



**WOLLEGA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
SCHOOL OF LAW**

Title:

**Legal Counseling in Criminal Trials and Its Challenges in
Procedural Issues: A Case Study in Oromia Regional State Courts**

By: Urga Getahun

Advisor: Solomon Emiru Gutema [Assistant Professor of Law]

A Thesis submitted to the School of Graduate Studies of Wollega University in Partial Fulfilment for the Requirements of Degree of Masters of Law (LL.M) in Criminology and Criminal Justice.

**June, 2022
Nekemte, Ethiopia**



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APPROVAL SHEET FOR SUBMITTING RESEARCH

Title:

Legal Aid in Criminal Trials and Its Challenges in Procedural Issues: A Case Study in Oromia Regional State Courts

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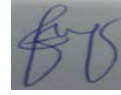
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DECLARATION

This thesis is my original work, has not been submitted for a degree in any other University and that all material used have been duly acknowledged.

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First and for most, I would like to praise the Almighty God for giving me all things in my life!

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Abstract

The purpose of this study is to examine legal problems pertaining to the rights of defendants in criminal cases and the challenges emanating from legal proceedings in Oromia Regional State courts. The right to obtain free legal aid is a fundamental constitutional right in criminal cases in Ethiopia. However, a lack of clear and coherent procedural law protecting such a fundamental right is a critical issue to be closely examined, especially in criminal cases in Oromia Regional State courts. Accordingly, the researcher proposes this study to explore and identify procedural rules that are incongruent with the constitutional provisions that extend free legal counsel. The efficacy and limitations of procedural rules are examined in view of the normative rights stipulated in both of the Constitutions of the Oromia Regional State and the Federal Democratic Republic of Ethiopia. The research will be conducted with a procedural justice framework, collecting data from court case analysis, participant observations during trials, interview with defence councils, court structure and related court's reports on the same matter. The findings of this research will be useful in contributing toward the improvement and reforms of the specific components of the criminal justice system of the Oromia Regional State, as well as the Federal Democratic Republic of Ethiopia.

Key words: [Free Legal Aid, Defense Council, Indigent, Accused, Procedural Law]

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ACRONYMS

ACPHR = African Charter of Human and Peoples' Rights

FDRE = Federal Democratic of Republic of Ethiopia

ICCPR = International Convention on Civil and Political Right

LAB = Legal Aid Board

OAU= Organization of African Union

UDHR = Universal Declaration of Human Rights

UN = United Nations

USA = United States of America

LOCAL TERMS

Kebele = Small Administrative Units within Woreda

Woreda = District Administration

CHAPTER ONE: INTRODUCTION

1.1 BACKGROUND OF STUDY

The UN Charter on the Role of Lawyers clearly states that it is necessary to provide access to efficient legal advice services to ensure that human beings enjoy their fundamental rights and freedoms as human beings.¹ It is stipulated under conventions and declarations of human rights that persons arrested and charged on suspicion of crimes, as well as persons in custody, shall have access to necessary legal advice services as far as possible.²

One of the most important fundamental rights and freedoms of citizens is the right to a transparent and fair judiciary. In this regard, the constitution stipulates that it is the responsibility of the state to ensure that the fundamental human rights and freedoms of persons arrested and charged in the criminal trial process are protected.³ Accordingly, the government should ensure that suspects are made aware of their right to appropriate counseling services by the relevant judicial authorities as soon as they are arrested.

In particular, people who are unable to access legal advice services due to inability to pay should be provided with legal advice by adequately qualified professionals at government expense. In other words, the right to a fair, equitable, and transparent judicial service cannot be said to have been respected if disabled people are allowed to appear in any judicial process without legal advice solely because of their poverty.

According to the Federal Government of our country, the origin of the right to appoint a lawyer for the accused is stipulated under Article 20(5) of the FDRE Constitution. If the accused is unable to be represented by a lawyer at his own expense and believes that justice will be perverted if he argues without representation, he shall be represented by a lawyer at the expense of the state.⁴

¹ International convention on civil and political right, Art.14, ,and African Charter on Human Right, Art.8 &7.

² ibid

³ Paul MAGEEN :THE ROLE AND INDEPENDENCE OF PROSECUTORS Belfast ,Northern ,Ireland 17th may 2005,Cario .9.

⁴ Conistitution of Federal Democratic of Republic Of Ethiopia , Art 20(5).

Similarly, in the Oromia Region, the state constitution recognized under Art.20(5) and thereafter the State Judicial Powers Revised proclamation no. 141/2000 Art.17 provided for the provision of defense counsel services in the Regional Courts of Oromia at state expense and proclamation no.216/11 to amend the previous law expanded this service under section 39 to include legal support and awareness services. The Criminal Procedure Code of Ethiopia and the Constitution of the FDRE and the constitution of Oromia Regional State indicate that the parties involved in criminal proceedings should be treated equally before the law.⁵

This concept, including the right to justice, can be expressed in three indicators. First, existing laws and practices shall not restrict or prohibit access to justice by bringing cases that can be finalized in court. Second, to be accommodated by an efficient and impartial court. Third, to ensure equality of arms or equality of parties in the proceedings, the government should appoint competent and qualified defense counsel for the accused who cannot stand defense counsel.⁶

Although the right to free defense counsel from the state is enshrined in the national and regional laws and constitutions, the procedures for evaluating its implementation and monitoring the level of the service are weak. Unqualified defense counsel services not only fail to achieve the purpose of the service but also make the justice system an instrument of oppression. For example, in USA to avoid this, the American Bar Association (ABA) established an independent committee to monitor defense counsel services and recommend necessary adjustments and procedures.⁷

This study describes legal problems pertaining to the rights of defendants in criminal cases and the challenges emanating from legal proceedings in Oromia Regional State courts. Lack of clear and coherent procedural law protecting such a fundamental right is a critical issue to be closely examined, especially in criminal cases in Oromia Regional State courts by this thesis.

1.2. STATEMENT OF PROBLEM

It is understood that the service of free Legal Aid and Legal Awareness services in the Courts of Oromia plays an important role in rendering justice in the work of Judicial Service Delivery.

⁵ Oromia Regional State constitution Art. 25

⁶ Abera Haile Mariam & Wonduyifraw Girmachew, Public Defender's Services in Ethiopia, Assessment of Current Gaps and the Way Forward, Ethiopian Lawyers Association & Ethiopian Young Lawye Association:ed. Abera Hailemariam Woldeyesus, Tigist Abera, Wondyifraw Girmachew, Elias N. Stebek, 2015, 5.

⁷ Ibid

Without relying upon lawyers, it would be impossible for a lay person accused of a crime to experience the technical proficiency required of him to protect his rights which include; test the prosecution's case against him through cross- examination of witnesses and other means; systematically investigate the facts that can produce reasonable doubt upon guilt; and, for those found guilty, present evidence to be considered in mitigation with regard to punishment.

So, the right to be heard would be of little reward if it did not realize the right to be heard by legal representation. Even the intelligent and educated layman charged with crimes may be convicted upon incompetent or irrelevant evidence if left without the aid of legal representation.

Beyond the violation of the defendants' right to get justice, lack of access to legal representation may also result in denial of the right to equality. There can be no equal access to justice where the kind of trial a person gets depends on the amount of money he or she has. So, unless effective right to legal representation is guaranteed, the kind of justice people get depends very much upon how much money they have.

Understanding this problem, international law has provided that indigents should obtain free legal representations by government at all critical stages of the criminal justice process.

A variety of studies of the system indicate that the lack of resources, high workloads, inadequate training, and tremendous pressure to process cases generate a constant stress on public defenders which leads to an increasing sense of skepticism about the job. This causes an enormous human rights violation that occur to the indigent defendants who are convicted and sent to jail without the benefit of representation and loss their liberty which may be impossible to undo, once denied .

There are also studies which indicate that *'Ethiopia reports negligible legal aid in criminal case staffing in the office of the defense counsel'*.⁸

As there is no standard of service which a legal representation must furnish, there are criticisms that the counsels appointed to indigents accomplish their defense obligation hastily. As well, there are allegations that the accused and his/her counsel are not provided with a reasonable period of time to prepare their defense.

⁸ Howard Lintz, Yallana Mcgee, Ola Mohamed, Safa Sajadi, Sarah Sawyer, Melanie Stratton, Jordan Wolfe, Deborah M. Weissman, A Basic Human Right: Meaningful Access to Legal Representation, (The Human Rights Policy Seminar University Of North Carolina School Of Law), 2015, 6-7.

The same is true in Oromia Regional State. Based on these facts, under this study, the emphasis is given to problem with gaps in law on how to resolve problem related to the right to obtain free legal aid due to lack of coherent procedural law protecting such a fundamental right is a critical issue to be closely examined, especially in criminal cases in Oromia Regional State courts. Lack of clear and coherent procedural law on the aforementioned issue has negative impact on the right of getting free legal aid protected constitutionally.

1.3 OBJECTIVE OF THE RESEARCH

1.3.1 GENERAL OBJECTIVE

The general objective of this study is to identify the problems which burdened an effective implementation of the right to legal aid and discover the human rights violations which the indigent defendants face due to lack of clear and coherent procedural law protecting such a fundamental right in Oromia Regional State Courts. The study also has the following specific objectives:

1.3.2 SPECIFIC OBJECTIVES

The Elementary aim of this thesis is as follows:

- To explore and identify lack of procedural rules in related to free legal aid in Oromia State Courts.
- To identify and highlight the cause and nature of procedural limitations and
- Will recommend a set of propositions to address the legal challenges in related to free legal aid in Oromia Regional State courts.

1.4 RESEARCH QUESTIONS

The research attempts to answer the following research questions:

The principal question is: How have a lack of clear and coherent procedural law infringed a protected fundamental right of free legal aid in criminal Trials in Oromia Regional State courts?

Around the primary issue, the following sub-questions emanate:

- How has Oromia legislation as a duty-bearer helped to safeguard the right of free legal aid in criminal case?

- How Oromia State Courts safeguard the right of free legal aid in Criminal case?
- How Defence Council in Oromia Courts protect the right of free legal aid in full manner in Criminal case?
- What suggestions can be given for legislative and policy interventions?

1.5 LITERATURE REVIEW

There are different researches in relation to free legal aid about its effectiveness at national level and Oromia Regional State level. In this study, the attempt is made to review literatures about the governing system of the free legal aid at Oromia Regional state Courts on the issue, especially on lack of clear procedural law under study.

