Civil and Political Rights 1966, article 14.

¹⁹ Convention on Economic, Social and Cultural Rights 1966, article 11.

²⁰ Convention on the Elimination of all forms of Racial Discrimination 1969, article 5(a) and 6.

²¹ Convention on the Elimination of All Forms of Discrimination Against Women 1981, article 4,7, 8 and 15.

²² Convention Against Torture 1987, article 13 and 14.

²³ Convention on the Rights of the Child 1990, article 12.

²⁴ Convention on the Protection of the Rights of All Migrant Workers 1990 article 18 and 83.

²⁵ Convention for the Protection of All Persons from Forced Disappearance 2010 article 2,8, 11 and 17.

²⁶ Ilias Bantekas, M. Ashley and Dimitris Anastasiou, the UN Convention on the rights of person with Disabilities 2018, a Commentary ,Oxford University press, p 384.

²⁷ Ibid, CRPD , art 13.

The government of Ethiopia also has taken a number of legislative and policy steps that indicate commitment to advancing the rights of persons with disabilities.²⁸ Ethiopia ratified in 2010 by proclamation no 676/2010 the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which is the first international, legally binding treaty aimed at protecting the human rights of persons with disabilities. And also ratified other treaties that advance the rights of people, including those with disabilities, for example the UN Convention on the Rights of the Child, the African Charter on Human and People's Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Beijing Platform for Action – all of which make some reference to protecting the rights of persons with disabilities to fair treatment, appropriate care, inclusion and full participation in society.²⁹

Though it has no direct bearing with the right to access to justice of person with disability, Our country enacted national laws and legislation to protect the rights of person with disability. For instance FDRE constitution article 41(5) sets out the state's responsibility for the provision of necessary rehabilitation and support services to 'the physically and mentally disabled'.³⁰ Another is Proclamation No.568/2008 Concerning the Rights of Disabled Persons to Employment, which aims to protect and promote the rights of persons with disabilities to appropriate training, employment opportunities and salaries, and to prevent workplace discrimination. Also there is the Developmental Social Welfare Policy of 1997, which makes reference to the inclusion, participation and independence of persons with disabilities, including children. Implementation strategies include creating accessible physical environments, promoting positive attitudes towards disability, and assisting NGOs working on the issue. In addition the Ethiopian Building Proclamation no 624/2009 makes it mandatory for public buildings to be physically accessible for persons with disabilities. The National Plan of Action for the Inclusion of Persons with Disabilities 2012 – 2021 is an ambitious policy framework that aims to mainstream disability issues in all fields of society. Lastly the Higher Education Proclamation No. 650/2009 which

²⁸ Sida, disability right in Sub-Saharan Africa, 2015, p 1. https://www.google.com/search?client=firefox-b-d&sxsrf=ALeKk02_MotAg_xUtCLKqUVmO8jVuhKbpw%3A1613024743582&ei=580kYNf_IozhUs3kEg&q=sida+a-disability+right+in+Ethiopia+2014&oq=sida+disability+right+in+Ethiopia+2014&gs_lcp=Cgdnd3Mtd2l6EAM6BwgAEEcQsAM6BwghEAoQoAE6BAghEAQmYkKWIVFCmDaIwpoAXABeACAAesEiAHmGJIBCTItNS4yLjAuMpgBAKABAaoBB2d3cy13aXrIAQjAAE&scient=gws-wiz&ved=0ahUKEwiXj-u2meHuAhWMSBOKHU2yBAAQ4dUDCAw&uact=5 accessed at February 10,2021.

²⁹ Ibid, p 2.

³⁰ The constitution of Federal Democratic Republic of Ethiopia 1995, article 41(5).

announced the higher education system should be inclusive and must provide the necessary facilities. These all proclamation and policies issued by Ethiopia have great contribution for protection and respecting the rights of person with disability.

Although our country tried to ratify CRPD and national legislations including policies, the right to access to justice of person with disability in general and especially hearing impaired person in criminal case is difficult to be effectively implemented practically in our country in general and Jimma Zone of Oromia region in particular.

1.2 STATEMENT OF THE PROBLEM

The right to access to justice encompasses both substantive rights that are part of the right to equality and nondiscrimination within the justice system and also includes certain procedural rights such as the right to a fair trial and due process, the right to be heard, to cross-examine witnesses, to be represented by counsel, to appear in court, and to be heard by an impartial and independent judiciary.³¹ Hearing impaired person in Ethiopia and throughout the world face serious barriers when they enter the criminal justice system. For a hearing impaired person, injustices can occur at every step of the legal process, beginning with arrest and throughout the consequent sequence of interrogations, courtroom hearings, trials, acquittal, probation, or incarceration, and parole.³² These injustices result primarily from a lack of understanding of their idea on the part of professionals working in the legal system. These obstacles include denial of their legal standing and due process guarantees and the inaccessibility of the physical and communication environments during proceedings.

The government of Ethiopia has taken a number of legislative and policy steps that indicate commitment to advancing the rights of persons with disabilities. In Ethiopia, the right to access to justice is one of the fundamental rights that recognized in the 1995 constitution under article 37. This right is recognized as general as the right of everyone and without providing specific provision for the right of person with disability.³³ The Constitution also guarantees every accused

³¹ Arlenes S. Kanter, the development of disability rights under international law: from charity to human rights 2015, p 223.

³² McCay Vernon and Katina Miller, obstacles faced by deaf people in the criminal justice system 2005, American Annals of the deaf, vol.150, no.3, p 283.

³³ Ibid, the constitution of the Federal Democratic Republic of Ethiopia 1995, article 37.

person the right to a fair trial,³⁴ which includes the right to be present when being tried, the right to adduce and challenge evidence,³⁵ the right to be tried in a language which the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language,³⁶ and the right to have required information given to an accused in a language that the accused understands. It also guarantees the right to equality before the law³⁷ in which all person have equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political, or other opinion property, birth or other status. But our constitution and subsidiary laws fail to recognize the right to sign language interpretation of hearing impaired person. All persons have the same right to understand the proceedings, but hearing impaired person have a physical inability to understand criminal proceedings without the aid of sign language interpreter. Direct and indirect discrimination is forbidden under our constitution; failure to provide reasonable accommodation for hearing impaired person amounts to discrimination by itself. Ethiopian government provides notice of law through publishing on Negarit Gazeta. Ethiopia's Negarit Gazeta is published with federal working language which is Amharic and regional laws may be published by their regional working language. Person with hearing impairment in Jimma zone are mostly those who can't read and write to aware of published laws. In absence of awareness of these published laws hearing impaired person cannot even know what is good and bad for their right. Accordingly our criminal code state as ignorance of law has no excuse³⁸ which indirectly shows each individual has to read and aware of the published laws. Our country without providing the right to access to laws and information for person with disability, imposing duty to report a crime and give information is another unjust treatment on such people. The court has duty to provide interpreter for those do not understand the court proceeding (Amharic).³⁹ But it forget the fate of hearing impaired person who cannot understand court proceeding without the aid of sign language interpreter. In our country when the law provides the need to supply an interpreter, sign language does not automatically come to mind in our country's legislature and they did not explicitly include sign language interpreters.

³⁴ Ibid, article 20.

³⁵ Ibid, article 20(4).

³⁶ Ibid, article 20(7).

³⁷ Ibid, article 25.

³⁸ The Criminal Code of Federal Democratic Republic of Ethiopia, proclamation no.414/2004 article 81(1).

³⁹ Federal Courts Proclamation, Proc. No 25/1996, Fed. Neg. Gaz. Year 2nd No 13 article 25.

According to Ethiopia's third National Population and Housing Census which was conducted on May and November 2007, number of person with disability is high in Oromia region.⁴⁰ Out of total 805,492 person with disabilities in Ethiopia, the numbers of person with hearing impairments are 170,614. Oromia region ranks 1st by 282,544 total disability of which 75,681 person with hearing impairments, Amara region 198,694 of total disability of which 22,035 are person with hearing impairments, Southern Nation and Nationality 170,113 of which 40,981 are person with hearing impairments and Tigray region 69,017 of which 14,838 are person with hearing impairments. Accordingly, from Oromia region high prevalence of disability found in Arsi zone total disability of 28,497 of which 7,720 are person with hearing impairments, East Hararge 27,368 of which 7,529 person with hearing impairments and Jimma zone 24,612 of which 7,057 are person with hearing impairments. From these three zones when we see the number of person with hearing impairments by percent Jimma ranks 1st by 28.673% ($7,057 * 100 / 24,612$) followed by East Hararge by 27.51% ($7,529 * 100 / 27,368$) and Arsi zone 27.09% ($7,720 * 100 / 28,497$). This data shows the high prevalence of person with hearing impairments in this zone and thus why I focus my research study site this zone to access the fate of person with hearing impairments in criminal proceeding.

In criminal proceeding person with hearing impairments may appear as witness, defendant or victim and these persons face such difficulties starting from crime reporting, police interrogation, trial hearing up to correction institution. Obstacles faces person with hearing impairments from initial stage. A fair trial requires that the accused be able to understand the proceedings at all times. These constitutional entitlements are founded on the recognition that effective communication is imperative for a fair trial. The right to a fair trial poses particular challenges where a court is dealing with an individual whose hearing is impaired, for there is a grave danger that the individual will be excluded from meaningful participation in the trial. Here to the problem is not only with this disabled person but also with the justice actors, their limitation to understand what said by person with hearing impairment specially for those who use local and personal sign language. This problem emanates from a lack of understanding of their idea on the part of professionals working in the legal system and lack of accessibility and reasonable

⁴⁰ Ethiopia's third National Population and Housing Census report table 4.1 p 135. which was conducted on May and November 2007, available at <http://www.csa.gov.et/census-report/complete-report/census-2007?start=5> accessed on Feb 7, 2020.

accommodation by government. There is no accessibility of school of sign language which affords the needs of such people specially those who are from rural and victim of poverty. Unless these people get chance to learn commonly used sign language, their fate is limited to use his/her own personal sign language that nobody can understand them except his family (co-family) as a chance. When such people confront criminal case no one can understand their consent. The right to access to justice of such people became meaningless because they can't communicate with their legal counsel, no one can interpret his/her sign language because from the beginning he/she use his/her sole personal sign language. In such way it is impossible to expect effective access to justice in criminal justice system. Their right to hear for what they are arrested by police, the right to be interrogated by the language they understand, the right to have court proceeding by the language they understand through interpreter become questionable. The court has also a duty to afford interpreter on trial proceedings⁴¹ but does this duty goes up to affording interpreter of sign language is also another practical challenge in our countries criminal justice system.

Effective access to courts and tribunals is very essential in order to enforce one's rights. For access to be effective, physical and non-physical barriers should be removed, or at least be kept at a minimum. To minimize these barriers my paper mainly focuses on, the right to access to justice of hearing impaired person in criminal cases specifically case of Jimma Zone, Oromia region of Ethiopia. The reason my paper focuses on the right to access to justice of hearing impaired person in criminal case is, not to mean that, their right in civil proceeding is solved. Rather I want to make my scope of study more specific and more the right under criminal system is interconnected with human liberty, not as such easy as that of civil proceedings which is pecuniary matter mostly. And also the reason why I choose Jimma zone is the existence of high prevalence of hearing impaired person from Oromia region is found in this zone according to reports of the third national population and housing census.⁴²

1.3 OBJECTIVES OF THE STUDY

My research will have the following general objectives and specific objectives.

1.3.1 GENERAL OBJECTIVE

⁴¹ Ibid, Federal Courts Proclamation, article 25.