The study made by Desalegn Gemechu explained under the title of 'The Right to Legal Counsel in Ethiopia: A Case Analysis in Oromia', he explained the right to legal counsel in criminal justice proceedings is recognized under the FDRE constitution and the revised constitution of Oromia National Regional State. This right is also recognized under international bill of rights such as ICCPR. And the rationale behind granting this right is that, when a state and a criminal defendant confront at criminal justice proceedings, there exists certainly an inequality of arms.⁹ He claimed, though the right to legal counsel in criminal justice proceedings is recognized under the FDRE constitution and the revised constitution of Oromia National Regional State disparity is observed among jurisdictions in recognition and implementation of the right to legal counsel in criminal charge.¹⁰ Further he argue, disparity is that some objective and subjective aspects of the right are stated in general terms hence exposed to interpretation. And the state's provision of legal counsel for the indigent criminal defendants is narrowly defined to specific criminal cases leaving out many serious crimes out of the scope of the state's legal aid system.¹¹

Another study conducted by Abdi Asefa explained that about the effectiveness of defence council service in Oromia State Courts. He said that although the right to free defence counsel from the state is enshrined in the laws and constitutions of the country and the region, the system for evaluating its implementation and monitoring the level of service are weak. He also argued

⁹ Desalegn Gemechu ,The Right to Legal Counsel in Ethiopia: A Case Analysis in Oromia (2016)

¹⁰ Ibid

¹¹ Ibid

that The service of an unqualified defence counsel not only fails to achieve the purpose of the service but also makes the justice system an instrument of oppression.¹²

All above mentioned writers argues about the issues relate to the right to get free legal aid in criminal matters. The first author argues the concept of right legal aid is conceptually interpreted in narrow way and this resulted to leaving out many serious crimes out of the scope of the state's legal aid system.

The second writer argues about the effectiveness of defence legal counsel service in the state due to lack of procedures for evaluating the implementation and monitoring the level of service. I have shared their ideas, but this paper is unique in that it does not only focus on identifying problem in interpretation of the provisions of law in related to the service and the effectiveness of defence legal counsel service. The study try to justify it is possible to overcome both problems related gaps in laws and practice. This will be done clearly through having or enact a clear procedural law which governs the service delivery system and to overcome the mentioned problems systematically.

1.6 SIGNIFICANCE/IMPORTANCE OF RESEARCH TOPIC

This research is important/significant to identify and highlight the cause and nature of procedural limitations and will recommend a set of propositions to address the legal challenges in related to legal aid in criminal trials in Oromia Regional State courts. The findings of this research will be useful in contributing toward the improvement and reforms of the specific components of the criminal justice system at regional and national level. This will enable practitioners and policymakers to have accurate and contemporary data to inform the development of legal aid strategies.

1.7 RESEARCH METHODOLOGY

This thesis was conceived as qualitative; mostly the study has used both primary and secondary sources. Books, journals, and other relevant publications were consulted. The study has also assessed the contents of some international human rights instruments, non-binding UN declarations and statements of principles, regional treaties and domestic legislation pertaining to the right to legal representation. Analysis of these tools will help to find out the content of the

¹² Abdi Asefa, Effectiveness of Defense Council Service in Oromia State Courts (2010)

right to legal representation and the stages of criminal proceedings to which the right should extend. This method will also help to show the various normative jurisprudence and experiences on the procedures and criteria that are used to determine indigence and interpret miscarriage of justice standard. In addition, information was also taken from important documents of the court such as the actions plans and annual or quarterly reports. Court Case Analysis is most used data for this thesis. Interview for Defense Councils in Oromia Supreme Court and additionally my knowledge being I am serving as judge on criminal bench both at state High court and State Supreme Court of Oromia for the last 13 years is also a supplementary source for this research. Therefore, any unreferenced documentation in relation to the factual situation in this research is based on my knowledge.

1.7.1 SOURCES OF DATA

To conduct this research the researcher has been used both primary and secondary kinds of data.

a. Primary data were drawn from the following relevant instruments:

- The FDRE Constitution
- The Oromia Regional State Constitution And other legislations
- International bill of rights such as ICCPR
- African Charter on Human and People's Rights.
- Interview for Defense Councils in Oromia Supreme Court

b. Secondary statistics was drawn from the following:

- Books, journal articles, magazines, different international, regional, national instruments and documents retrieved from reliable/trustworthy websites were used as secondary source for this study.
- Analysis of cases decided in Oromia State Courts at different levels
- Applicable reports from various departments such as Legal Support and Awareness Office of Oromia Supreme Court.

1.8 RELIABILITY

Up to the researcher's knowledge, the research was conducted this study depending up on the information that was gathered from different trustworthy sources.

1.9 SCOPE OF THE STUDY

Different studies shows that there is lack of effective service of free legal aid in Oromia Regional state. Therefore, it needs deep study throughout Oromia to fix its impact on the right of accused. However due to lack of procedural law on relation to free legal aid in Oromia Regional state courts there is problem in implementing the service uniformly across all level courts for all accused. And the scope of this study is to address what procedural law is must be enacted to overcome in related to the aforementioned problem.

1.10 LIMIRATION OF THE STUDY

The right to get free legal aid is a fundamental right protected constitutionally at national level and regional level as well as recognized under international instrument and due to this the right contains a deep concept and needs scheduled and deep rooted investigated research. But due to, resource scarcity, shortage of budget the research may not be able to address the whole genuine gaps; and the whole legal, social, political and economic values in related to implementing the right to free legal aid of accused.

1.11 STRUCTURE OF THE PAPER

The study will be, divided in to four chapters, each of which has its own sections and subsections. Chapter one covers proposal part, introduces the background of the study, research problem, research questions, objective of the study, research methodology, reliability, significance of the study, scope of study, limitation and organization of the study. The second chapter review Right to Legal Aid: Concept and principles of the mentioned right. It discusses definition of legal aid, justifications of the right to legal aid, importance of legal aid, who is entitled to right to legal aid? and the experience of a few countries and the context of our country and regional state. Chapter three of this paper reviewed, analysis of challenges in procedural issues in Oromia Regional State Courts and Case analysis in related to legal aid. It discusses about Legal Support and Awareness structure, Legal and Procedural System for the Management of Defence Counsel Service. Chapter four and last chapter summarizes the findings; puts conclusion and implications or recommendation of the study.

CHAPTER TWO

THE RIGHT TO LEGAL AID: CONCEPTS AND PRINCIPLES

Introduction

It is commonly assumed by public that the principal function of the defender will be to prevent the conviction and imprisonment, or execution of the innocent. But the great opportunity which lies open to the defender is to realize the meaning of that profoundly significant phrase "the due administration of the criminal law."

2.1. Definition of Legal Aid

The term *legal aid* has no single definition. Different writers describe to it a variety of elements. While some conceive it broadly from the perspective of access to justice, others define it from the preview of the state's obligation to provide legal aid in criminal cases to defendants who are unable to hire private lawyers on account of indigence and when the interests of justice so require.¹³ It is regarded as central to the provision of access to justice by ensuring equality before the law, the *right to counsel* and the right to a fair trial. In short term we can define it Legal Aid means the services of a defense attorney who represent the poor or eligible persons in criminal proceedings.

2.2 Justifications of the Right to Legal Aid

The trend of providing free legal aid to the poor is not a new phenomenon. In this regard, an ancient right of access to justice dates back to England in the 1400s where a 1495 statute of Henry VII waived all fees for indigent civil litigants before common law courts and empowered the courts to appoint lawyers without payment.¹⁴

Formal, comprehensive, statutorily-funded legal aid schemes were established in the 1940s and 1950s.¹⁴ Despite their positive contribution towards the development of legal aid, these earlier legal aid schemes, such as England's single national legal aid system established in 1949 and

¹³ .Access to Legal Aid in Criminal Justice Systems in Africa Survey Report: 9. Available at: https://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf

¹⁴ E Skinnider, *The Responsibility of States to Provide Legal Aid*, (The International Centre for Criminal Law Reform and Criminal Justice Policy, Paper prepared for the Legal Aid Conference, Beijing, China, March 1999)

Ontario's provincial legal aid scheme established in 1951 were limited in respect of their coverage and scope of services offered.¹⁵

The services provided were generally limited to legal advice and legal representation in court to those who could not afford to pay market fees, patterned on the legal services then offered to paying clients.¹⁶ Thus, only the goal of formal equality was met.

When the criminal justice is set in motion, two parties are confronting each other with two competing interests. When these parties are confronting at a criminal justice proceedings, there exists certainly an inequality of arms. Because state is powerful, as it has necessary resources, trained man power and sufficient finance to deal with the issue. But a criminal defendant is very weak, as he/she is ignorant of science of the law and his rights, has no competitive resources when brought before a tribunal that has power to take his life or liberty.

It is to mitigate this inequality of arms of the criminal defendant with a state that the FDRE constitution and the Revised Constitution of Oromia recognized the right to legal counsel. This right is also recognized under ICCPR. Under all these legal documents this right has two parts. These are the right to privately retained legal counsel and the right to free legal counsel at state cost.

The second justification is that, pursuant to ICCPR provision states 'state provision of legal representation in court in criminal cases' or 'state appointed legal counsel' is providing justice and avoiding injustice, and injustice is done not only in criminal proceedings but also in civil and administrative proceedings as well, states are under treaty obligation to provide legal assistance in all legal proceedings that might otherwise result in injustice.¹⁷

The third justification for free legal counsel is, to avoid or minimize the adverse effect of poverty on the administration of criminal justice administration. According to Art 25 of the FDRE constitution all persons are equal before the law and are entitled to equal protection of the law without discrimination on any ground. By virtue of this provision the state is mandated to

¹⁵ E Johnson, 'Toward Equal Justice' (1993) 5(1) Maryland Journal of Contemporary Legal Issues 204

¹⁶ Supra note 10.

¹⁷ ibid

provide justice equally to all, without discrimination on any ground.¹⁸ But poverty creates inequality between equals based on economic ground. This occurs when two individuals, one who can hire legal counsel and the other cannot, due to his poverty, are suspected/accused with the same or identical crimes.