⁴² Ibid, 3rd national population and housing census report of Oromia region data (2007), table 4.2 which classify by types of disability and sex, p 340.

The main objectives of my study is to assess the right to access to justice of person with hearing impairments in criminal cases specifically focusing on Jimma zone, Oromia region of Ethiopia.

1.3.2 SPECIFIC OBJECTIVES

- To analysis the adequacy of law and policy of Ethiopia regarding the right to access to justice of person with hearing impairment in criminal case.
- To assess the particular entitlements given to persons with hearing impairments during criminal proceedings and whether these are given effect in the research site.
- To identify those barriers of hearing impaired person that hinders them to enjoy the right to access to justice in Jimma zone.
- To assess the obligation of the justice sectors whether they have executed their obligation in the Jimma zone.
- To assess the primary consideration or appropriate measure given by justice sectors to hearing impaired person to provide effective access to justice in Jimma zone.

1.4 RESEARCH QUESTIONS

This research tries to give answers for the following questions:

- ✚ Is there adequacy of law that guarantee the right to access to justice of person with hearing impairments in criminal case in Ethiopia as general and Oromia region of Jimma zone specifically?
- ✚ Is there any particular entitlements given to persons with hearing impairments during criminal proceedings and do these are given effect in the research site?
- ✚ What barriers hinder hearing impaired person to access justice in criminal case in Jimma zone?
- ✚ What are expected from the justice sectors and do they have executed their obligation in Jimma zone?
- ✚ Is there any an appropriate measure or primary considerations taken by justice actors to provide effective access to justice of person with hearing impairments in criminal proceeding in this zone?

1.5 LITERATURE REVIEW

There is a scarcity of research on the areas of the right to access to justice of hearing impaired person in criminal case. However, there are some attempts to deal with the issues in general form of disability which tried to touch the issues indirectly. Accordingly, the researcher has reviewed some literatures in relation to the right to access to justice of person with disability in Ethiopia.

The first literature reviewed was the work of Kokebe Wolde Jemaneh, reconsidering the right to access to justice in Ethiopia⁴³, which focus on the general concept of the right to access to justice as human right approach and it doesn't touch the right to access to justice of hearing impaired person in criminal proceeding to enjoy this right.

The second literature is the work of Pietro Toggia on, effective access to justice through legal literacy in Ethiopia⁴⁴ which focus on the general idea that individuals should equally be expected to have adequate awareness of basic legal knowledge of how the legal system is structured and administered, what the legal process entails, the basic knowledge and capacity to seek free legal advice and services, and most importantly, individuals should know how to claim and exercise their due process rights qua human rights. But his work fails to address the right to access to justice of person with disability in general and the right of hearing impaired person specifically.

The third reviewed literature is the work of Mizane Abate, Alebachew Birhanu and Miheret Alemayo on advancing access to justice for the poor and vulnerable through legal clinics in Ethiopia: constraints and opportunities⁴⁵ which focus on the means to solve problems of access to justice of the poor and vulnerable through promotion of legal clinics. Their work is more focus on general disability problems in advancing the right to access to justice in case of economic capacity, but not tried to address the problem facing hearing impaired person to accessing justice in criminal proceeding.

⁴³ Kokebe W.Jemaneh, reconsidering the right to access to justice in Ethiopia, Center for human rights Addis Ababa University,2014.

⁴⁴ Pietro Toggia, effective access to justice through legal literacy in Ethiopia, Center for human rights Addis Ababa University, 2014.

⁴⁵ Mizane Abate, Alebachew B. and Mihret Alemayo, advancing access to justice for the poor and vulnerable through legal clinics in Ethiopia: constraints and opportunities 2017, Mizan law Review, vol.11 no. 1.

Fourthly reviewed literature is the work of Belayneh Admasu on, Legal Protections Accorded to Persons with Disabilities under Ethiopian Law⁴⁶ which deals with the adequacy of laws regarding the right of person with disability and examines the level of protection accorded to persons with disabilities in Ethiopia. But his work didn't address specifically the right to access to justice of hearing impaired person in criminal proceeding and also fail to access the practical obstacles and barriers of person with disability in general and hearing impaired person specifically in accessing justice.

The fifthly reviewed literature is the work of Muradu Abdo on Disability and Access to Criminal Justice System in Ethiopia which focus more on the general disability and their right to access justice in criminal justice system of Ethiopia.⁴⁷ The author tried to exhaust general problem facing person with disability to enjoy the right to access to justice in criminal justice system but his work fail to address and exhaust the problem with hearing impaired person in criminal proceeding specifically.

Having reviewed these and other literatures, I concluded that none of them has explored the legal, policy and practical challenges facing the right to access to justice of hearing impaired person in criminal justice system specifically Jimma zone, Oromia region of Ethiopia. This shows the existence of legal adequacy, policy and practical barriers in which this research is going to explore in this area.

1.6 SCOPE OF THE STUDY

This study provides a critical and comprehensive account of the right to access to justice of person with hearing impairments in criminal proceeding in Jimma zone, Oromia region of Ethiopia. This research focuses on adequacy of law and policy, the existing practice and barriers in ensuring the right to access to justice of persons with hearing impairments, by limiting areas of study more formal judicial system, in criminal proceeding only.

⁴⁶ Belayneh Admasu, Legal Protections Accorded to Persons with Disabilities under Ethiopian Law 2013, Bahir Dar University Journal of Law, vol.3 No 2.

⁴⁷ Muradu Abdo, disability and access to criminal justice system in Ethiopia, Center for human rights Addis Ababa University, 2014.

1.7 LIMITATION OF THE STUDY

As to research, there is no study conducted on the right to access to justice of hearing impaired person in criminal proceeding in Ethiopia in general and Jimma zone of Oromia region in particular. As a result, I may face scarcity of adequate hard copy materials in place that help me in sharing information. Further, in conducting this study, the researcher may face many limitations such as constraints of budget and shortage of time as well as difficulty of finding persons need for interviews. However, the researcher will make an attempt to remedy this problem to a lesser extent by using e-book, softcopy materials available on websites, reports, cases and interviews to increase the authenticity and reliability of the study.

1.8 SIGNIFICANCE OF THE STUDY

The study is important to assess the realization of the right to access to justice of person with hearing impairments in criminal proceeding and help to judge the adequacy of policy and regulation of Ethiopia in line with the duty to effective implementation of CRPD.

Furthermore, the study also advances the knowledge and insight into the right to access to justice of person with hearing impairment in criminal proceeding in Ethiopia as general and Jimma zone specifically and more helps to understand the limitation, legal gaps and practical obstacles in ensuring this right.

Moreover, the study will inform the Policy and law Makers to make a new legislation or amend the existing legislation in order to minimize or avoid barriers of person with disability as general and specifically hearing impaired person to ensure equal access to justice with others.

Finally the study also contributes to the academic literatures since there is no published articles and research conducted on the area of study.

1.9 RESEARCH METHODOLOGY

1.9.1 METHOD

In order to attain the objectives listed and to address the research questions, the approach I prefer to follow in this research is both doctrinal and qualitative research method. In doctrinal approach I will try to analysis the legal frame works adequacy and gaps of national laws in line

with international human right instruments (Convention on the Right of Person with Disability) regarding the right to access to justice of person with disability in general and hearing impaired person in criminal case specifically. In qualitative research method I try to assess whether or not the right to access to justice of person with hearing impairment in criminal proceeding is really effectively ensured on equal basis with other person in Jimma Zone. Therefore it is both doctrinal and qualitative research design that best fit this study.

1.9.2 SOURCE OF DATA

Both primary and secondary data source have been sorted in this study. I have collected data from primary sources including laws, court decisions and other information's gathered through semi-structured interview. On the other hand, secondary sources like books, journal articles, archive and minutes have been utilized.

1.9.3 DESCRIPTION OF STUDY AREA

Study area selected for the assessment is Jimma Zone, which is found at South Western part of Ethiopia in Oromia Regional State at the distance of 365km from Addis Ababa and it has 21 woredas. The study area has been selected firstly by considering prevalence of hearing impaired person according to report of third national population and housing census that conducted on 2007.⁴⁸ Accordingly, Jimma zone ranks 1st by 28.673% ($7,057 \times 100 / 24,612$) hearing impaired person out of 24,612 total number of disabled person and followed by East Hararge 27.51% and Arsi zone 27.09% of hearing impaired from Oromia region. From Jimma zone Tiro Afeta woreda ranks 1st by 32.59% ($423 \times 100 / 1298$) hearing impaired person out of 1,298 total number of disability, Mana woreda ranks 2nd by 31.99% ($507 \times 100 / 1585$) hearing impaired person, Dedo woreda ranks 3rd by 31.89% ($888 \times 100 / 2784$) of hearing impaired person and fourthly Kersa woreda by 29.9% ($409 \times 100 / 1368$) hearing impaired and fifthly Limu Seka woreda 2118 of which 623 (29.4%) hearing impaired. Secondly the reason why I select this research site is accessibility issue for collection of data to reduce time and cost to make this research effective. This is why I choose this study area to assess the realization of access to justice of hearing impaired person in criminal proceeding.

⁴⁸ Ibid, 3rd national population and housing census 2007.

1.9.4 METHOD OF DATA COLLECTION

Personally administered interviews (semi-structured interviews), and case analysis will be used to obtain relevant and all necessary data for the study.

1.9.5 PURPOSIVE SUMPLING

I will adopt purposive sampling to gather relevant information from participants of my research. Accordingly, I will try to address 1-3 ranked woredas justice actors (judiciary, prosecutor, police and prison administration) depending on the prevalence hearing impaired person and zonal justice actors. In addition to these woredas Jima zonal justice actors will be assessed, because cases of each woredas come to here by appeal and cases of zone jurisdiction concerning hearing impaired person entertained here is going to be addressed. In doing so, I will interview one (1) persons from each office (justice actors) of selected woredas and zone, and total of fifteen (15) persons from Court, Justice Office, police and prison administration. The reason why I interview from these office is that access to justice in formal judicial proceeding cannot be performed out of these organ and they directly face this hearing impaired person and I want to assess how and in what manner these justice actors provide access to justice for such people.

1.10 ETHICAL CONSIDERATIONS

The researcher will make utmost effort and due care to comply with ethical considerations of the research. To this effect, the researcher secured a letter from the Associate Dean of the school of Law and Governance Studies at Jimma University requesting all of concerned bodies to cooperate the researcher with his research. Accordingly, most of the prosecutors, police, judges, lawyers and other officials were willing to be interviewed by the researcher believing that the research contributes positively for the improvement of the status of the right to access to justice of hearing impaired person in criminal proceedings in Ethiopia as a general and Oromia region of Jimma Zone specifically. In addition the researcher will take due care to get permission to collect data and to properly preserve and to utilize it for the purpose of conducting this research only. Further, in the interpretation of data, the researcher will provide an accurate account of the information and will not use language or words (offensive words) that are biased against persons initially but I will ask excuse for using such like word when siting on foot note as a reference on person with hearing impaired person offensively, if any.

1.11 ORGANIZATION OF THE STUDY

My thesis will have five chapters which are organized as follows:-

- ❖ Chapter one is an introduction which contain the proposal of the study
- ❖ Chapter two deals with general discussion on the concept of the right to access to justice and disability
- ❖ Chapter three deals with legal frame works on the right to access to justice of person with hearing impairment
- ❖ Chapter four deals with barriers to person with hearing impairments to access justice in criminal case in Jimma zone
- ❖ Chapter five finalizes the study by Conclusion and recommendation

CHAPTER TWO

2. THE CONCEPT OF ACCESS TO JUSTICE AND DISABILITY

2.1 Introduction

The term of access to justice has a broad concept encompassing people's effective access to the systems, procedures, information, and locations used in the administration of justice.⁴⁹ The notion of access to justice is based on the proposition that each person should have effective means of protecting his rights or entitlements under the law. This ideal in turn emanates from the fundamental principle that all people should enjoy equality before the law, which itself is based on the notion of human dignity as the foundation of justice. Unfortunately, persons with disabilities have often been denied fair and equal treatment before courts, tribunals, and other bodies that make up the justice system in their country because they have faced barriers to their access. Such barriers not only limit the ability of persons with disabilities to use the justice system, they also limit their contributions to the administration of justice.

Disability is not defined under international law since it is complex and evolving concept. Due to this reason definition accorded to disability originates from different views and model developed over a time. These models are charity model, medical, social and human rights models. To overcome these problems Convention on the Right of Person with Disability (CRPD) adopted in 2006 gives most recent and common definitions which says "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." Under this chapter the concept of access to justice and disability will be discussed broadly including the right to access to justice of person with disability.

2.2 CONCEPT OF ACCESS TO JUSTICE

The concept of access to justice starts with the existence of rights enshrined in laws, and awareness and understanding of those rights. Effective access includes the availability of, and access to, counsel and representation. It also encompasses the ability of such mechanisms to provide just, fair, impartial and enforceable solutions.⁵⁰ The notion of access to justice can be described in different ways. It may encompass notion narrowly mainly from a procedural perspective or more broadly, taking a more substantive perspective. Barriers to such access can be various such as; high court costs, restrictive jurisdictional rules, complex regulations, ineffective enforcement mechanisms, and corruption. Access to justice is also can be related with judicial independence and having legal literacy.

⁴⁹ Stephanie Ortoleva, *Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System*, 17 *ILSA J. Int'l & Comp. L.* 281, 284, 2011.

⁵⁰ J Beqiraj, L McNamara and V Wicks, *Access to justice for persons with disabilities: From international principles to practice*, International Bar Association, October 2017, p14.

According to narrow approach, access to justice is ‘concerned with the means for securing vested rights, particularly through the use of courts and tribunals’.⁵¹ The notion of ‘procedural access to justice’ therefore mainly means being able to use a procedure before a court. Following this approach, one likely focuses on the obstacles people face when trying to bring a case before a court, such as having no access to justice.

When taking a broader approach, the notion not only encompasses access to a (legal) procedure, but also the outcome of a procedure or measure. More specifically, the notion concerns the question whether the outcome is ‘just and equitable’⁵² or helps realize ‘material justice’. UN development program also strength this expanded notion of access to justice, which entails much more than improving an individual’s access to courts and it must be defined in terms of ensuring that legal and judicial outcomes are just and equitable.⁵³ Accordingly, it has been pointed out that the concept of access to justice encompasses not only *procedural* access in which effectively engaging in and using the established legal system, but also *substantive* access in which equitable and beneficial judicial outcomes and *promotional* access in which promotion of citizens’ belonging and empowerment is to be ensured.

Access to justice is, in core, a question of equality under which the weaker part of society used to defend their rights. Out of these people person with disabilities do not enjoy the benefit of the law simply because they do not have access to justice. Equality does not mean identical treatment. In order to attain true equality before the law, we must acknowledge and be sensitive to the deep social inequalities that exist in relation to people with disabilities and tailor rules of law and procedures to their needs. In legal systems to attain equality, using non-identical treatment is possible, as there is no greater inequality than the equal treatment of unequal situations.

The concept of access to justice is recognized in Ethiopia under 1995 FDRE constitution article 37(1) which says ‘everyone has the right to bring a justiciable matter to and to obtain a decision or judgment by, a court of law or any other competent body with judicial power’. Here the notion of access to justice under this provision is not only to show the individual or group rights to access to courts rather it also include to ensure the right to get just and equitable decision from court of law or any other competent body with judicial power. Therefore we can conclude that the notion of access to justice recognized in Ethiopia encompass both procedural and substantive access to justice.

Under this constitution there is no specific provision referring to the right to access to justice of person with disability directly. But the right to access to justice under this constitution is the right

⁵¹ Jeremy McBride, ‘Access to Justice for Migrants and Asylum-seekers in Europe’, CDCJ (2009) 2, para 6. See also Patricia Hughes, ‘Law Commissions and Access to Justice: What Justice Should We be Talking About?’, 2009, 46 OHLJ 773, 778.

⁵² Ibid, McBride, para 9.

⁵³ United Nations Development Program (UNDP), Access to Justice: Practice Note, 2004, p. 3.

of every one which includes every individuals or groups or associations representing similar interests of the members. Therefore we can deduce that this right include person with disability to access justice since the phrase ‘everyone’ include all dignified human being.

2.3 CONCEPT OF DISABILITY

The term ‘disability’ is not defined under international law and it is a complex and evolving concept. As it can be understand from the preamble of CRPD, disability is an evolving concept and that results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others’. Due to this reason definition accorded to disability originates from different views and model developed over a time. These models are charity model, medical, social and human rights model.

A. CHARITY MODEL

This model considers people with disability as helpless victims who need “care” and “protection”. In order to meet the needs of people with disability, the model resorts to the goodwill of benevolent humanitarians for “custodial care” of this class of people. In addition, the charity model imposes social responsibility to members of the society to take good care of people with disabilities. Such responsibility emanates from individual acts of generosity. Assistances arising out of the charity model compromise the entitlements of the “grantees” because charity replaces entitlements. Accordingly in society, they are viewed as a burden on family and society instead of contributing members in their community. Such approaches have long dominated legislative frameworks and policy and continue to foster negative attitudes towards persons with disabilities.⁵⁴

B. MEDICAL MODEL

This model considers disability as an individual with bio-medical or functional problem.⁵⁵ It invokes the images of disease and disorder. This model perceive person with disabilities as abnormal, but may be prevented or enhanced through medical treatment and it centers on biological factors. The medical model sees disability as any loss or abnormality of psychological or anatomical structure or function; disability resides in the body of the person; the person is equated with a medically sick person; disability can be cured with medical attention.⁵⁶ In its extreme form, this model may treat persons with disability even as undeserving or dangerous; this association of disability with danger underpins the custodial model of care. The way this model view disability is problematic because it allows individuals, societies, and governments to

⁵⁴ Muradu Abdo, disability and access to criminal justice system in Ethiopia, center for human rights Addis Ababa University 2014, p. 222.

⁵⁵ Barnes, C., ‘the Social Model of Disability: Valuable or Irrelevant?’ in Watson, N., Roulstone, A. and Thomas, C. (eds.), the Routledge Handbook of Disability Studies. Routledge, London, p. 12.

⁵⁶ Indian National Human Rights Commission, Disability Manual, 2005.

avoid the responsibility of addressing the human rights obstacles that exist in the social and physical environment.

C. SOCIAL MODEL

The social approach traces the experience of disability in the social environment, rather than in the impairment of the person, urging us to take actions to dismantle the social and physical barriers to the participation and inclusion of persons with disabilities; it reinterprets disability as social oppression, and radically refocuses the agenda away from cure, treatment, care and protection to the acceptance of impairment as positive dimension of human diversity, and rejection of a social norm that results in exclusion.⁵⁷

This model focuses on eliminating the barriers created by the social and physical environment that inhibit the ability of persons with disabilities to exercise their human rights. These barriers can be eliminated through promoting positive attitudes and perceptions, modifying the built environment, providing information in accessible formats, interacting with individuals with disabilities in appropriate ways, and making sure that laws and policies support the exercise of full participation and non-discrimination.⁵⁸ This model basically realizes that there is a need to break down these barriers in society and to address not only the medical and rehabilitation needs of persons with disabilities, but also all of their needs and the fulfillment of all of their human rights. The social model of disability, which focuses on the responsibility of governments and society to ensure access, inclusion, and participation, sets the stage for the adoption of a human rights-based approach to disability and empowered disability rights advocacy.

D. HUMAN RIGHT-BASED APPROACH

This is the most relevant model for the legal definition of PWDs, as the ideas have been incorporated into numerous currently applicable international legal instruments and domestic laws. The human rights model complements the social model, buttressing the argument that all human beings are inherently equal and entitled to equal enjoyment of all human rights without distinction of any kind, including disability.

This approach identifies persons with disabilities as rights holders and subjects of human rights law on an equal basis with all persons by recognizing and respecting a person's disability as an element of natural human diversity, on the same basis as race or gender, and addresses the disability specific prejudices, attitudes, and other barriers to the enjoyment of human rights. This model places the responsibility on society and governments for ensuring that the political, legal, social, and physical environments support the human rights and full inclusion and participation of persons with disabilities.

⁵⁷ Ibid, Muradu Abdo, p. 217.

⁵⁸ Human rights yes! Action and Advocacy on the right of person with disability, 2nd edition 2012, p.12.

Generally, Charity model and medical model are traditional in which they connote person with disability as an object of charity which are dependent and helpless, and patient who need treatment respectively rather than right holder. These two models are narrow perspectives that do not reflect a comprehensive understanding of persons with disabilities as holders of rights and as active participants in their communities. While the social model relate with societal attitude in which the society create barriers to person with disability that hinder them to enjoy their rights; and the human right model which is modern one shifts attitude the society towards PWD from object to the right holder. The human rights model complements the social model, supporting the argument that all human beings are inherently equal and entitled to equal enjoyment of all human rights without any distinction to support person with disabilities' claims to equal access to services and opportunities.

Accordingly, defining persons with disabilities as rights holders and subjects of human rights law on an equal basis with others is a powerful approach to changing perceptions and attitudes, as well as providing a system for ensuring the human rights of persons with disabilities.⁵⁹ A human rights approach identifies minimum legal standards necessary for persons with disabilities to participate freely in society. It holds certain actors, such as government and the private sector, responsible for respecting those standards and requires that individuals have access to justice in cases where those standards are not respected.

These models have served as a basis for the definition of disability and PWDs in international legal instruments and pertinent domestic law. Both international legal instruments and domestic laws enacted before the UN CRPD used the traditional charity and medical models for this purpose, but, those that have been passed since the CPRD's enactment apply the social and human rights models in combination. For this reason, the definition varies depending on the purpose of international and domestic legislation, as well as its timeframe.

The UN General Assembly has promulgated a number of declarations and conventions concerning PWDs since the UDHR. Among these UN Declaration on the rights of Disabled persons (1975) was drafted to ensure equality in general.⁶⁰ The UN Declaration on the Rights of Disabled Persons (1975) defines disability as “Disabled person means any person unable to ensure by himself or herself, wholly or partially, the necessities of a normal individual and or social life, as a result of deficiency, congenital or not, in his or her physical, or mental capabilities.”⁶¹ This definition relies on the ability of an individual to survive alone and a person with any kind of disability is no longer considered to be disabled if he or she is able to ensure his or her own necessities at all. The clause excludes disabled persons who may be able to take care of themselves to some extent.

⁵⁹ Ibid, human right yes! p.16.

⁶⁰ Belayneh Admasu, legal protection accorded to person with disabilities under Ethiopian laws 2013, BDU, VOL.3, NO. 2, p. 302.

⁶¹ Declaration on the Rights of Disabled Persons, proclaimed by UN General Assembly Resolution 3447 (XXX) of December 1975, No. 1.