The fourth justification is the right to fair trial principles. The right to a fair trial is a norm of international human rights law, designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms, the most prominent of which are the right to life and liberty.¹⁹ This right is of little or no avail unless the defendant is represented by legal counsel as these principles are beyond the knowledge of lay man criminal defendant to be fully enjoyed.²⁰

The 5th justification is the adversarial nature of the criminal justice proceedings. In fact this also is the character of a common law legal system. But it is also applicable to Ethiopian criminal justice proceeding, as the character of Ethiopian criminal justice proceeding has both the inquisitorial and adversarial character. Accordingly, each party to the litigation should do his best to establish a case of his side and destroy the case his opponent is trying to establish.²¹ This can hardly be realized without the defendant being assisted by legal counsel.

The last justification to the right to free legal counsel is the right to due process of law (by the law of the land). The due process principle states that, no person shall be deprived of life, liberty or property without due process of law. Accordingly, state is under obligation among other things, to provide free legal counsel to take any action limiting the protected rights of indigent criminal defendants. Under the FDRE constitution this principle is recognized under it as the constitution declares the inviolability and inalienability of human rights and freedoms emanating from the nature of mankind.²²

The state is duty bound to move through proper procedure of the law one of which is providing the accused with legal counsel to shield them from unfair limitation of these basic rights.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ European Conference of Ministers, Ibid. *Legal Aid and Advice: Resolution 78(8)* adopted by Committee of Ministers of the Council of Europe on 2 March 1978.

²¹ Supra note 10 at 15

²² Ibid

2.2 Importance of Legal Aid

The first and the direct beneficiary of the right to legal aid is the individual criminal defendant. The defense lawyer plays a critical role in protecting the rights of the criminal defendant in each stage of the proceeding.

At the trial/hearing stage the defense lawyer plays several roles some of which are:

- Advising the defendant of his or her rights and explaining to him/her what to expect at different stages of the proceeding.
- Investigating all the facts and evidences related to the case and lining up witnesses and experts for a defense.
- Cross-examining prosecution witnesses, objecting to improper questions and evidence, and presenting all relevant legal defenses on behalf of the defendant.

Ensuring that the defendant's constitutional rights are not violated by law enforcement officials or during court proceedings.²³

In case of guilty verdict, the participation of a lawyer makes a great deference in sentencing of the accused. The lawyer helps to mitigate the quantum of punishment by raising all the available mitigating grounds. This rescues the defendant from suffering improper punishment.

On the other hand, the accused might have been convicted on ill-founded indictment, i.e. improper charge or inadmissible evidence, or the amount of punishment imposed by the trial court might be unfair. This time the lawyer plays a critical role in appealing the conviction and/or the sentence to the appellate court by preparing a memorandum of appeal. In general a defendant who is assisted by an effective lawyer is in a better position with regards to the enforcement of his fair trial rights at each stage of the proceeding.²⁴

The second beneficiary from the right to legal counsel is a state. Because ineffective criminal justice administration costs a state in two ways. It increases the cost of criminal justice administration and it reduces production. When a functioning legal aid system is in place, it reduces the length of time suspects are held in police stations and detention centers; it reduces

²³ Smith *et al.*, 'Making Legal Aid a Reality: A Resource Book for Policy Makers and Civil Society' 87.

²⁴ G.S. Prentzas (2007), *Gideon v. Wainwright, The Right to Free Legal Counsel, Great Supreme Court Decisions*, Chelsea House Infobase Publishing, New York, at 37.

the number of prison population, prison overcrowding, and case backlogs in the courts, thereby reducing the number of justice machinery needed.²⁵

2.5 Who is Entitled to Right to Legal Aid?

Different countries set their own criteria for providing free legal aid. Legal aid is essential to guaranteeing equal access to justice for all, as provided for by Article 6.3 of the European Convention on Human Rights regarding criminal law cases. Especially for citizens who do not have sufficient financial means, the provision of legal aid to clients by governments increases the likelihood, within court proceedings, of being assisted by legal professionals for free or at a lower cost, or of receiving financial aid.²⁶ Related to this topic Experiences of some countries are analyzed as follows.

2.5.1. The Experience of a Few Countries

A. SOUTH AFRICA

South Africa is one of the African countries that has implemented better legal support services. As the service grew, it went from a free legal support service to a court-employed advocacy service. South Africa began providing these services during the apartheid regime by focusing only on civil cases and later as the struggle against the regime intensified, 'criminal' cases were added and the need for legal support took place in the 1994 introduction of the democratic constitution constitutionally recognized for this service in criminal cases.²⁷

In South Africa, the Legal Aid Act of 1969 was amended in 1971, 1972, 1989, 1991 and 1996 to establish the Legal Aid Board (LAB) to provide widespread legal coverage for these services. Accordingly, it also includes providing legal assistance to poor people in the place of defense counsel at public expense if justice is believed to be perverted.²⁸ The Board gained legal status

²⁵ Hatla Thelle, Paul Dalton, and Klaus Slavensky (2010), *Human Rights to Legal Aid*, Danish Institute for Human Rights, Denmark, at 15.

²⁶ UN Principles and Guidelines, introduction at para. 3.

²⁷ Legal Aid, available at: https://en.m.wikipedia.org/wiki/Legal_aid

²⁸ David McQuoid Mason, *Holistic Approach to the Delivery of Legal Services – The South African Experience*, in *Legal Aid – International Experience and Promising Practices for Aid Providers*, Paul Dalton and HatlaThelle, (Eds.), The Danish Institute for Human Rights, (2010) , at p. 136.

and was established with a calling to the Ministry of Justice. The source of its budget is announced by the country's parliament and there are various sources that support this service.²⁹

The country's Legal Aid System is provided to all poor communities and 58 legal aid centers and 41 Satellite Offices are connected to this procedure or Network.³⁰ It also points out that the courts of the country can refer cases filed by the Defense Counsel to the Board for evaluation.³¹

The experience of South Africa follows a holistic approach. These are legal support services provided by government agencies, NGOs, national Legal Aid Councils or Boards, Bar Associations, legal associations established to protect the public interest, law clinics, etc.³²

In total, 11 different approaches were used to provide legal aid: for the purpose of our research, free legal aid work was funded through the Court or referred to private lawyers using a professional outside the Courts and defense lawyers that there are employed.³³ Before the South African Constitution was revised, the Court was the main means of providing these legal support services and the Court was obliged to provide these services at its own expense. This process was difficult to meet many systems were established to reach everyone. Currently, the country's courts provide this service using defense lawyers in only a few cases.³⁴

In South Africa, services are also provided through private institutions where the Court assesses the need for a lawyer for the accused (Judicial care legal aid), permanent defense counsel is hired under the board and legal clinics in remote areas (legal clinics) to provide services. The accused received this service by filling out the request form prepared for this purpose and going through the screening process.

B.USA

The first time the Defense Counsel service as an institution was introduced in the USA in 1913 was in Los Angeles, followed by various American cities such as San Francisco in 1921 opening

²⁹ Art. 2 & 3 dA of the Legal Aid Act

³⁰ Arts. 2, 4/1, a-g, and 9/1, a & b, of the Legal Aid Act

³¹ Supra note 24 at page 137-138

³² Per Art. 3 of the Act, courts before deciding that an indigent accused shall be represented by a counsel at state expense, shall take into account, inter alia: the personal circumstances of the person, the nature and gravity of the charge and send the case to the board that will evaluate and report back its findings.

³³ Supra note 24 at page 135

³⁴ The Challenge of Providing Legal Representation in the United States, South Africa and China, *Journal of Law and Policy*, vol. 7.47, p. 50.

their own offices, Then Alameda opened a Defense Counsel office in 1926 and expanded accordingly.³⁵

The basis for the birth of the question of the right to defense counsel is the case of Gideon v. State. In 1961, Gideon was charged with aggravated robbery in Florida, and although the Sixth Amendment of the US Constitution provides that anyone accused of a crime must have the right to a defense counsel, the defendant was denied this right, the Court ignored the defense counsel's request and stay and convicted him. He appealed against the same complaint and the Supreme Court ruled that the system preventing the exercise of this right does not constitute a reasonable argument and the court has decided to assign him a defense council. The Supreme Court interpreted the verdict as a violation of the constitutional provisions and ruled that the accused should have the right to a defense counsel.³⁶

The importance of this amendment is to ensure that all defendants benefit from this right and that all communities benefit from this right equally regardless of differences in the defendant's property status, type of crime and mental state.

Following the Court's order, the US Congress enacted the 'Criminal Justice Act of 1964', directing the Federal Trial Courts to include access to legal counsel for indigent criminal defendants in its plans.³⁷ Following this, a few US states have implemented public-defender programs; others used private counsel and followed assigned -counsel systems and made payments based on the hour, caseload, or services rendered in the case. On the other hand, so far, private lawyers or legal service providers or non-profit organizations have been using the contract system with the government to calculate the percentage of fees for the poor cases and the government payments are following the contract system.³⁸

In the United States, defense counsel services are provided by three bodies. First, the public defender's office, an independent body governed by its own board, provides free legal services. Many regions have adopted this structure. Second, a contract system is an agreement with an outside party for a fixed fee to

³⁵ Supra note 24 at page 139-162

³⁶ William Beaney, *The Right to Counsel in American Courts* (U of Mich, 1955); and Emery A. Brownell, *Legal Aid in the United States: A Study for the Availability of Lawyers' Services for Persons Unable to Pay Fees* (1951, supplemental 1961)

³⁷ "Gideon v. Wainwright". LII / Legal Information Institute.

³⁸ Criminal Justice Act of 1964, Pub. L. No. 88-455, 78 Stat. 552 (codified at 18 U.S.C. § 3006A)

provide advocacy services free of charge. Third, the assigned counsel model is the direct hiring of a private lawyer to provide services to the defendant.³⁹

The US Guidelines for the service of Advocacy Services state that the mere appointment of a lawyer does not mean that the government has fulfilled its obligations; the lawyer must be sufficiently qualified. The competence and ability of the defense counsel is critical to providing quality services. It is fundamental to protect the rights of the accused by providing competent counsel who can provide effective services to the accused who is unable to stand counsel.⁴⁰

C.CHINA

China follows a unitary system of government. The right to legal aid was first established in 1996 by the Chinese Ministry of Justice as the National Legal Aid Center and came into force in 2013 with its own law. Legal Coverage of Advocacy Services in China especially right to legal aid is recognized in the constitution, the Independent Legal Aid Act, the Laws on Courts and Judicial Procedure, the Civil Procedure Code, the Criminal Procedure Code and the Guidelines for the Implementation of Legal Aid. It came into force in 2013 with the issuance of guidelines and in 2008 the 'Chief Legal Support' was established in the Ministry of Justice to formulate and monitor the country's policies. Special legal support services are provided to vulnerable sections of society such as the disabled, internally displaced persons, children, women, the elderly, families of military service members and immigrants. This means that groups can be served by providing proof of identity or poverty to receive legal support services, but they are not required to provide this proof where permitted by law. This service can be provided at the request of the person who wants to be served or by the police or the prosecutor. It also points out that when the case is brought before the Court, the Judge handling the case should first investigate the case and proceed. In China, the Legal Support Service is headed by the country's Minister of Justice who at the national level, is responsible for the service's strategic and policy programs, to monitor and support legal support services, etc. In China, these services are provided by private, governmental and non-governmental organizations. Government-employed legal support

³⁹ Eve Brensike Primus, *Defense Counsel and Public Defence*, University of Michigan Law School,. 123; and Available at: https://repository.law.umich.edu/book_chapters/113

⁴⁰ Robert L. Spangenberg And Marea L. Beeman, *Indigent Defense Systems In The United States*, Law And Contemporary Problems, Vol. 58: No. 1, 32.

services are managed by the Bureau of Justice at the lowest to highest levels in the local government..

In criminal cases, legal aid professionals are represented by the Court or the Police or the Legal Aid Center and they review their list of names according to their agreement. The government is obliged to provide services from its budget to the people who are entitled to these services; these include the poor, children, persons with disabilities, persons sentenced to death or life imprisonment, persons arrested or imprisoned for crimes, accused or victims of crime.⁴¹

D.RWANDA

There are seven groups of legal aid service providers in Rwanda. These include through NGOs, University legal aid clinics, Professional bailiffs, Private lawyers and Bar Association which provides litigation, advocacy, Conciliation, Arbitration, like agreements etc. As the defense counsel's office one team is one of the bodies that provide legal support and awareness.⁴²

Rwanda does not have a defense attorney's office. However, she is organizing various bodies to provide legal support services in various directions. These legal aid service providers include Access to Justice Bureaus, Maisons d'Acciones à la Justice (MAJ), Judi care, pro bono work by lawyers, legal aid in public institutions (paralegals). According to the country's legal aid service policy, services are provided free of charge to the poor including criminal matters, public relations and administrative matters. The structure of their legal aid service organization system is based on the National Support Services Committee (MINIJUST) and the MINIJUST Division that deals with access to justice issues.⁴³

2.5 The Right to Legal Aid under FDRE Laws

In Ethiopia, for the first time, the right to legal representation was constitutionally recognized in the 1955 revised constitution. Article 52 of the constitution provides “*In all criminal prosecutions the accused, duly submitting to the court, [...] shall have the right to have the*

⁴¹ Asher Flynn, Jacqueline Hodgson, Jude McCulloch And Bronwyn Naylor, Legal Aid And Access To Legal Representation: Redefining The Right To A Fair Trial, Melbourne University Law Review Vol 40:207, 2016, page 209

⁴² United Nations Office on Drugs and Crime, Global Study on Legal Aid Country Profiles, Vienna, United Nations, Dec.2016

⁴³ Republic of Rwanda Ministry of Justice National Legal Aid Policy October 2014 at 13

assistance of a legal counsel for his defense, who, if the accused is unable to obtain the same by his own funds, shall be assigned and provided to the accused by the court”.

The 1987 PDRE constitution also provides that “*when a person is charged with serious offence and his inability to appoint a legal counsel is established, the state shall appoint one for him free of charge as determined by law*”.

The 1995 FDRE constitution have considered the right to legal representation as “the right of all criminally accused persons to be represented by legal representation of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense”.⁴⁴ The 1995 FDRE Constitution has also guaranteed the right to equality and equal protection under the law, and it has explicitly prohibited discrimination on any ground.⁴⁵

The 1955 revised constitution has a wider scope than the stipulations of the PDRE and FDRE constitutions in that it explicitly extends the right to all criminal prosecutions, while the 1987 constitution has explicitly limited the right to serious offences.

According to article 20 (5) of the FDRE Constitution, states are obliged to provide a qualifying indigent accused with legal counsel who should be a professional lawyer. In Ethiopia, presently there exist no criterions which enable to identify those who do not have sufficient means to pay for legal counsel.

According to the Federal Courts Re-establishment Proclamation no.25/88 Art. 16(2) (j) empowers the President of the Federal Supreme Court to establish Offices of Defense Counsel at all levels of the Federal Courts. According to this establishment, the Courts should have a budget to provide legal support services to the poor, and the laws by which these services are conducted.⁴⁶

Proclamation no. 25/88 was amended by proclamation no. 1234/2013. The proclamation no. 1234/2013 to revise the powers of the Federal Courts states under art. 17(j) that Under the Powers and Responsibilities of the President of Supreme Court, ‘The President shall organize the Office of the Defense Counsel and the functional structures to assist in the implementation of the

⁴⁴ Ibid at page 20

⁴⁵ Supra note 4, art 20(5).

⁴⁶ Ibid at art. 25

services provided by the Court. This indicates that it is intended to adjust its structure in the form of Office rather than the provision of previous Law proclamation no. 25/88.

2.5.1 The Right to Legal Aid the Oromia Regional State Laws

Article 20(5) of the Constitution of the Oromia Regional State has been declared as a constitutional right stipulated in the FDRE Constitution⁴⁷. The proclamation on Re organization of the Powers of the Courts of Oromia no.141/2000 under art.17 promulgated the provision of 'Establishment of Defense Counsel' which led to the introduction of Defense Counsel services in the Courts of Oromia at public expense. According to this provision, everyone has the right to be represented by a lawyer at his own expense and for a person charged with an offense punishable by a severe imprisonment of not less than 5 years who is unable to appoint a lawyer; the Court shall assign a defense counsel at the expense of the state.

The 'Assignment of Defense Counsel' in this proclamation expanded the service to 'Provide Legal Aid Services' under proclamation no.216/11 which is to Re determine the Organization, Powers and Functions of the Courts of the State of Oromia.⁴⁸ It has since been structurally upgraded to the 'Office of Legal Support and Awareness'. Even if there is no definition of defense counsel, the definition indicates that the counsel is appointed by the President.

The Proclamation attempt to close the gap in the previous law by pointing out that the court is obliged to appoint counsel for accused charged with serious crimes punishable by more than five years imprisonment and if it believes that justice will be distorted, the court should also assign them to those charged with crimes punishable by less than 5 years imprisonment.⁴⁹

The office of legal support and awareness uses the budget for salaries and operating budget from the same budget that the Supreme Court has so far shared. Regarding logistics, the same is being shared by requesting from the Supreme Court. The issue of whether or not they have an independent budget is related to the issue of freedom, efficiency, quality and accessibility of

⁴⁷ The judiciary has the mandate to initiate the enactment of a law under article 6 subarticle 2 of the Ethiopia Federal Democratic Republic of Ethiopia House of Peoples' Representatives Working Procedure and Members' Code of Conduct (Amendment) Proclamation No. 470/2005 Republic Constitution.

⁴⁸ Constitution of the Oromia Regional State , art.20(5))

⁴⁹ proclamation no.216/11 which is to Redetermine the Organisation, Powers and Functions of the Courts of the State of Oromia, art 39.

services. If there is no budget to run the operation properly, it leads to finding a budget elsewhere to provide services. This affects the freedom of service by causing the budgeting body to do only what it wants, the office to go according to the schedule and wishes of another body, the office planning to be delayed, etc. This reduces the executive capacity and effectiveness of the office.

2.6 Principles Used to Provide Legal Aid

All criminal defendants are not eligible to free legal counsel. It is only those who fulfill the criteria set by the Oromia Regional State constitution that can claim for the assignment of free legal counsel. The same is true under ICCPR. Both have provided two preconditions to be eligible for free legal counsel. These are the ‘means test’ and the ‘interest of justice requirement test’. The ways these two tests are interpreted and implemented in state of Oromia, along with their possible effects, are discussed in sections 2.5.1

2.6.1 Means test (financial criterion)

Poverty creates inequality before the law between equally situated persons. This occurs when two individuals, one who can afford to pay for private lawyer and the other cannot on account of indigence, are suspected or accused of the same or identical crimes; the one who is represented by a lawyer gets quality justice at every stage of the proceeding because of the assistance he gets from the lawyer. But the other who doesn't get the legal assistance might suffer unjust proceeding as he cannot protect his interest himself in the proceedings due to his ignorance of the law. This can go to the extent that the one who is assisted by a lawyer can be acquitted while the other who deserves the same justice is convicted due to the difference created by the participation of a lawyer in one of the proceedings.

The first and the main criteria to be eligible for the right to free legal counsel under both the Oromia constitution⁵⁰ and ICCPR is lack of means by the suspect/accused to hire private lawyer. The rationale behind granting this right is to minimize the discriminating effects of poverty up on the criminal justice administration.⁵¹

The problem with implementing this right in this sense in the courts of Oromia Regional state is that there is no clear definition of who is indigent defendant. None of the international or

⁵⁰ Supra note 44 at art.39(3)

⁵¹ ICCPR .2

regional treaties ratified by Ethiopia has defined indigence. However, there are stances, by different writers, to give definition to indigence. Roy describes an indigent in the following words “*an indigent defendant can be considered as the one who lack the necessary funds, on a practical basis, to retain competent counsel.*” He further enunciates that while assessing indigence, it is important to consider the defendant's complete financial situation by balancing assets against liabilities and income against basic living expense.⁵² The indigence assessment may be conducted by different bodies. It may be conducted by a judge, administration or other staff of court. It may also be conducted by a third party.

2.6.2 Merits test (interest of justice criteria)

The international human rights law has generally provided that the assignment of legal assistance in criminal matters is available only where the interests of justice require the assignment. This provision is enacted both in the Constitution of the Regional State of Oromia and the proclamation no. 216/11 provides in a similar manner. But neither of the instruments nor domestic laws has explicitly illustrated the phrase ‘where the interests of justice require the assignment’.