Another international human right instrument is the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities similarly defines “disability” based on the incapacity to perform daily activities. Accordingly this convention define disability as “ a physical, mental or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities of daily life, and which can be caused or aggravated by the economic and social environment”⁶². This definition exclude disabled person who capable of performing many essential activities since it depend on capacity of disabled person.

The other is the definition given by the Standard Rules on the Equalization of Opportunities for Persons with Disabilities that adopted by the UN General Assembly in 1993. It defines disability as “disability includes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature”⁶³.

International Labor Organization Vocational Rehabilitation and Employment (Disabled Persons) Convention, adopted by the UN General Assembly in 1983 gives purpose-specific definitions for disability: “disabled person means an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment.”⁶⁴ This definition does not include someone unless his or her opportunity for employment is considerably affected as a result of his or her physical and mental impairment.

In general, Persons with disabilities are marginalized members of society who do not fully and effectively participate in socio-economic activities on an equal basis with others due to various barriers in the environment. Taking this into account, the United Nations has promulgated the Convention on the Rights of Persons with Disabilities, which complements general human rights instruments and gives particular emphasis to respect and protection of the rights of persons with disabilities. To overcome these problems Convention on the Right of Person with Disability (CRPD) adopted in 2006 gives most recent and common definitions which says “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”⁶⁵ This definition shifts the focus away

⁶² Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, adopted in Guatemala City, Guatemala, at the twenty-ninth regular session of the General Assembly of OAS, held on 7 June 1999.

⁶³ Standard Rules on the Equalization of Opportunities for Persons with Disabilities, A/RES/48/96, 85th plenary meeting, 20 December 1993, No. 17.

⁶⁴ International Labor Organization, Vocational Rehabilitation and Employment (Disabled Persons) Convention 159, 1983.

⁶⁵ Ibid, CRPD 2006 article 1.

from a clinical label of impairment towards recognizing that people are ‘disabled’ from accessing the world through environmental, attitudinal, financial, social and legal barriers.

The concept of disability under our country is also not far from the above models that show improvements through time. Our law and policy before ratification of CRPD mostly adopts medical-charity approach disregarding them as the owner of right as human being. Even the FDRE constitution which recognized fundamental rights and freedoms didn’t recognized person with disability as a right holder. When we see article 41(5) of FDRE constitution says ‘the state shall, with in available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged...⁶⁶. It presupposes person with disability as patient that need rehabilitation and that cannot survive without the assistance of the state.

The FDRE Criminal Code which treated offenders with intellectual disability⁶⁷and criminal procedure code⁶⁸have similar approach in dealing with person with mental disability which shows the medical charity model followed by our country. The adoption of the non-rights-based approaches to disability, such as the charity or medical models, or hybrid of the two by various Ethiopian laws, does not mean that the country has adopted laws which explicitly discriminate against persons with disabilities because the principle of nondiscrimination (of equality) has been fully entrenched in the constitutions and other legislations. Subsidiary laws of the country also reflect the principle of equality, and to the treatment of like case alike.⁶⁹

The right to access to justice also recognized under FDRE constitution as a right of everyone without specifically referring to person with disability.⁷⁰ But the mere fact the constitution failed to refer specifically to person with disability does not mean that the constitution exclude person with disability from enjoying the right to access to justice. Because the phrase ‘everyone’ under this provision shows as person with disability also entitled to this right which is supported by article 25 of constitution that prohibit any discrimination based on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or *other status*.⁷¹ The phrase ‘other status’ under this provision prohibit discrimination on the ground of disability to enjoy the right enshrined under this constitution in general and the right to access to justice specifically.

2.4 THE RIGHT TO ACCESS TO JUSTICE OF PERSON WITH DISABILITY

The CRPD recognizes that access to justice as a right and fundamental freedom is indivisible from and interdependent with other rights and freedoms enshrined in the CRPD. Persons with

⁶⁶ Ibid, FDRE constitution art.41 (5).

⁶⁷ Ibid, FDRE Criminal code article 129-133.

⁶⁸ Criminal Procedure Code, Proc. No.185/ 1961, Neg. Gaz., Extraordinary Issue No. 1 of 1961 Article 208.

⁶⁹ Ibid criminal code Art 4, which provides: “Criminal law applies to all alike without discrimination as regards persons, social conditions, race, nation, nationality, social origin, color, sex, language, religion, political or other opinion, property, birth or other status.”

⁷⁰ Ibid, FDRE Constitution Art.37.

⁷¹ Ibid, art.25.

disabilities may face physical barriers to accessibility, such as barriers which render the act of physically entering police stations or courts impossible and Communication barriers that prevent them access to information, understanding legal procedures or exchanges with judges, lawyers and other interlocutors.⁷²

The right to access to justice can be understood as being made up of, dependent on and expanding the rights to effective remedy, fair trial and equality. The right to an effective remedy speaks to substantive access to justice, while the right to a fair trial sets standards regarding procedural access to justice.⁷³ Non-discrimination or equality clauses can attach to the right to effective remedy and fair trial, further reflecting the foundation of a general right to access to justice.⁷⁴ In legal proceedings, non-discrimination provisions constitute an important pillar of access to justice for persons with disabilities; that is, in order to enjoy effective access to justice, persons with disabilities must be treated equally before the law and have equal opportunities to participate in the justice system.⁷⁵ At the same time, equality of opportunities may require the adoption of (positively) discriminatory measures to place persons with disabilities on an equal footing with others, such as the requirement to provide accommodations to facilitate participation in legal proceedings.

The non-discrimination principle creates equal treatment and equal opportunities. Its aim is to prevent or limit the effects of discrimination, which often lead to the fact that a person cannot take part fully in the social life of the community. The factors of discrimination may be indirect or direct.⁷⁶ According to the principle of universal accessibility, the environment, processes, goods, products, services, as well as objects, instruments and tools should be understandable, usable and practicable for all persons in safe conditions and in the most autonomous way possible. Therefore, methods of clear, comprehensible and accessible information should be made available. The availability of easy-to-read information would allow person with disabilities to understand documents or information that could help and affect them.

The convention on the right of person with disability under article 13(1) provides substantive equality which encompasses both equality of opportunities and equality of outcomes by setting obligation the member states to ensure access to justice for persons with disabilities on an equal

⁷² Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/37/25, 2017, Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities, p 6.

⁷³ The Universal Declaration of Human Rights (UDHR) contains the earliest articulation of the right to an effective remedy Art 8 and the right to a fair trial Art 10.

⁷⁴ Equality rights are now fairly commonplace, and can be found in documents like the European Convention on Human Rights Art 14, the Charter of Fundamental Rights of the European Union (Arts 20–26), the American Convention on Human Rights Art 24 and the African Charter on Human and Peoples' Rights Arts 2 and 3.

⁷⁵ Julinda Beqiraj, Lawrence McNamara and Victoria Wicks, the right to access to justice of person with disability: from international principles to practice, international Bar Association 2017, p 15.

⁷⁶ The European Court of Justice held that discrimination can arise through the application of different rules to comparable situations, or the application of the same rule to different situations. See Case C-243/95 Kathleen Hill and Ann Stapleton v The Revenue Commissioners and Department of Finance [1998], Case C-279/93 Finanzamt Köln-Altstadt v Schumacker [1995] ECR I-225.

basis with others. The right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law.⁷⁷

Since effective access to justice is a precondition to, an enabler of and a guarantee for the full enjoyment of all other rights and fundamental freedoms. It creates an empowering environment in which persons with disabilities can better assert their legal rights. Article 8 of CRPD imposes a specific requirement on states to ‘foster respect for the rights and dignity of persons with disabilities’; this could be achieved through various awareness raising media campaigns and training programs about the rights of persons with disabilities. When read together with Article 13, Article 8 requires that access to justice starts with individual and public awareness of how persons with disabilities are entitled to and can access justice.

From the perspective of an effective access to justice, an Optional Protocol to the CRPD establishes a complaint mechanism where individuals can bring claims regarding alleged violations of their rights established in the CRPD – once they have exhausted the available domestic remedies,⁷⁸ but our country Ethiopia didn’t sign optional protocol of CRPD yet which left the right to seek effective remedy of person with disability in general and hearing impaired person specifically.

⁷⁷ Human Rights committee, General Comment no.32, para 2.

⁷⁸ Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities adopted and opened for signature, ratification and accession by General Assembly resolution 61/106 of 13 December 2006, entry into force 3 May 2008.

2.5 CONCLUSION

The right to access to justice is a basic right of every individual in which other right of individual cannot be ascertained without realizing this right. This right encompasses both procedural and substantive access to justice. Person with disability cannot easily access this right equally as other person without affording reasonable accommodations. Disability is an evolving concept and that results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others'. Due to this reason definition accorded to disability originates from different views and model such as medical, charity, social and human right model that developed over a time. Ethiopian laws and legislations mostly originate from medical-charity approach disregarding person with disability as the owner of right as human being.

The right to access to justice recognized under FDRE constitution as a right of everyone which includes also person with disability as it can be inferred from phrase everyone. Ethiopia by ratifying CRPD become member state of the convention and obliged to ensure effective access to justice of person with disability as enshrined under the convention. Effective access to justice is a precondition to, an enabler of and a guarantee for the full enjoyment of all other rights and fundamental freedoms. It creates an empowering environment in which persons with disabilities can better assert their legal rights.

The right to access to justice can be understood as being made up of, dependent on and expanding the rights to effective remedy, fair trial and equality. The right to an effective remedy speaks to substantive access to justice, while the right to a fair trial sets standards regarding procedural access to justice. The convention on the right of person with disability under article 13(1) provides substantive equality which encompasses both equality of opportunities and equality of outcomes by setting obligation the member states to ensure access to justice for persons with disabilities on an equal basis with others.

When effective access to justice of individual is violated, individual can bring claims regarding alleged violation of their rights recognized under CRPD after exhaustion of available local remedies through compliant mechanisms established by an Optional Protocol to the CRPD. But our country Ethiopia didn't sign optional protocol of CRPD yet which left the right to seek effective remedy of person with disability in general and hearing impaired person specifically.

CHAPTER THREE

3. LEGAL FRAME WORKS ON THE RIGHT TO ACCESS TO JUSTICE OF PERSON WITH DISABILITY

3.1 Introduction

Effective access to justice is a precondition to, an enabler of and a guarantee for the full enjoyment of all other rights and fundamental freedoms. The right of person with disability to enjoy this right has not get recognition under international laws before the adoption of CRPD. As a result, the international community believes that special laws are important to give due consideration to the respect and protection of rights of PWDs. Accordingly the UN Convention on the Rights of Persons with Disabilities (CRPD) which give particular emphasis to respect and protection of PWDs have been accepted by UN member states and adopted in 2006 and come into force 2008. This convention creates an empowering environment in which persons with disabilities can better assert their all legal rights.⁷⁹ Under this chapter we will discuss firstly the right to access to justice of person with disability generally and person with hearing impairment specifically under international and regional human right instruments and secondly we will discuss how the right to access to justice of person with disability in general and person with hearing impairment looks like under national laws in details.

3.2 INTERNATIONAL AND REGIONAL FRAME WORKS ON THE RIGHT TO ACCESS TO JUSTICE OF PERSON WITH DISABILITY

Before the adoption of CRPD, there is no binding laws that directly deals to ensure the right of person with disability in general and the right to access to justice of person with disability specifically. Only the right to equality and non-discrimination is enshrined in several international legal instruments. These instruments ensure that every person is equally entitled to all human rights. As stated in the UDHR, distinctions such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status shall not be grounds to deny any person rights on an equal basis with others.⁸⁰

⁷⁹ Ibid, Julinda Beqiraj, p 15.

⁸⁰ Universal Declaration of Human Rights 1948, art.2.

A. UNIVERSAL DECLARATION OF HUMAN RIGHT

UDHR 1948 as it can be understood from its preamble the main target is to realize freedom, peace and justice in the world, to recognize the inherent dignity and equal and inalienable rights of all members of human being. Person with disability are also members forward to realize justice, peace and freedom in the world it even further puts that the recognition of the rights of all human family is the foundation of justice in the world. This declaration was not totally silent about the question of access to justice by persons with disabilities generally and access to the criminal justice system in particular. Accordingly it recognizes the right to access to justice under article 8 which says that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Here, even if, the provision not specifically refers to person with disability, the phrase which says ‘everyone has the right’ shows as it intends to cover person with disability since person with disability is also human being which born with dignified rights that seek the right to access to justice.

B. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The right to access to justice is also recognized in United Nations core human rights treaties, including the International Covenant on Civil and Political Rights, which provides that persons whose rights or freedoms have been violated are to have an effective remedy, and that “all persons shall be equal before the courts and tribunals.”⁸¹ The phrase ‘all person’ includes person with disability and under its article 2(1) it prohibit any discrimination based on race color sex language religion, politics or other opinion or social origin property ,birth or other status. Even though the provision does not prohibit discrimination based on disability expressly, it can be deduced from the phrase ‘other status’ which include disability. As a result we can conclude that the right to access to justice of person with disability in general and person with hearing impairment is recognized under this convention indirectly.

⁸¹ International Covenant on Civil and Political Rights (1966) article 14.

C. INTERNATIONAL CONVENTION ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

Like other convention discussed above, Convention on Economic Social and Cultural rights does not specifically recognized the right to access to justice of person with disability. But this convention under its article 2(2) enunciates that ‘the right will be exercised without clearly applying to discrimination on the ground of disability as to the application of the provisions’. State parties under this covenant are required to appropriate measure to the maximum extent of their available resources, to enable person with disability to seek to overcome any disadvantages in terms of the enjoyments of their rights specified in the convention following their disability. This prohibited discriminatory provision indirectly entitle person with disability to enjoy all rights recognized by this convention generally.

D. AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHT

The charter recognize individual rights as well as peoples’ rights and duties and some economic rights in addition to civil and political rights was adopted by African Union in 1981 and come to force October 1986. The charter under its article 1 gives special protections for person with disability by imposing obligation on state parties to adopt legislation and policy measures which particularly consists for the protection and rehabilitations of person with disability.⁸² ‘Every individual’ including person with disability entitled to enjoy rights and freedom recognized by prohibiting any discrimination based on race, color, ethnic group, sex, language ,religion...or other status which include disability as a ground. As a result the right to access to justice recognized under article 7 of the charter can be inferred to person with disability since this right is recognized under article 2 for every individual without any discrimination based on disability.

E. EUROPEAN CHARTER OF HUMAN RIGHTS

This charter recognizes the right to access to justice under its article 6 and 13 by referring to the right to fair trial and remedy.⁸³ The right and freedom recognized under this charter is entitled to ‘every one’ as it provided under article 1 of the charter which means person with disability is also included indirectly.

⁸² African Charter on Human and peoples’ Right 1986, article 1.

⁸³ European Charter of Human Rights 1948, article 6 and 13.

F. OTHER CONVENTIONS

When come to other international human rights instruments which adopted before coming of CRPD, the recognition they tried to give for the right of person with disability can be inferred from the principles of non-discriminations provided in each.⁸⁴ All these international bill of human rights prohibit discrimination on grounds of disability and they implicitly recognize and protect the rights of persons with disability by guarantying equality before the law and equal protection by the law for all people, including against discrimination.

However, these international human right instruments do not explicitly address the conditions of persons with disabilities in criminal justice systems of states. To address these problems the coming of Convention of the Right of Person with Disability in 2008 was necessitated.

G. CONVENTION ON THE RIGHTS OF PERSON WITH DISABILITY

The UN Convention on the Rights of Persons with Disabilities (CRPD) adopted in 2006 and come into force 2008. It provides definition that reflects the latest understanding of the concept of PWDs. This convention says: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”⁸⁵. This Convention is comprehensive in terms of envisaging the rights of different categories of persons with disability and the subject matter treated therein. It addresses human rights involving persons with disabilities, including the rights of the disabled to enjoy access to a wide range of services including access to justice. The issue of access to services and facilities in general and access to justice in particular is one of the pillars of the Convention. CRPD is the first international treaty to include the actual phrase “access to justice” as a free standing substantive right and it is also a right that imposes on States Parties an affirmative duty to provide reasonable accommodations.⁸⁶ Article 13 (1), entitled Access to justice, reads:

⁸⁴ The International Convention on the Elimination of All Forms of Racial Discrimination, The Convention Against Torture, The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and The International Convention for the Protection of All Persons from Enforced Disappearance, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women 1979.

⁸⁵ Ibid, Convention on the Right of Person with Disability, art 13.

⁸⁶ Arlene S. Kanter, the development of disability right under international law,- from charity to human rights, p.183.

*States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.*⁸⁷ Accordingly Article 13 guarantees the right of all persons with disabilities to (1) effective access to justice on an equal basis with others; (2) effective access to justice at all phases of the administration of justice; (3) effective access to justice as both direct and indirect participants; and (4) procedural and age-appropriate accommodations to facilitate their right to access justice. And this article is supported by the anti-discrimination and equality provisions of Articles 4 and 5 and by the requirement of reasonable accommodations provided in Article 5(3).

The predominant obligation of article 13 is to ‘ensure effective access to justice for persons with disabilities on an equal basis with others’.⁸⁸ The term which says, ‘on equal basis with others’ is to mean that disabled people should have the same opportunities as non-disabled people to access justice.⁸⁹ To have equal opportunities person with disabilities should have to get reasonable accommodations. Reasonable accommodations is an adjustment to standard practice or procedure which must be undertaken to remove a particular disadvantage at which a specific disabled person would otherwise be placed in order to access justice.⁹⁰ Examples might include allowing more frequent breaks in the hearing for a person whose disability so requires; allowing person with hearing impairments to give evidence through a sign language interpreter.⁹¹

Access to justice also involves changes to the many formal and complex rules that make it difficult for some people with disabilities to effectively negotiate the judicial system.⁹² Although certain rules and procedures of a justice system may guarantee equal access to all, person with hearing impairments may not have access without accommodation or assistance. It is for this reason that Article 13 not only declares unequivocally the right of all people with disabilities to “effective access to justice” on an equal basis with others, but also that the “necessary procedural and age-appropriate accommodations” be provided in order to facilitate their effective

⁸⁷ Ibid, UN Convention on the Right of Person with Disability, art 13(1).

⁸⁸ Ibid.

⁸⁹ Ilias Bantekas, M. Ashley and Dimitris Anastasiou, The UN Convention on the rights of person with Disabilities 2018, a Commentary ,oxford University press, p 392.

⁹⁰ Ibid CRPD art 2.

⁹¹ Ibid, commentary on CRPD p 391.

⁹² Ibid, Arlene S.Kanter, p 223.

participation. It is also the reason why Article 13 requires States Parties to “ensure effective access to justice for persons with disabilities” through “appropriate training for those working in the field of administration of justice, including police and prison staff.”

Access to justice also includes the right to be free from attitudinal barriers that interfere with a person’s right to substantive and procedural access to justice. In general CRPD is the first international human instrument guarantees the right to access to justice of person with disability by providing substantive equality which encompasses both equality of opportunities and equality of outcomes by setting obligation the member states to ensure access to justice for persons with disabilities on an equal basis with others.

To solve such barriers of communication of person with hearing impairments, CRPD provides official recognition and access to sign language which is essential for person with hearing impairment to access all public services. States are obligated to take appropriate measures to ensure disabled persons have equal access to information and communication.⁹³ Such measures include providing professional sign language interpreters to facilitate effective access to justice. More generally, Article 9 imposes a somewhat challenging burden on the State to assurance the overall environment is accessible to disabled persons in general and person with hearing impairment specifically. This requires States to ensure access to the physical environment, to transportation, to information and communication, including information and communication technologies and systems, and to other facilities open to the public. Also Article 21 requires states to not only recognize and promote sign languages, but to take appropriate measures to accept and facilitate the use of sign language in official interactions. Accordingly person with hearing impaired will have 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.⁹⁴ In addition Article 24(4), requiring states to undergo appropriate measures to employ (or train) teachers qualified in sign languages. Finally, Article 30 obligates the state to recognize and support the specific cultural and linguistic identity of disabled individuals, which includes sign language and their culture.

⁹³ Ibid, CRPD article 9.

⁹⁴ Marku Jokinen, Legal Measures Required by the Convention on the Rights of Persons with Disabilities, WORLD FEDERATION OF THE DEAF, <http://www.wfdeaf.org/reports/Legal>. Measures. p.122.

H. OPTIONAL PROTOCOL TO CRPD

All state party to the convention have obligation to ensure effective access to justice for person with disability. Optional protocol to CRPD establishes an individual complaints mechanism for person with disability who alleges that their rights under the convention have been denied. When the right to access to justice of person with disability is violated by state party to the convention, person with disability whose right is violated can have the right to bring individual complaint before committee of CRPD.

However, individual complaint mechanism before the committee can only be possible when the member state to the convention has ratified this optional protocol by accepting the competence of the committee. Our country Ethiopia has not ratified this optional protocol. As a result, a person with disability in general and hearing impaired person whose right to access to justice is violated in our country has not had a chance to bring individual complaints before this committee.

3.3 NATIONAL (DOMESTIC) LEGAL FRAMEWORKS

Many member states have accepted these international legal instruments (CRPD) and committed to the enforcement of the rights enshrined therein. As a member state, Ethiopia has accepted and ratified the CRPD via proclamation No. 676/2010. The government of Ethiopia has taken a number of legislative and policy steps that indicate commitment to advancing the rights of persons with disabilities. As an example, the Proclamation no.568/2008 Concerning the Rights of Disabled Persons to Employment, which aims to protect and promote the rights of persons with disabilities to appropriate training, employment opportunities and salaries, and to prevent workplace discrimination; the Developmental Social Welfare Policy of 1997, which makes reference to the inclusion, participation and independence of persons with disabilities, including children; the Federal Civil Servant Proclamation No. 515/2007, provides for special preference in the recruitment, promotion, and deployment, among others, of qualified candidates with disabilities; the Ethiopian Building Proclamation no.2009 makes it mandatory for public buildings to be physically accessible for persons with disabilities; Labour Proclamation, No. 377/2003, amended by Labour Proclamation No. 494/2006; Developmental Social Welfare Policy 1997, specifically targets people with disabilities and sets out to safeguard their rights and to promote opportunities for vocational rehabilitation; National Program of Action for Rehabilitation of Persons with Disabilities, 1999 which aims to take disability preventive measures by promoting community participation; enable persons with disabilities and promote a better standard of living by building their capacity; and ensure their equal rights and full

participation in society; National Plan for Accelerated and Sustained Development to End Poverty (PASDEP), provides the framework for national poverty-reduction program for 2006-2010 and includes the provision of a safety net for persons in vulnerable situations who cannot work, including persons with disabilities; the National Plan of Action for the Inclusion of Persons with Disabilities 2012 – 2021 that aims to mainstream disability issues in all fields of society; Ethiopia’s Growth and Transformation Plan (2010-2015) that identifies disability as a crosscutting development issue and focuses on education and training, rehabilitation and equal access to services and opportunities for persons with disabilities, as well as strategies to prevent disability. These all shows effort made by Ethiopian government for the protection and recognition of person with disability in general even though it has no direct bearing with access to justice of person with hearing impairment in criminal case.