The Human Rights Committee, which is the treaty monitoring body established by the ICCPR, considers the severity of the charge and the complexity of the case in making the determination. According to the Committee, the state was not required to provide state-funded legal assistance in a case where the accused was charged with a minor criminal offence which would have likely resulted in a fine.⁵³

The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa indicate that ‘the interests of justice should be determined by considering the seriousness of the offence and the severity of the sentence.’⁵⁴ The justification for the exclusion of minor offences is that such cases entail simple issues which can adequately be presented and defended by the average accused. However, as it is unfeasible to judge the potential complexity of the case at the beginning it is imperative

⁵² Quoted in Lloyd Duhaime, Indigent Legal Definition, http://www.duhaime.org/Lloyd_Duhaime.asp, Accessed; May 1, 2022

⁵³ Junius L. Al lison, Symposium on The Attorney-Client Relationship: Rights and Duties Relationship Between the Office of Public Defender and the Assigned Counsel System, Valparaiso University law review, Volume 10.c (2005)

⁵⁴ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa; available at: <http://www.achpr.org/instruments/fair-trial/> Accessed on may,2022.

to include the complexity of the case as an eligibility requirement for the right to assigned counsel.⁵⁵ The problem, again, is that there is no authoritative norm which identifies the criteria to label a case as complex.

According to the discussions of the constitution drafting committee (hatata za mikiniyaat), justice can be violated in the following circumstances. They are:-People who cannot properly defend themselves because of lack of education; If he is mentally retarded; if the accused is unable to speak at the hearing because of fear; Women and youth; and If they are underage children.⁵⁶ This suggests that the injustice should be considered based on the circumstances and character of the accused.

According to the Constitution of the Oromia Regional State, the requirement for the appointment of Defense Counsel under Article 20(5) is “to be represented by a lawyer of their choice, or If he is unable to hire his own lawyer and there are circumstances in which justice may be violated.

According to Proclamation no 216/11 art 39 of Oromia Regional State the court is obliged to appoint counsel for accused charged with serious crimes punishable by more than five years imprisonment and if it believes that justice will be distorted, the court should also assign them to those charged with crimes punishable by less than 5 years imprisonment.⁵⁷ For some extent the proclamation no 216//2011 does not seem to be in line with the Constitution of Oromia Regional State. Because, according to the meaning of “hateta ze mikiniyaat” the deprivation of justice should be considered on the basis of the circumstances and character of the accused, not on the seriousness or simplicity of the offense charged with.

2.7 Stages of Case in Which Right to Counsel

Practically in Oromia, the indigent defense service offered by the court is not available at some stages of criminal proceedings. There is no practice of assignment counsel, in the court, until after accusation, even for defendants who are in custody. The police and the prosecutors do not have the practice of informing the suspects, during investigation, that they have the right to consult lawyers at state expense before responding to their questions.

⁵⁵ W.W.Black, Right to counsel at trial, the Canadian Bar Review, 1975, Vol.19, No 1: 67.

⁵⁶ Abduljabbaar Hussein and Ahmad Jamaal, Application of Fundamental Rights and Freedoms Module, OROMIA INSTITUTE OF TRAINING OF JUDICIAL PROFESSIONALS AND RESEARCH OF LAW, 31

⁵⁷ Supra note 49

⁵⁷ Supra note 45

2.7.1 The Need for Legal Assistance at Pre Trial Stage of the Criminal Justice Proceeding

Due to many reasons the pretrial stage of the criminal justice proceedings is a critical stage at which the suspect is in a vulnerable position. The risks posed to the suspect at this stage are, ill treatment such as torture, undue pressure to secure confessions, failure of the authorities to produce the suspect before court of law within 48 hours of his arrest, and poor detention center facilities are some.

Even if it is not clearly provided by the FDRE constitution, Oromia constitution and the ICCPR, the UN Human Rights Committee, Inter-American Commission on Human Rights and European Court of Human Rights have all recognized that the right to a fair trial requires access to a lawyer during each event at pretrial stage of the proceedings such as detention, interrogations and preliminary investigations.⁵⁸

According to the UN Subcommittee on Prevention of Torture, the presence of a lawyer during police interrogations may restrain them from resorting to ill-treatment or other abuses. Therefore the presence of legal counsel during police interrogations shields the suspect from such potential violation of rights.⁵⁹

The other event which calls for the assistance of legal counsel at pretrial stage of the criminal justice proceedings is a bail/remand hearing. The right to bail is a basic element of a fair trial right. Access to legal assistance during such time therefore enables the suspects to challenge the lawfulness and length of their pretrial detention.

In case of Oromia from this point of view, according to personal experience of the writer, there is no any system in place to provide legal assistance to the indigent criminal suspects/accused at pretrial stage of the criminal justice proceedings. In general, there is no any form of legal aid available to indigent criminal suspects at pretrial stage of the criminal justice proceedings in Oromia. This is true irrespective of the nature of the crime with which they are suspected including capital offences.

⁵⁸ Marion Isobel (2013), *The Right to Legal Aid, Arrest Rights Brief No. 3*, (A Legal Brief Prepared by the Open Society Justice Initiative to Assist Legal Practitioners to Litigate the Right of Arrested or Detained Persons to Free Legal Aid,) Open Society Justice Initiative, at 4, found at <<http://www.justiceinitiative.org>> accessed on may.2022.

⁵⁹ Adam Stapleton and Brenda Brainch (2011), *Hand Book on Improving Access to legal Aid in Africa*, Criminal Justice Handbook Series, United Nations Office of Drug and Crime, New York, at 56.

2.7.2 The Role of Defence Counsel in Trial (hearing) Stage

The hearing stage of the proceeding is a critical stage as the guilt or innocence of the accused is decided at this stage. There are series of rights of the accused implemented at this stage which necessitates the assistance of legal counsel. These include a right to presumption of innocent until proved guilty, admitting or denying the charge, a right to remain silent, a right to be released on bail pending trial, a right to cross examine prosecution witnesses, a right to adduce evidence to defend oneself, a right to speedy trial, and in case of conviction, presenting mitigating grounds of punishments.⁶⁰ Therefore if the proceeding is wanted to be fair and reasonable, the participation of defense counsel is necessary.

The principle of equality of arms is also ensured at trial stage if and only if the accused is represented by a lawyer. “In criminal proceedings, the principle of equality of arms imposes procedural equality between the accused and the prosecution. Accordingly, the prosecution and the defendant shall be allowed equal time to present their case, their witnesses shall be given equal treatment in all procedural matters”.⁶¹ This can in no means be realized in the absence of a defense lawyer in the side of the defendant.

When we see the case of Oromia from this angle of view, the system in place to provide legal counsel to the indigent criminal defendants is not full and effective enough to ensure the right to fair trial of the accused. It doesn't cover all crimes, and all the chains of the criminal justice proceedings due to lack of clear and coherent procedural law which identify crime offences and accused to be represented by state legal aid.

2.7.3 The Need for Legal Assistance to Appeal and at Appeal Proceedings

According to the FDRE and Oromia Regional State constitution accused persons have the right to appeal against their conviction and/or the quantum of punishment imposed on them.⁶² The rationale behind the right to appeal is to rectify the errors that might be committed by trial judges.

But the right to appeal to serve its purpose, a memorandum of appeal should be prepared carefully stating the grounds of appeal or points on which the judgments of the trial court are

⁶⁰ Supra note 54 at 8

⁶¹ Supra note 54 at 37

⁶² Supra note 4 Art (6); See also ICCPR Art 14 (5); Eth. CPC Art 185.

disputed. The appellant also need to convince the appellate court by oral litigation to consider the errors of the trial court. Otherwise it will be dismissed on account of lack of merits. Because of this the necessitates of the assistance of legal counsel to appeal the judgments of trial courts and on appeal proceedings for the indigent criminal defendant is must.

In Oromia from this point of view, there are a number of problems which encounter the convicts to appeal against their conviction and/or sentence. This is resulted from due to lack of clear and coherent binding procedural law which protect right of convicted persons. Especially those who are convicted at first instance courts are facing many problems. There is no legal aid at first instance courts to assist the indigents who cannot afford to pay for preparation of the memorandum of appeal. As a result they have no way out than serving unfair sentence despite the existence of apparent errors or sufficient grounds to reverse part or all of the judgments passed by trial judges. The need of assistance of legal counsel to appeal against his/her convictions and/or sentence is that from the time of conviction on wards the convict remains under the custody of the police. I experienced from my experience for a person who doesn't have friend or relative, it is difficult to appeal the judgments of the trial courts. If the person has legal counsel this problem would be avoided as the counsel assists him.

CHAPTER THREE

ANALYSIS OF CHALLENGES IN PROCEDURAL ISSUES IN OROMIA REGIONAL STATE COURTS: A CASE ANALYSIS IN RELATED TO LEGAL AID

3.1. Introduction

Data collected from various directions to conduct this research are analyzed under this chapter. Those analyzed data include information taken from important documents of the court such as the actions plans and annual or quarterly reports as well as Court Case Analysis is the most analyzed data. The data analysis was analyzed with the ideas under the second chapter and thus the current level of service delivery was examined to clarify the major findings and point out the directions for implementation.

In general, the directions of this chapter are evaluating the service delivery level of this office with appropriate analyze with the purpose of this research and point out solutions. Also data analysis is made based on major pillars that are supposed to be used by the office. Those pillars are the office structure; The legal and procedural system by which the services , Free Legal Aid is managed; accessibility, Executive Capacity and Efficiency of service delivery; Freedom and Responsibility; Office budget and logistics; and The performance appraisal system of the professionals managed by the office is analyzed as follows.

3.1. 2 The Office of Legal Support and Awareness structure

Article 20(5) of the Constitution of the Oromia Regional State states that “if the accused person is unable to afford the services of a private lawyer and justice is perverted, the government shall provide this legal support service at its own expense.

This means the service is not limited to representing in court but also provides professional advice, written support and related services to the accused who does not have the ability to present a private lawyer. On the other hand, two major principles: ‘The Right to Equality and the Right to Access to Justice are provided in the Constitution Oromia Regional State states. Art 25 of the constitution states that “everyone is equal before the law and is entitled without any discrimination to equal protection of the law”. And Article 37(1) which provides that ‘every person shall have the right to access to justice by referring a matter which may be decided by the

Court or to any other body having jurisdiction’. To ensure this, Article 39 of the proclamation no. 216/2011 Re determining the Organization, Powers and Functions of the Courts of the Oromia Regional State provides for the implementation of Legal Support Services. According to Art. 39 sub-section 4 points out that the Supreme Court should establish the necessary structures and systems to ensure that three main services: 1. defense counsel services, 2. legal awareness services and 3. Free legal support services should be provided in all levels of the Regional Courts.