For the purpose of assessing the right to access to justice of person with hearing impairment in criminal case, my paper under this chapter mainly focus on existing Ethiopian laws and policies that have direct connection with access to justice of hearing impaired person in criminal case.

A. FDRE CONSTITUTION

The FDRE constitution which comes to enforcement in 1995 was the document that brought fundamental rights and freedoms in this country. Out of these the right to access to justice which categorized under democratic right recognized under FDRE constitution as the right of everyone.⁹⁵ This provision does not clearly refer to person with disability specifically as that of CRPD. However, this does not mean that the provision excluded person with disability from enjoyment of the right to access to justice because of three reasons. Firstly, the phrase under this provision which says ‘everyone’ refers all dignified human being in which person with disability is a part of this group and entitled to this right. Secondly, this constitution under article 25 recognize equality of all person to enjoy rights recognized under this constitution by prohibiting any discrimination on any grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political, or other opinion, property, birth or other status. This ‘other status’ include discrimination on the grounds of disability which entitle the person with disability to enjoy this right. Thirdly, this constitution under Article 9(4) and Article 13(2) of the

⁹⁵ Ibid, FDRE constitution article 37(1).

Constitution, state that, all international agreements ratified by the Ethiopian government automatically become part of the law of the land and all fundamental rights under chapter three of the constitution should be interpreted according to international human right instrument adopted by Ethiopia. Though the FDRE constitution comes to effect before the adoption of CRPD, the Ethiopian government is therefore obliged to ensure the rights of persons with disabilities as prescribed in the CRPD at this time.

This constitution recognize the right to Equality before the law⁹⁶, the right to be informed by the language they understand the reason of their arrest and their accusation,⁹⁷ the right of to the assistance of counsel,⁹⁸ the right to confront adverse witnesses,⁹⁹ the right to request interpreter with state expense in court proceeding when do not understand the language conducted by court proceedings.¹⁰⁰ But it didn't recognize sign language as language which ignores the right of hearing impaired person to get the right to interpretation. Under article 5 of the constitution the legislator intended to cover only those spoken languages which forfeit person with hearing impairment to get the right to sign language interpreter to access justice.

B. FDRE CRIMINAL CODE

FDRE criminal code like other subsidiary laws reflects the principle of equality, and to the treatment of like case alike. For example under article 4 says: "Criminal law applies to all alike without discrimination as regards persons, social conditions, race, nation, nationality, social origin, color, sex, language, religion, political or other opinion, property, birth or other status".¹⁰¹ the phrase which says 'other status' prohibit discrimination on the grounds of disability.

FDRE criminal code Ethiopia imposes on all persons, with or without disabilities, one central duty, with two aspects, in relation to the administration of criminal justice.¹⁰² The first is the duty to assist. This duty requires that the commission of an offense must be reported when a person knows about the commission of a crime.¹⁰³ Second, the law imposes a duty to aid the

⁹⁶ Ibid, art.25

⁹⁷ Ibid, art 19(1) .

⁹⁸Ibid, 20(5)

⁹⁹ Ibid, art 20(4).

¹⁰⁰ Ibid, art.20 (7).

¹⁰¹ Ibid, FDRE criminal code art.4.

¹⁰² Ibid, Muradu Abdu, p. 230.

¹⁰³ Ibid, criminal code, Articles 254, 335 and 443.

administration of criminal justice by coming forward to testify about the details of the crime. For example, Article 124 (1) of the Criminal Code of Ethiopia assumes that prosecution and defense witnesses shall appear before a court of law to give their testimony. Just as the criminal law burdens persons with obligations to report and testify, the law also bestows rights upon them. This is the fundamental right to defend oneself if accused of a criminal offense usually termed as the right to be heard. This duty emanate from grand principles of criminal law which says ‘ignorance of law has no excuse’. Under principles of legality there is no crime without legality and also there is no penalty without crime. This means everyone should not be victim of penalty without violating legally prohibited acts or omission. The way in which our society shows their determination to their internal free will to do or refrain from doing this prohibited acts or omission is awareness of law or duo notice of law. The government is under duty to give awareness of law through publishing on Federal Negarit Gazzete without going to provide further awareness of published laws. Ethiopia’s Negarit Gazzete is published with federal working language which is Amharic¹⁰⁴ and regional laws may be published by their regional working languages. There is no chance to access these laws for person with hearing impairment in Jimma zone because they can’t read and write since there is no special need school that afford them such chance. Our country without providing the right to access to laws and information for person with hearing impairment, imposing duty to report a crime and give information is another unjust treatment on such people. In general this criminal code treat all person equally, which means person with hearing impairment is forced to be treated equally with other person without getting reasonable accommodation. Failure to give reasonable accommodation for person with disability according to their need amounts to discrimination as stated under article 2 of CRPD.

C. CRIMINAL PROCEDURE CODE

The right to access to justice includes both substantive and procedural rights. One of the main tools that use to implement this right is criminal procedure. Criminal procedure code regarding to the right to seek interpretation of language in court proceedings Art 27 (4), states: “Where the arrested person is unable properly to 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.” And Article 126 (2) of the same code specifies; “Where an interpreter is

¹⁰⁴ The Federal Negarit Gazette Establishing Proclamation Procl. No. 2/1995, Fed. Neg. Gaz., 1st Year, No.2.

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”. However, the interpretation of the language under this code refers only spoken languages as it can be understood from the direct reading of the two provisions. In general, the right to get sign language interpreter of person with hearing impairment is silently passed over since it limits its scope on spoken language only which is contrary to article 2 of CRPD that define language as including both spoken and sign languages.

D. FEDERAL COURT PROCLAMATION NO 25/1996, AMENDMENT PROC. NO.138/1998, REAMENDMENT PROC.NO.454/2005

Courts are independent institutions that interpret the laws to give decision on justifiable matters brought before it by maintaining the balance of court proceeding through interpreting laws. The judiciary is primarily deemed as the protector of the weak from the strong, the poor from the wealthy, and the powerless from the powerful. This institution is duty bound to provide interpreter for the one who do not understand the language of court proceeding. This duty of court is provided under proclamation 25/1996 which was found to determine the jurisdiction of federal court under article 25(2) which says ‘The Court shall provide an interpreter to a party who does not understand Amharic’.¹⁰⁵ This proclamation also considers languages as only spoken language by overpassing the right of person with hearing impairment to get sign language interpreter when come to court.

In general in our country when the law provides the need to supply an interpreter, sign language does not automatically come to mind in our country’s legislature and they did not explicitly include sign language interpreters. As a result, there is a need to make an explicit mention of sign language in legislation.

E. NEW DRAFT CRIMINAL PROCEDURE

The new draft criminal procedure is the only laws that tried to give consideration and protection for person with hearing impairment in Ethiopia. This law tried to overcome weakness of passed criminal procedure code and transform criminal justice system of the country. Accordingly this

¹⁰⁵ Art 25, Federal Courts Proclamation, Proc. No 25/1996, Fed. Neg. Gaz. Year 2nd No 13.

draft procedure code recognize the right of person with disability unlike that of previous code under different provision according to the needs of person with disability in general and person with hearing impairment specifically.

For instance this code recognize under article 7 equality before the law that read as: *‘Arrested or accused persons are equal before the law. They are entitled without any discrimination to the equal protection of the law. Criminal Law and Procedure shall apply without discrimination on grounds of race, nation, nationality, colour, sex, language, religion, political opinion, social origin, property, birth or other ground prohibited by the law.’*¹⁰⁶ This prohibited discrimination based on ‘other grounds’ impliedly refers to discrimination based on grounds of disability.

This code also recognizes equality of arms under article 13 which read as *‘Every proceeding shall ensure the procedural equality between the public prosecutor or private prosecutor and the accused.’* This equality of arms intended to treat unequal party unequally which means treating an equal party with giving support or reasonable accommodation for person with disability for example.

Again also under article 14(3) it recognizes right of person with hearing impairment directly by providing the chance to get sign language interpreter by government; which read as:

14(3) *Where the court proceeding is conducted in a language he does not understand, the State shall appoint an interpreter to interpret it into a language or sign he understands.*

(4) *The provisions of sub-article (3) of this Article shall apply in respect of translation of the charge and documentary evidence.*

The draft procedure recognize the possibility to give witness statements by sign language for those with hearing impairments under article 80.

Article 80 **Taking statements of witnesses**

(4) Witnesses’ statement shall be taken as follows:

(a) *The witness may reply verbally, by signing or in any other manner convenient to the witness to the questions put to him from the investigating police officer.*

¹⁰⁶ Draft criminal procedure code art.7

Art. 116.- Statement of the accused person.

(4) Where the suspect elects to make statements, he may reply orally, in writing using sign language or interpreter, as appropriate. Where the suspect makes statements with the help of an interpreter, the interpreter shall affirm the accuracy of the interpretation.

Art. 122.- Statement made to the court.

(4) The court shall record the full statement or confession of the suspect in writing, audio or video; the court shall sign on the statement or confession after it is read out to the suspect and the suspect has confirmed its accuracy.

In general this draft procedure is the only law in Ethiopia that gives recognition for the needs and interests of person with hearing impairments by solving communication barriers of hearing impaired person. Such recognition of sign language interpreter safe miscarriage of justice not to happen on hearing impaired person. Hearing impaired person mostly face such challenges in all states of legal proceedings.

For instance in people of state of Michigan vs. Ann McBride¹⁰⁷ case the suspect was hearing impaired person arrested and charged with murder in death of her boyfriend, Robert Adelsburg. In this case the officers violate constitutional right to counsel of the suspect which resulted as the suspect has waived her right of Miranda warning. During the interrogation, McBride made statements that could lead the court to decide that McBride murdered Adelsburg with premeditation and intent, a verdict of first degree murder. The appellate court then after understanding the suspect was hearing impaired, obtained an interpreter (sign language) and decide as the suspect is incapable of knowingly waiving constitutional rights found in the Miranda warning without getting interpreter and counsel.

Another case Raymond Kruse vs. The state of South Africa case no A100/2018¹⁰⁸

The accused, who was legally represented throughout the proceedings, was tried in the Wynberg Regional Court on a charge of murder, it being alleged that on 23 June 2014 and at Eastridge,

¹⁰⁷ People of state of Michigan vs. Ann McBride, c.no.133142, found at <https://casetext.com/pdf-sent?returnPath=case%2Fpeople-v-mcbride-2021> accessed on 10,2021.

¹⁰⁸ Raymond Kruse vs. The state of South Africa case no A100/2018, found at <https://www.saflii.org/za/cases/ZAWCHC/2018/105.html> accessed on 10, 2021.

Mitchell's Plaintiff, he unlawfully and intentionally shot and killed one Nashief Davids ("the deceased"). The accused's defense was that he was acting in self-defense. He was convicted of murder on 5 May 2017 and subsequently sentenced to 15 years of imprisonment, of which 5 years were conditionally suspended for a period of 5 years.