This structure shows that at Supreme Court Level Office of Legal Support and Awareness is structured and headed by an Office Head with the rank of Directorate II. At Supreme Court level the structure consist of that there is an independent Defense Advocate, Independent Legal Aid Specialist and Legal Awareness division and that the division service is intended to be led by an independent team leader.⁶³

At the High Court level, the free legal aid service is intended to be covered by defense counsel and the legal awareness service has an independent professional. And generally services at the High Court level are managed by the Legal Support and Awareness Case Coordinator.

At the state First Instant Court level, it seems that all services are intended to be covered by defense counsel. At the High Court and First Instant Court levels, the idea is that free legal support services should be covered by a lawyer who appointment as defense counsel.⁶⁴

Although the structure of services provided by the Office is established in this way, it is not supported by regulations and guidelines as a system. The structures at all levels courts also lack a system of management, do not know each other, do not know who their calling is for and lack a system of accountability.

Therefore, from the perspective of the writer in general, the structure of the service should be strongly organized, it should have its own independence to provide the service, it should be transparent, it should be accountable, it should be managed by establishing an independent system that it must have full confidence among the clients. Accordingly, it is very important to consider the successful experiences of other countries and adopt an effective structure to provide proper services in our region.

⁶³ Directoret of Human Resource Management,Oromia Suprem Court Human Resource Structure.

⁶⁴ Ibid

3.1.3. Legal and Procedural System for the Management of Defence Counsel Service

Defense counsel for poor people should efficiently provide full service to the poor people from the date of assignment and follow all the legal procedures till the end, complete the case in a clean manner.

It is understood from the general concept of existing procedural law that if the accused has a complaint against the judgment given, defense council should follow the wishes of his client and prepare an appeal and submit it to the next court to protect the justice of his client.

Accordingly, at this stage, this research is considered in the following analysis in relation to the legal system and procedures by which the defense counsel's services are managed.

A. Starting of the Hearing System

According to the Criminal Procedure Code of our country, the criminal hearing covers the legal process from the establishment of criminal charges to the imposition of punishment. At the initial stage of the proceedings, the prerequisites are to deliver the charge sheet to the accused, read and explain the charges to the accused at the hearing, ask the accused if he has any objections to the charges and give necessary ruling. At this stage, it is known whether or not the case will proceed if the accused fully admits the criminal act.⁶⁵

At this stage, the accused is expected to conduct the proceedings carefully as the confession or plea given by the accused at the hearing will result in a final judgment. This statement of confession or plea states that the accused has committed the crime charged against him and is guilty or that he committed the act but cannot be held guilty or that he did not commit the act and should not be guilty. A defense lawyer is very important at this stage of the criminal proceedings. Especially if at this stage the innocent person makes a mistake at the beginning of the hearing: that is, if he does not understand the whole charge properly, if he does not read it, if he does not know the evidence presented with the charge and ignored without raising it, if he admits his act in his right he is deemed to have fully admitted it and if he cannot proceed to the next proceedings without making necessary arguments may cause the innocent person to be severely punished. Therefore, the initial ceremony of the criminal hearing is a crucial stage for giving a

⁶⁵ Criminal Procedure Code of Ethiopia Art 126-134

fair decision and the defense counsel is expected to follow the existing system and properly manage it to fulfill his duty.

In this regard, to understand the hearing initiation system on the part of the defense counsel, this study analyzed court case as follows what is the preparation for the trial by understanding the time given to the defense counsel at the initiation of the trial conducted to determine the level of debate and legally based support.

In two court cases analyzed, as counsel is not made available to indigent defendants at the earliest opportunity, numerous detained defendants have suffered from groundless denial of the right to be released on bail and compelled to suffer in pretrial detention for longer period of time. For example, there are defendants who are charged for a crime punishable by simple imprisonment but denied their right to bail with no good cause.⁶⁶

A self-represented defendant charged for homicide by negligence under art 543 (2) of the FDRE criminal code was denied the right to bail, as the prosecutor has opposed the right to bail of the defendant alleging that the defendant is unlikely to come back if he is set at liberty.⁶⁷

In another similar case a defendant represented by lawyer, who is charged under similar crime is allowed the right to bail, despite the prosecutor opposes the right to bail for the same ground stated in the above case.⁶⁸

This has occurred as the self-represented defendant fails to make all necessary allegations and to present evidences necessary to secure the right or it may be caused as the defendants' fail to oppose the allegations the prosecutor made in opposition to the right.

There are also defendants who did not claim to be released on bail and stayed for longer pre-trial detention as they lack the awareness about their right.⁶⁹

⁶⁶ Public prosecutor Vs Hailat G/Michael, Adama Special Zone Court, F.N. 16585. The defendant in this case was charged under the crime of adultery- article 652(1) of the FDRE Criminal Code.

Public prosecutor Vs Seife Teshome, Adama Special Zone Court, F.N. 16509.

⁶⁷ Public prosecutor Vs Mesfin Mekonnen, Adama Special Zone High Court, F.N. 16466 (The defendant was charged for homicide by negligence (art 543 (2) of the FDRE criminal code which carries punishment of 1-5 years and fine.

⁶⁸ Public prosecutor Vs Yared Engida, Adama Special Zone High Court, F.N.16484.

⁶⁹ Public prosecutor Vs Mohammed Nasir, PP Vs Shemalis Mekbib, PP Vs Negash Alemayo; F.N 16510, 16516, 16612 respectively.

From the cases analyzed above, we can see that the harms of not using defense counsel and the benefits of using defense counsel are understandable.

B. Defense Evidence Submission System

The stage of hearing the defense evidence of the accused begins after the prosecutor's evidence is heard and the accused is convicted of the act and the degree of guilt of the accused is determined it is known that the accused will then defend himself.

At this stage, the accused's lawyer should be aware that he is expected to do three main things. 1st, identify the eye witnesses or written defense evidence useful for the accused on the basis of the evidence against the prosecutor; 2nd Identify the main issue that defense evidence of the accused will approve and engage the Court (his advocate may then open his case and briefly explain his defense stating the evidence he proposes to put forward); The 3rd is expected to follow its line of issue on the basis of the issue that the evidence they know and be able to defend the case using preliminary and revision questions if any.

In practice, according to report of the office the stage at which defense evidence to be presented is ordered to be heard through the Court, Defense counsel doesn't know the identity of the defense witnesses, appearing in court without identifying the main issues that of the defense witnesses know, due to the fact that the accused cannot pay the cost for the defense witnesses and the police are not willing to present the defense witnesses, defense council fill the form prepared by the court by states that his defense witnesses are not available or he does not have any defense witnesses. The fact is that they did not lose their defense evidence or disappear from the country but because they faced various problems beyond the control of the accused and the accused's counsel does not appear to make any effort to resolve these problems. On the other hand, the problem is that the principle that the accused is considered innocent until proved guilty by the court is not believed by police due to the prosecution's evidence is presented and the police are not willing to produce the defense evidence as they have been investigating him, charging him and they are costed to produce the prosecution's evidence.

C. Procedure Covering Costs of Defendant-Related Evidence

In order to understand the procedures related to the cost coverage system, it is necessary to look at the laws related to free defense counsel services and legal aid and analyze the cost-related aspects of the law with the concept of the law.

Article 20(5) of the Federal Constitution and the Oromia Regional State Constitution states that if the government believes that justice will be perverted for an accused who is unable to hire counsel, state shall assign counsel for him. The English provision of both constitutions states that he shall be entitled to the services of a lawyer 'at the expense of the state' while the Amharic provision states that he is 'entitled to a lawyer from the state'.⁷⁰

On the other hand, the proclamation no.261/11 on the Reorganization of the Powers of the Oromia Courts, art. 39(3) provide that 'the Court shall provide for access to defense counsel at public expense'. What makes both constitutions one is that the government has the duty to provide a defense counsel and the English version says 'at the expense of the government'. It is estimated that when the government grants the rights to the poor, it is accompanied by expenses. The question is that who is the Government body that can afford to provide defense counsel? is unclear issue. However proclamation no.261/11 art. 39(3) undertook to provide these services 'at the expense of the Court'. This does not mean that this duty falls solely on the Court but it seems to have taken its responsibility as it seemed necessary to facilitate the matter with the service provider as a government body.

We can see that from this analysis, a clear rule of procedure should be enacted as to who covers the costs of the accused's defense evidence.

D. Complaints and Appeals System

The Federal Constitution and the Oromia Regional State Constitution recognize this right to appeal as a fundamental right in the constitution stating that 'any person who has a complaint against an order or judgment of the court hearing the case shall have the right to appeal to the competent court'.⁷¹

⁷⁰ Supra note 4, Art. 20(5)

⁷¹ Ibid Art . 20(6)

In connection with this research, the case of the criminal accused which is ordered by the court to be represented by the 'defense counsel of the accused' the accused has the full right to notify his defense counsel that the order or judgment is wrong and to have it corrected on appeal. It should be noted here that the criminal accused is unable to hire his own counsel due to his poverty and the court has given the responsibility to the defense counsel to take accused's duty and argue properly. But in practice because the accused has no one to take the appeal, the case is left there and the time to file the appeal is expired.

Therefore, it is necessary to enact clear rules of procedure to protect the right of appeal of the accused who is represented by free defense counsel.

3.4. Legal and Procedural System by Which the Services of a Free Defence Council is Provided

Art 39(1) of proclamation no. 216/2011 provides as a general guideline that a poor person should have access to legal support services in relation to civil and criminal matters'. On the other hand, Article 39(2) directly provides that if a person accused in a criminal case is unable to appoint a private lawyer due to poverty, the court shall provide legal aid services at public expense or free of charge. In this regard, the legal system and procedures by which the service of legal aid is managed in different directions are analyzed as follows.

3.4.1 Cases in Which Free Legal Aid is provided

As in the Oromia Region, there is no clear law indicate to provide free legal services based on the type of case. But only clue is that the proclamation no. 216/2011 art 39 provides that this service is provided for all types of criminal cases not punishable by less than five years.⁷²

However which is problematic is that under sub-art 3 of this provision. It states that 'Notwithstanding the provision of sub-article (2) of this Article, the court shall assign a defense council, at a state expense, or a free legal aid service to an individual who does not have sufficient means to pay for it and accused of a crime punishable with an imprisonment less than five years if miscarriage of justice would result otherwise.'⁷³ The question arises here is that what types of criminal cases are constitute miscarriage of justice is unexpressed. And also there is no procedural laws identified the aforementioned issue.