The accused was hearing impaired that have no any training on sign language, but he had passed Grade 5 at school and could read and write in which he communicate the court through reading and writing. The Wynberg Regional court (the presiding officer) failed to provide qualified interpreter to assist the hearing impaired accused in order to ensure that he is able to participate fully in the trial. Accordingly the appellate court found out as the procedure adopted by the magistrate was not sufficient to ensure that the accused was able to participate effectively in his trial and as there was a miscarriage of justice on several grounds, namely the denial of the accused's right to a properly qualified interpreter, the refusal to allow his son to testify, and the negative bias of the presiding officer. Finally decided as accused was not afforded a fair trial and his murder conviction therefore cannot stand. If the State decides to bring fresh charges against the accused, the case must be tried before a different magistrate, and regard must be had to the guidelines set out in this judgment.

To sum up in spite of the policy advances above, formal commitment has not yet sufficiently manifested in action in Ethiopia because still there are legislative and policy gaps. As I tried to discourse above, except this draft criminal procedure, other domestic laws still have to be harmonized with the CRPD, as required by article 4 of the convention. Person with disability whose right is violated also has no chance to bring individual complaints to the committee since our country didn't signed optional protocol to CRPD yet.

3.4 CONCLUSION

Before the adoption of CRPD, there is no binding laws that directly deals to ensure the right of person with disability in general and the right to access to justice of person with disability specifically. Only the right to equality and non-discrimination is enshrined in several international legal instruments. These instruments ensure that every person is equally entitled to all human rights. However it does not mean that other international instruments are totally silent about the question of access to justice by persons with disabilities generally and access to the

criminal justice system in particular. All these international bill of human rights prohibit discrimination on grounds of disability and they implicitly recognize and protect the rights of persons with disability by guarantying equality before the law and equal protection by the law for all people, including against discrimination.

Convention on the right of person with disability is the only international instrument that addresses the right to access to justice of person with disability for first time. The convention under Article 13 requires States Parties to “ensure effective access to justice for persons with disabilities on equal basis with others”. To have equal opportunities person with disabilities should have to get reasonable accommodations. These reasonable accommodations might include allowing more frequent breaks in the hearing for a person with hearing impairments; allowing person with hearing impairments to give evidence through a sign language interpreter. States are obligated to take appropriate measures to ensure disabled persons have equal access to information and communication. Such measures include providing professional sign language interpreters to facilitate effective access to justice. Accordingly person with hearing impaired will have 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.

However our country Ethiopia being the member state to this convention does not formally performed the obligation set under the convention practically. There are still legislative and policy gaps that have to be harmonized with the convention to person with disability. And also there is no chance of seeking remedy from the committee of the convention if person with disability right is violated in Ethiopia since our country didn't ratify the optional protocol to the convention.

CHAPTER FOUR

4. BARRIERS TO PERSON WITH HEARING IMPAIRMENTS TO ACCESS JUSTICE IN CRIMINAL CASE IN JIMMA ZONE

4.1 INTRODUCTION

Person with hearing impairment face various challenges to access justice in criminal case on equal basis with other persons. The obligation on States Parties to the CRPD and international human rights law generally is to identify and remove barriers that stand in the way of access to justice and services for persons with disabilities. Ethiopia as state party to the CPRD has duty to ensure effective access to justice as enshrined under the convention. But practically in this zone, person with hearing impairment can't access justice because of these barriers that hinder them from enjoyment of the right to access to justice. Under this chapter we will assess how the right to access to justice of person with hearing impairment in criminal case is actually practiced in Jimma zone.

4.2 BARRIER THAT HINDER PERSON WITH HEARING IMPAIRMENT TO ACCESS JUSTICE IN CRIMINAL CASE IN JIMMA ZONE

Person with hearing impairment in Jimma zone face different obstacles that hinder them to access justice. These are lack of information accessibility, lack of sign language interpreter, lack of reasonable accommodation and primary consideration, lack of the right to confront prosecution witness and also when the right to access to justice of person with hearing impairment is violated by state party to the convention, person with disability whose right is violated can have the right to bring individual complaint before committee of CRPD. But in our country in general and Jimma Zone specifically such person cannot seek remedy from this committee because our country didn't signed optional protocol of this convention.

A. LACK OF INFORMATION ACCESSIBILITY

Knowledge about the law and rights under the law is an essential prerequisite for accessing justice. Person with hearing impairments often lack knowledge about their rights to and within the justice system, because information about their rights is inaccessible, not produced in user-friendly formats, and not available in plain language. This gap in knowledge means that persons with hearing impairments may not know how to access justice, the procedures that they must follow, or even when their rights have been violated.

Person with hearing impairment in this zone has no chance to get information accessibility because there is no special need school (sign language school) in this zone that afford knowledge about their rights.¹⁰⁹ Due to this person with hearing impairments in this zone use his personal sign language that nobody even professional sign language interpreter, can understand their

¹⁰⁹ Interview with mr.Esmael A/Boor president of Jimma zone High court at Jimma on October 9, 2020.

language except family who live with them if any. In absence of knowledge about their rights it is impossible to expect from these persons to ask about their right in criminal justice in particular and all public service in general. Even they could not report the crime committed on them and their family usually report the crime committed on them.¹¹⁰ According to general comment no 2 on Article 9 “there can be of no effective access to justice, if the service they provide, information and communications aren’t accessible”¹¹¹.

B. LACK OF SIGN LANGUAGE INTERPRETER

Sign language is the most effective method of visual communication for person with hearing impairments because sign language interpretation gives a complete and simultaneous translation of the discussion. In the criminal process, however, the use of sign language requires a competent interpreter who is familiar with the terminology and procedures of the criminal justice system.

For person with hearing impairments interpreters are mainly observed as being key professionals who can remove the communicative barriers between people with a signed language and people with a spoken language. The interpreter’s code of ethics also contains a statement that emphasizes recognition of the equal status between signed and spoken languages: as both language types represent natural, fully fledged languages, suggesting that a person with hearing impairments is more in need of their services than a hearing person in theory makes no sense to the interpreters.¹¹² The interpreters thus describe their professional role as being limited, within well-defined borders.

In the context of criminal justice, interpreters are considered to be indispensable when it comes to securing person with hearing impairments access to, and a chance of participation in, police interviews and proceedings in the criminal courts. Accordingly sign language interpreter needed for person with hearing impairments to ensure effective communication in which the individuals with disabilities can receive information from, and convey information to, the public entity. Courts must ensure that a person with hearing impairment can understand what is being said in the proceeding and make them understood. Providing summaries of what happened during or after the proceeding is not sufficient in this context. Accordingly state parties should have laws, regulations, and court rules contain provisions requiring communications access in the courts for persons who have hearing impairments as well as those who cannot readily understand or communicate using the spoken working language.

However, in our country as I have tried to assess under legal frameworks there is no laws, regulations and court rules that recognize effective communication for person with hearing

¹¹⁰ Interview with saj.Jamal Abdela, Dedo woreda police crime investigator at Dedo on October 10, 2020.

¹¹¹ See general comment of CRPD committee on G.C on art.9 UN Doc CRPD/C/GC/2(2014) para 22.

¹¹² Terje Olsen and Patrick Kermit, Sign language, translation and rule of law – deaf people’s experiences from encounters with the Norwegian criminal justice system, *Scandinavian Journal of Disability research* (2015),vol.17.no S1, P 29.

impairments. Accordingly person with hearing impairments in Jimma zone cannot get sign language interpreter by government cost. Even sign language interpreter in court didn't recognized.¹¹³ The duty of the court to afford interpreter for the one who cannot hear language of court proceeding which is recognized by proclamation no 25/96 was only for spoken language not include sign language to interpret. However, according to definition given under CRPD article 2, 'language' includes *spoken and signed languages and other forms of non-spoken languages*. Accordingly person with hearing impairment has not the right to interpretation to sign language in this zone.

The convention under Article 21 also requires states to not only recognize and promote sign languages, but to take appropriate measures to accept and facilitate the use of sign language in official interactions. Accordingly person with hearing impaired will have 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. Ethiopia as member state should have to obey this obligation set by the convention.

In general, Ethiopian Constitution does not provide hearing impaired criminal suspects with an absolute or specific right to an interpreter. Ethiopian laws including constitution, criminal procedure and federal court proclamation didn't consider language as it can include 'sign languages' and our laws limit language as spoken language only to be interpreted. When person with hearing impairment confront criminal case in this zone these justice sectors treat such person without sign language interpreter by using family as interpreter.¹¹⁴ This results finally miscarriage of justice by convicting innocent defendant and acquittal of criminal.

C. LACK OF REASONABLE ACCOMMODATIONS

Reasonable accommodation means "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms"¹¹⁵. A reasonable accommodation, in this context, is an adjustment to standard practice or procedure which must be undertaken to remove a particular disadvantage at which a specific disabled person would otherwise be placed in order to access justice. The primary obligation of article 13 is to 'ensure effective access to justice for persons with disabilities on an equal basis with others'. The phrase 'on an equal basis with others' shows the obligation to prohibit discrimination which set under general principle article 3 and general obligation of the convention article 4. The convention also makes it clear that a failure to provide reasonable accommodation is considered discrimination and must be prohibited.¹¹⁶

¹¹³ Ibid, interview with Esmael A/Boor.

¹¹⁴ Interview with mss. Zahra Mohammed, Jimma zone public prosecutor at Jimma on October 09, 2020.

¹¹⁵ Ibid, CRPD, article 2 definitional part.

¹¹⁶ Ibid.

In Jimma Zone person with hearing impairment when come to justice sectors there is no any reasonable accommodation provided for these persons as a result they will be treated according to normal condition in which person without disability treated.¹¹⁷In general, failure to provide reasonable accommodations is equal with discrimination and as a result Jima zone in particular our country in general violate the obligation set under the convention on the rights of person with disability ratified by it.

D. LACK OF PRIMARY CONSIDERATIONS

A common barrier to communications access is “a failure to provide the appropriate type of auxiliary aid or service needed by the particular person with hearing impairments”¹¹⁸. These individuals are most familiar with their disability, and therefore in the best position to determine what type of auxiliary aid or service will be effective. This require public entities to give “primary consideration” to the request of the individual with the disability when deciding what auxiliary aid or service is necessary to ensure effective communication. Giving “primary consideration” may include taking into account a request for specific interpreters with whom the person with hearing impairment is comfortable and able to communicate with effectively. Courts should be prepared to consider and contact such interpreters.

Convention on the Right of person with disability under Article 13(2) obligates the state party to promote appropriate training for those working in the field of administration of justice, including police and prison staff to ensure effective access to justice for person with disabilities. However, in this zone there is no any primary consideration set for person with hearing impairment in criminal case starting from police arrest up to correction institution in this zone according to information gained from interview. These justice sectors have no get training to understand and fulfill the needs of person with hearing impairments.¹¹⁹ Such person when come to access justice in these sectors, they will be treated according to normal proceeding without getting special attention.

In general, judges, court personnel, and police, as well as defense and prosecuting attorneys in this zone have no training on how to understand and respond to the specific needs of persons with certain disabilities, including how to provide necessary accommodations.¹²⁰

These barriers may lead to wrong conclusions and even wrong convictions, as well as general distrust of the judicial systems among person with hearing impairments. These failings are

¹¹⁷Interview with Com.Tilahun Asfaw Jimma Zone prison Administration statics officer at Jimma on October 7, 2020.

¹¹⁸A guide to Court access to individuals who are deaf and hard of hearing, American bar Association, commission on Disability right, p 12.

¹¹⁹ Interview with Abera Kebede criminal bench judge at Tiro Afeta on October 08, 2020.

¹²⁰ Interview with inspector Alemu Kebede, Jimma city police crime investigator at Jimma on October 09, 2020.

potentially a risk, both for person with hearing impairments, as well as the criminal justice system.

E. LACK OF THE RIGHT TO CONFRONTION

The underlying principle recognizes that ‘confrontation’ means more than being allowed to confront the witness physically. The ability of a defendant to conduct a cross-examination and expose the direct testimony's weaknesses is considered a critical fact-finding tool in criminal trials.¹²¹ The right to confrontation requires trial courts to ensure that defendants understand prosecution testimony well enough to be able to comment on the veracity of the statements and assist defense attorneys in cross-examination.¹²² In the case of defendants with hearing impairments, the trial court’s responsibility requires it to provide adequate interpretation, regardless of whether a specific motion or request is made.

Since there is no sign language interpreter that can interpret what said by prosecution witness for the suspect and vice versa, the right to confrontation is meaningless in this zone. The only option is to comment on the statement said by family of hearing impaired person without understanding the wording of the witness.¹²³ The non-applicability of the right to confrontation in criminal case finally results in miscarriage of justice.

F. LACK OF CHANCE TO BRING INDIVIDUAL COMPLIANT TO COMMITTEE OF CRPD

All state party to the convention has obligation to ensure effective access to justice for person with disability. Optional protocol to CRPD establishes an individual complaints mechanism for person with disability who alleges that their rights under the convention have been denied. When the right to access to justice of person with disability is violated by state party to the convention, person with disability whose right is violated can have the right to bring individual compliant before committee of CRPD.

However, individual compliant mechanism before the committee can only possible when the member state to the convention ratified this optional protocol by accepting the competence of the committee. Our country Ethiopia didn’t ratified this optional protocol still knows. As a result person with disability in general and hearing impaired person who’s right to access to justice is violated in our country has not get chance to bring individual complaints before this committee. Let see the practical case happened in this zone as follows.

¹²¹ Deirdre M. Smith, confronting silence: the constitution, deaf criminal defendants, and the right to interpretation during trial, *Maine Law Review*, vol.46:87, p. 112.

¹²² *Ibid*, p. 116.

¹²³ Interview with Gonfa Hailu criminal bench judge of Mana woreda on October 07, 2020.

Ahmed Aba Sambi (4 accused's) vs. public prosecutor ¹²⁴

The case was happened at Dedo woreda in 2009 (E.C) at 10:00 night time. Four person are charged with suspect of committing crime of body assault(art.556(2A)) and failure to lend Aid to another (art. 575(2a)) on victim mr x who has hearing impairment by biting him on his head and chained his hand and legs to a tree not to move anywhere disallowing medication when his head is bleeding.

The court started hearing by giving them charges and read for them to take plea of guilt. The suspects denied the commission of the crime and as a result public prosecutor brings witnesses to proof the commission of the crime according to his charges. The first witness of public prosecutor was a victim who has hearing impaired and started to respond the court proceeding without sign language interpreter with the help of his father as interpreter. Additional eye witnesses also responded with the same manner as to the commission of the crime on the victim as his head is bleeding and also his hand and legs are detained by these suspects in their home.

The court after hearing public prosecutors witnesses give adjournment to give decision. Lastly the court gives decision by making them free of guilt according criminal procedure code art. 141. The court when gives this decision raised as ground one the interpretation given by the father of the victim is under doubt since no one understand what said by the victim and simply hear what his father respond to the court. The other ground raised under court judgment is the said crime was committed when the victim tried to steal property of the suspects at night time and the measure taken by these suspects are allowed by the law (criminal procedure code art.19 and 58) to protect their property and also the detention made by the accused's on the victim is also to prevent further damages since the victim is dangerous who can commit further crime and can escaped from them.

The woreda public prosecutor takes appeal to Jimma Zone High court. And Jimma zone High court gives the same decision under case no.45168 support decision given by woreda court according to art.195 (2bi).

Again in Jimma city another case happened which is on pending (case no.41787) by this time. The victim is hearing impaired female on which crime of rape is committed. According to interview made with police investigator, they faced problem of communication with this victim since she cannot hear, speak, write and read.¹²⁵ They tried to overcome this by using family of the victim as an interpreter to investigate the crime. What makes this crime investigation different from other crime is that crime of rape mostly committed at the time and place where no one can see as witness and mostly in such crime the principal witness is the victim of the crime herself. This communication barrier may hinder the victim to access justice in this zone like that

¹²⁴ Ahmed Aba Sambi vs. Jimma zone public prosecutor case no. 15941 decided case.

¹²⁵ Ibid, Interview with inspector Alemu kebede.

of the previous case happened in this zone. At this time (at the time of data collection) criminal suspect released from police custody by bail.

This shows the right to access to justice of person with hearing impairment in this zone need special attention. Because person with hearing impairment in this zone has not get chance to learn sign language in school since there is no accessibility of sign language school. In absence of this sign language school person with hearing impairments forced to use their own solely personal sign language. These persons have no accessibility to know their right and duty prescribed by laws since laws and regulation of this country is not readable to person with hearing impairment that has no education history to write and read. But the convention on the right of person with disability obligates member state under Article 24(4), to undergo appropriate measures to employ (or train) teachers qualified in sign languages. And also under Article 30 obligates the state to recognize and support the specific cultural and linguistic identity of disabled individuals, which includes sign language and their culture to solve this problem.

However, due to this reason when these persons come to justice sectors to seek justice in this zone nobody understand their language. Even these justice sectors professionals have no any training to respond to needs and interests of person with hearing impairment. But the convention under article 13(2) obligates the member state to promote appropriate training for those working in the field of administration of justice, including police and prison staff to ensure effective access to justice for person with disabilities. Opposite to this, in this zone, there is no any primary consideration given for person with hearing impairment and no training is given for this justice sectors as a result they treat them as other person in normal conditions. And also there is no sign language interpreter in this zone as a result these justice sectors use family of the hearing impaired person as interpreter.

This communication barrier of person with hearing impairment in this zone hinders them to access justice on equal basis with other. This problem results in miscarriage of justice by convicting the innocent and by acquitting criminals. This finally puts the justice system of the country under question because it fails to get good public attitude towards the justice system in general.

4.3 CONCLUSION

International human rights law strongly supports the right of persons with disabilities to have meaningful and effective access to justice in all its phases, not only as a right in itself, but also as a means to ensure that persons with disabilities may better enjoy their other human rights and fully assume their responsibilities as members of society. The obligation on States Parties to the CRPD and international human rights law generally is to identify and remove barriers that stand in the way of access to justice and services for persons with disabilities.

However in this zone person with hearing impairment denied access to justice because of non-removal of barriers that hinder access to justice. There is no reasonable accommodation and primary consideration set for person with hearing impairment when they confront justice sector. They cannot report crime committed on them, they cannot understand the proceeding starting from investigation up to court decision. Because there is gap of communication between hearing impaired person and these justice sectors since nobody understand the solely language of such person.

CHAPTER FIVE

5. CONCLUSION AND RECOMMENDATION

5.1 CONCLUSION

The concept of access to justice is one that has attracted significant attention in international human rights law in recent years. People with disabilities represent one of the marginalized communities who have long sought access to justice in order to remedy violations of their human rights. Access to justice for persons with disabilities includes ‘people’s effective access to the systems, procedures, information, and locations used in the administration of justice. Prior to the adoption of CRPD there is no international laws that directly refers to the right to access to justice of person with disability except that of equality and non-discriminatory clauses to enjoy the right. Thus why, the CRPD is said, the first international laws that recognize the right to access to justice of person with disability. This convention set obligation on state parties to ensure effective access to justice for person with disability on equal basis with others. Our country Ethiopia ratified this convention at 2010 to ensure the right of person with disability in accordance to the convention. In addition to this our country tried to enact different legislation and policies to enhance the protection of the right of person with disability but cannot effectively realize right to access to justice of hearing impaired person.

In Criminal proceedings with the right of person with hearing impairments liberty interest directly at stake, are occasions in which the need for person with hearing impairments to have a full understanding of what is said and done around them is most urgent. Building better competence and communicative systems for reflecting upon translation and interpretations of statements and interrogations may contribute to a better hermeneutically equipped criminal justice system in general.

Even though the convention obligates state parties to modify domestic legislations and policies to fill the needs and interests of person disability in general and person with hearing impairment specifically to access justice, our country failed to modify laws that promote and protect the needs and interests of person with hearing impairment to access justice on equal basis with others. Our country legislator didn’t recognize sign language as part of language at the time of legislations and their mind limited only to spoken languages which contradict definition given to language under convention ratified.

There is no sign language interpreter in justice sector of Jimma zone that can solve communication barriers of person with hearing impairments. And also in this zone there is no primary consideration and reasonable accommodation given to person with hearing impairments. No training given to justice sector professionals to understand the needs and interests of person with hearing impairments in accessing justice. Person with hearing impairments in this zone are in series problem to seek access to justice. Because at the time they confront this justice sectors nobody understand their needs and interests except their family who may be used as interpreter.

But the court puts in doubt the interpretation given by family depending on criminal procedure provision article 126(2). This communication barrier of person with hearing impairment hinders them to access justice in criminal cases in this zone.

5.2 RECOMMENDATIONS

Based on the aforementioned discussion and analysis, my thesis tried to find as there is legal and practical problem for person with hearing impairments to access justice in criminal case in Jimma zone. Accordingly I recommend as follows;

- ❖ Laws, legislations and policy of Ethiopia have to be harmonized with the CRPD, as required by article 4 of the convention.
- Constitution of FDRE constitution should be modified according to fill the needs and interests of person with hearing impairment in specific and person with disability in general. The charity and medical approach conception of this constitution should be revised to human right approach.
- The constitution as being the mother of the law of the land in this country should have to give special attention on the right to access to justice of person with disability in general and person in hearing impairment specifically.
- ❖ The proclamation no 25/96 and its amendments which talks about interpretation should be modified according to consider the right of hearing impaired person. The duty of court to interpret should include sign language interpreter also by modifying the limited scope of interpretation on the spoken languages only which contradict with definition given by CRPD.
- ❖ Criminal code and criminal procedure code should be modified to fill the needs and interests of person with hearing impairments. Criminal procedure code article 126 which prohibit possible interpretation by family should be allowed as the last option because in this zone there is no special need school that give chance for person with hearing impairment to learn common sign language. Without getting this chance such person forced to use his/her solely personal sign language which nobody understand their language except their family or person who stayed with them. Without the help of their family when such person come to justice sectors to seek justice nobody understand them because such person cannot write and read, even if there is professional sign language interpreter this person has no knowledge of this sign language to communicate with this professional interpreter.
- ❖ For person with hearing impairment the key component to accessibility for public services is the availability of a sign language interpreter. Sign language interpreter should have to be employed in these justice sectors to resolve communication barriers of person with hearing impairments for those who know sign language used in Ethiopia to access justice on equal basis with other persons.

- ❖ When the right to access to justice of person with hearing impairment is violated and after the exhaustion of local remedies person with hearing impairment can bring individual complaint before committee of CRPD. But this chance is only when the state party signed optional protocol of CRPD. Our country Ethiopia still didn't signed optional protocol of this convention which hinder to seek remedies from this committee. As a result Ethiopia should have to sign optional protocol of CRPD to allow such person to seek remedies from the committee.
- ❖ The government should afford accessibility to sign language for person with hearing impairments in this zone

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