⁷² Supra note 45

⁷³ Ibid

In this direction, cases punishable by a sentence of less than five years but justice is perverted should be distinguished or identified by the procedural law to overcome the problem in related to the issue.

3.4.2 People Who Are Beneficiaries of Free Legal Aid

The purpose of providing 'Free Legal Support Services' is to ensure that justice should reach everyone, to guarantee the people and to facilitate the path for everyone to move towards justice. This is to prevent the poor person from complaining the court because of his poverty and on the other hand, the powerful person does not use the poverty of the person whose rights have been violated as an opportunity to get unfair justice. It is important to note that the overall objective of this is to 'ensure balanced justice by preventing the spread of unfair discrimination by preventing the person who disabled for various reasons.' **DISABLED FOR VARIOUS REASONS'** concept is listed in various international conventions, such as 'the Convention on the Rights of Persons with Disabilities, the United Nations Convention on the Minimum Standards for the Administration of Youth in Conflict of Law, etc., or lack of capacity to pay cost of litigation to conduct litigation.⁷⁴

Disability is defined as being poor due to insufficient funds to hire for a private lawyer, children without parents or guardians, people with disabilities without support, powerless women, if they do not have enough money to defend themselves or are under various pressures and are males over 18 years of age but cannot defend themselves due to poverty.⁷⁵

However, there is no legal provision in the laws of Oromia on who is the disable person entitled to right to free legal aid.

Therefore, it is understood that a rule of procedure should be enacted on who the disable persons are.

3.5 Ways to Get Free Legal Aid

In relation with free legal aid services, the courts of Oromia are structured to assign an independent professional to implement them in a full manner.

⁷⁴ Declaration on the Rights of Disabled Persons Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975

⁷⁵ The Beijing Rules” adopted by General Assembly resolution 40/33 of 29 November 1985

The Licensing and Administration of Lawyers and Legal Clerks proclamation no. 182/2005 article 33(4,b) provides that free legal support services shall be provided through private lawyers, a lawyer or professional services firm shall provide 50 hours per annum. But for the applicability of this provision there are no procedural rules.

In Oromia courts Universities employed free legal support professionals and has opened offices in the Courts Office or outside the Court campus to provide these services. This service has been launched in collaboration with the Supreme Court and higher education institutions. This service is not available in all the Courts of Oromia but is being provided in large numbers in the cities where the University is located. The services provided in this form are mainly focused on civil matters issues, not criminal issues. The service does not have a legal procedure of governance. And that a procedural law should be enacted for utilization of this kind of service in the future.

3.6 Court Cases Analysed in Relation to Above Sub-Titles.

A. First Case, Analysis at Three Level Benches and on three file Numbers-Charges of Robbery and Assault Against Accused

The case was filed on file no. 19431 in the Special High Court of Oromia Around Finfinne.⁷⁶ The criminal proceeding was supported by the defense counsel of the high court. In this regard, the accused denied the charges. The court heard the prosecution's evidence and defense evidence. And finally, ruled that the prosecution's evidence proved the accused guilty and the defense did not defend him and gave convictions and sentences.

Then the Defense Counsel wrote a complaint to the Central Bench of Oromia Supreme court on file no. 327237 and the case was filed at the Appeal stage.⁷⁷ The defense counsel asked or argued for a two-step mitigation of the reasons for the mitigating sentence, saying that “the accused has no criminal record, has one child, manages three families.” The Court accepted the reasons for aggravating and mitigating they were and confirm the lower court's judgment. And the Cassation Division of the State Supreme court also confirmed the appellate court's decision on file no. 333048.⁷⁸

⁷⁶ file no 19431, Special High Court of Oromia Around Finfinne.

⁷⁷ file no. 327237, Central Bench of Oromia Supreme court.

⁷⁸ File no.333048, Cassation Division of State Supreme court

What can be understood from this case is that the decisions given by the courts at all levels are similar. This means that it is effective litigation for the accused who is represented by a defense counsel and argue from the beginning of the proceeding.

B. Second Case, Analysis at Three Level Benches and on Three file Numbers-Charges of Abduction of a Woman and Forced Rape Against Accused

The case was filed on file no. 53440 in the Akaki Woreda First Instant Court.⁷⁹ The district court convicted the accused and sentenced for 8 years imprisonment under both counts. Special High Court of Oromia Around Finfinne heard a case by appeal on file no.18572 and analyzed that the purpose of abduction also included sexual acts. And the Higher Court quashed the conviction and sentence judgment given under art. 620(1) on the ground that the lower court's decision was wrong.⁸⁰

The prosecutor complained about the judgment of the High Court to Central Bench of Oromia Supreme Court on file no.293657. The Defense Counsel responded that at appellate court by stating that the high court decision is right to acquit the accused under Art. 620(1). There is no evidence other than the statement of the individual victim to support the prosecution's charges. Art. 587 charges cover crime under Art. 620(1) itself and it is not proper for the public prosecutor to establish two charges already. And asked that therefore, the high court's decision should be upheld for us.

The Supreme Court decided that first Instant court decision is correct; stating that Even if the accused abducted, involuntary rape was also proved.⁸¹

From the analysis of this case it is understood that there were two crimes committed by the accused. It is understood that the accused committed two crimes. Therefore, the judgment of the district court and the Supreme Court is fair. Accordingly the defense counsel's argument at the Supreme Court level is ineffective. This suggests that the capacity of the defense counsel is not effective in some places.

⁷⁹ file no. 53440 ,Akaki Woreda First Instant Court

⁸⁰ file no.18572 ,Special High Court of Oromia Around Finfinne

⁸¹ Supra note 73, file no.293657

C. Third Case, Analysis at Three Level Benches and on Three file Numbers-Charges of Illegally occupied government land Against Accused pursuant to proclamation no.721/2004 Art.5(1) .

The case was filed on file no. 23623 in the Barak Woreda First Instant Court. The contents of the charge is that the accused occupied 13357.5000m² of land in Sandafa Bakkee township and built fences and planted trees around it. The accused argues that we have been in dispute with the village Administration (kebele) over this land and it remains in my hand. Therefore, it was mine and I planted on it. The district court heard the prosecution's and defense's evidences and rendered a guilty verdict and sentence.⁸²

The high court of Special High Court of Oromia Around Finfinne heard the case on file no. 70750 on appeal and confirm the lower court's decision.⁸³The accused also filed a complaint at the Supreme Court on file no. 327824 states that the land was in my possession, without the support of a lawyer, the punishment imposed on me by the high court and the district is not correct. The Supreme Court revised the fine of Br 40,000 to Br 5,000 and confirmed the conviction.⁸⁴

The analysis of the case shows that the offense charged against the accused is punishable by a penalty of 7-15 years and fine of Br 40,000_Br 50,000. This means that a defense council must be assigned to the accused because it is a crime punishable by more than five years. The court, however, allowed the accused to argue in by himself without a defense counsel without giving reasons. At the appeal level, there is no judgment to the fact even if, that the matter is a ground for appeal.

As a whole, the lack of a clear rule of procedure for the assignment of defense counsel has paved the way for similar problems. This seriously undermines or harsh the right of the accused to self-defense.

Another case similar to the above is that the case was filed on file no.16581 at Adama Special Zone High Court. The defendant is charged for violating 5 provisions ((696(1) (A), 477(1), 582,

⁸² file no. 23623,Barak Woreda First Instant Court.

⁸² Supra note 76,file no. 70750

⁸³ Supra note 76, file no. 70750

⁸⁴ Supra not 73, file no. 327824

481(A), 385(1) (B)) of the New Criminal Code and convicted only under the first 3 provisions. Moreover, the court did not appoint defense lawyers for a defendant who is accused under a charge which may contain several different counts even if all charges may be tried together and may aggregately carry a sentence of more than 5 years. However, the court has not provided the defendant with state funded lawyer. The defendant was finally sentenced to 11 years of imprisonment.⁸⁵

Overall, the analysis of the above cases and interviews indicates the advantages and disadvantages of assigning or not assigning a defense counsel to the accused. Accordingly, in the next and final chapter, the solutions and conclusions will be analyzed together with the purpose of this research.

3.7. Analysis of Data On Interview

On the merit of Oromia Regional State Courts an effective implementation of the right to legal aid and discover the human rights violations which the indigent defendants face due to lack of clear and coherent procedural law protecting such a fundamental right and to investigate whether those the right of persons accused in criminal cases to be served by his choices lawyer and, if they are poor, to be served at public expens is fully implemented before the courts in Oromia or not as well as to examine wether the service of free legal aid is in need to have regulations and guidelines, in which the rights and obligations required of professionals and customers to obtain and provide these services should be issued in a manner that can be implemented in a systematic manner as well as to examine what is the problem if the structure and the administrative system of the Office of Legal Support and Awareness is out of the court and independent with that of the Court, the researcher interviewed some Oromia Supreme Court's defence councils randomly selected individuals from the Office. The feedback obtained from them will be presented and analyzed as follows.

⁸⁵ file no.16581, Adama Special Zone High Court.

3.7.1 Analysis of Response Made by Defense Councils Working in the Oromia Office of Legal Support and Awareness

Under this section I would like to analyze the response of those workers in position of Defence Council at Oromia Supreme Court Office of Legal Support and Awareness including the former head office. Accordingly, the response made by the head of an office and two others defense councils working in the same office interview made for them on free legal aid in related to lack of clear and coherent procedural law protecting such a fundamental right as well as what is the problem if the structure and the administrative system of the Office of Legal Support and Awareness is out of the court will be analyzed.

As I have made Interview to Obbo Sanbata Abdata who is the former head of the office and currently trainer at Oromia Justice Reform, he said that in the courts Defense counsel services are not being provided in a full manner. This is because the structure of the office is not independent. The constitution does not provide for the establishment of an office of defense counsel in the courts. The right to a defense counsel begins to be questioned when the suspect or accused appears in court and the court realized that there was no body to provide this service and the office was established inside the court. The fact that the court itself decides a case and on the other hand assigns the accused a defense counsel to argue raises questions about the independence of the court. Therefore, it is not good that this office should be established inside the court. As a result, the services provided may not be provided in full manner. If the office is established independently outside the court, it will have budgetary and human resource as well as administrative independence and can provide full services. He said In the meantime, I think the preparation of guidelines and regulations by which the office will provide services and management will help to solve the problems temporary. ⁸⁶

The other worker who is defense council of the office Obboo Tamam Shale also said, the establishment of the office of the defense counsel in the court is good with the current situation in our country. If the office is established outside the court, it may be subject to pressure and interference of executive organ. This prevents it from performing its work properly. If this office

⁸⁶ Responses for interview made to Obbo Sanbata Abdata who is the former head of the office and currently trainer at Oromia Justice Reform ,made through his cell phone on 26 /11/2014 E.C

is to be established outside the court and provide effective service and to be independent, it will be good if its calling is to the court or the ' Caffee.' The office has no rules and regulations to govern it. This has resulted in the services provided by the office being incomplete. For example, a defendant charged with an offense punishable by less than five years imprisonment and what constitutes justice is grossly perverted should be regulated by law as to why a lawyer is assigned. Therefore, it is necessary to prepare guidelines and regulations for the service management and administration of this office.⁸⁷

The other worker who is acting head of office and Judge at Oromia Supreme Court Obboo Amsalu Olani also said the establishment of a defense counsel's office in court has made it less focused. The attitude toward defense counsel is also low in court. Therefore, even if manpower was allocated, qualified manpower would not be allocated. Also Sufficient logistics are not assigned to this office. This creates problems in the services provided by the office. Therefore, if this office is established independently outside the court and its calling is for the caffee, these problems will be solved.⁸⁸

Herein in general, the analysis points out that there should be a clear rule of procedure on what cases the court is obliged to assign a defense counsel.

⁸⁷ Responses for interview made to Obbo Tamam Shale who is the Defence Council at Oromia Supreme Court ,made through his cell phone on 26 /11/2014 E.C

⁸⁸ Responses for interview made to Obbo Amsalu Olani who is acting as head of the Office Legal Support and Awareness, at Oromia Supreme Court ,made through his cell phone on 26 /11/2014 E.C

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

Human beings have fundamental human rights that are inherent in everyone and democratic rights. These rights are equally protected by the law and recognized in the constitution and law.

However, although these rights are granted equally to everyone, there are circumstances in which these equal rights do not enjoy equal legal protection. Those circumstances include such as poverty, various problems that prevent people from getting justice for various reasons, people who for various reasons could not be on equal footing with others such as children, women, the disabled, old age due to age, prisoners who are unable to argue and follow their case because of their imprisonment, and etc. And for those kinds of persons their equal rights cannot be respected on an equal basis with others unless special support is provided. For this reason, the law of affirmative actions is intended to ensure the right to equal justice by providing equal legal rights to all those who need support.

The right to legal aid in our country is fundamentally derived from the Federal and State Constitutions. The Oromia Constitution under art 20(5) provides as a guideline that if the accused is unable to be represented by a lawyer of his own choice he should be represented by a lawyer at the expense of the state. On the other hand, the same right is guaranteed under Article 14(3)(d) of the Covenant on Civil and Political Rights (ICCPR) and Article 7(1)(c) of the African Charter on Human and People's Rights states that any person can be served by a lawyer representing him in any matter, and that the government shall provide this service free of charge if he is unable to assign his own lawyer and justice is deemed to be perverted.

In this study issue of who is the poor person that cannot afford this service on their own? for what kinds of crime this service may be provided for? At what stage of litigation does it begin to be given? How can the independence of the professionals providing these services be ensured? were analyzed.

On the other hand, this study shows that despite the availability of these services, the study revealed that the services provided by defense lawyers are inadequate and low when compared with the efficiency and overall condition of private lawyers and public prosecutor and lack of

laws and guidelines by which these services are run independently has been a major problem for the systematic delivery of these services and their full implementation.

Legal Aid means the services of a defense attorney who represent the poor or eligible persons in criminal proceedings. The reason for the implementation of this service is that the laws of various countries indicate that the government should implement this system extensively to ensure that everyone is treated equally before the law and the law protects everyone equally. If so, the fairness of the Court's proceedings will be ensured. Without this system, the resources, knowledge, legal skills and litigation efficiency of the poor person accused and need special support will never be comparable to the investigating and prosecuting teams on behalf of the government (Police and Prosecutor) and will put pressure on the Court to ensure justice. To achieve the goal of justice, a strong defense counsel system must be structured that seeks the truth for the country and the accused.

Various international and regional treaties dictate that the right should begin during the pre-trial contact with the criminal justice system and extend to all critical stages of criminal prosecution process. However, the practice in the court does not meet this. This study shows there is delay in appointing a counsel. The representation begins on the defendant's first appearance and run only until the day of sentence.

Both the FDRE and Oromia constitutions provide indigence as one requirement to qualify for state funded representation. However, there is no client eligibility screening system in the court.

Both the domestic laws and the international regional treaties have recognized the interest of justice requirement as a criterion for client eligibility. A Proclamation to Redefine the Structure, Powers and Functions of the Oromia Regional State Courts Proclamation No. 216/2011 enacted that 'The court shall assign a defense council, at a state expense, or a free legal service to an individual who doesn't have sufficient means to pay for it if he is accused of a crime punishable with rigorous imprisonment not less than five years or the court shall assign a defense council, at a state expense, or a free legal aid service to an individual who does not have sufficient means to pay for it and accused of a crime punishable with an imprisonment less than five years if miscarriage of justice would result otherwise.

This research shows that however, the provisions of this article provide legal aid should be given for a crime punishable by imprisonment for a term not exceeding five years and if miscarriage of justice would result. And the problem is that it is not clear in what kind of crimes miscarriage of justice would result.

The indigent defendants fail to claim that they deserve free legal counsel showing that the standard of interest of justice requires. Even those who are charged for serious crimes fail to claim representation especially, during the pre-trial and appeal stages. Consequently, there are defendants who suffer from various violations against their rights and freedoms. The defendants also fail to claim to be released on bail or fail to mention all the factual and legal allegations and suffer from longer pretrial detentions and unfounded denial of their right to bail. At appeal stage also many defendants fail to get access to the appellate courts and the time to take appeal lapses, as they are not aware of that. The defense lawyers, particularly, have failed to conduct in depth interviews with the client, meet the witnesses, or visit the crime scene, where necessary. The defense lawyers in the court also show lower performance in protecting the defendants and secure justice.

Despite the prevalence of these entire problems on the delivery of indigent defense service, the court is not taking effective measures to redress the inequality of arms. The court fails to make efforts to ensure that the indigents are getting quality representation. It also failed to take measures to protect the indigents from prejudice that occur to their right even when it is apparently observed that eligible defendants lacked representation.

Foreign countries experiences show that out-of-court defense counsel services are prepared and argued for eligible persons whose cases are referred to them by the Court. Working outside the court and determining its calling and making it work as an institution is to be taken from this experience.

This research shows although, the structure of services provided by the Office is established; it is not supported by regulations and guidelines as a system.

It is understood that the criminal case is being argued by a defense counsel ordered by the court on the bench. However, the study also showed that there are deficiencies created by defense lawyers in the hearing initiation system, defense evidence presentation system, procedures

covering the cost of evidence related to the accused, complaint and appeal system, and quality monitoring system of the case.

Thus, there is a great need for state assistance and technical support to help the needs of indigent defense system. Based on the understandings revealed by this study, the writer recommends the following to be considered by the practitioners, policymakers and other appropriate governmental and non-governmental bodies.

4.2 Recommendations

- ❖ In general, the basic principle enshrined in the constitution provides for the right of persons accused in criminal cases to be served by his choices lawyer and, if they are poor, to be served at public expense. Therefore it should be fully implemented before the court.
- ❖ The services provided by the Office of Legal Support and Awareness in the Courts in related to the service of free legal aid should be supported by regulations and guidelines, the rights and obligations required of professionals and customers to obtain and provide these services should be issued in a manner that can be implemented in a systematic manner and who are the poor or people in need of special legal support should be defined and implemented by law. Regulations and guidelines should consist:
 1. The system of conducting the proceedings: that the case is managed when it comes to the Court until the judgment is given;
 2. Appeal System: The process by which the case is appealed and managed if the judgment given by trial court is wrong;
 3. The system for the presentation of defence evidence and written evidence of the accused represented by a lawyer;
 4. Defense and client Communication System: This system should describe how they should communicate with each other in court and outside the court;
 5. Rules should be enacted to govern the audit of criminal cases where the defence counsel has been arguing

- ❖ The efficiency of defence lawyers is still low and the quality of the service is being compromised. Continuous awareness raising training should be provided independently and must be mandatory by rule. As well as there should be independence and accountability that is fundamentally focused on the professionalism of the office professionals. Additionally the structure of the Office Professionals from First instance court to Supreme Court should be supported by regulations and guidelines; their calling in hierarchy should be clearly defined and established in a coherent manner.
- ❖ In order for the office to conduct its work independently, the court shall allocate an operating and logistical budget from its budget to provide basic services and enable them to provide services independently and this should be mandatory in rules.
- ❖ To implement the independence and accountability of the Office, additional work is necessary by the court with the concerned government organ to determine the office's calling outside the court and make it function as an institution; if this is difficult to implement in the current practical situation, it is necessary to strengthen the independence of budget, logistics, planning system, monitoring and follow up power of the office under the Court.
- ❖ The Office of Legal Support and Awareness should work with institutions working on legal aid services to ensure that free legal aid services are provided in the courts. Guidelines should be issued for its implementation.

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- File no. 53440 of Akaki Firist Instant Court

- File No.18572 of High Court of Oromia Special Zone Around Finfinne
- File No. 293657 of Oromia Supreme Court central Criminal Bench
- File No.23623 of Barak Woreda Firist Instant court
- File No.70750 of High Court of Oromia Special Zone Around Finfinne
- File No 327824 of Oromia Supreme Court
- File No. 16466 of Adama Special Zone High Court,
- File No. 16585 of Adama Special Zone High Court
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VII. Internet Sources

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VIII. Appendix: Interview Guide

Questions for interview with key informants

Interview Questions for Defense Councils in Oromia Supreme Court.

Name.....

Date.....

Profession.....

Experience.....

1. Do you think the right of persons accused in criminal cases to be served by his choices lawyer and, if they are poor, to be served at public expense is fully implemented before the courts in Oromia?

2. Do you think the service of free legal aid is need to have regulations and guidelines, in which the rights and obligations required of professionals and customers to obtain and provide these services should be issued in a manner that can be implemented in a systematic manner?

3. Do you think who are the poor or people in need of special legal support is defined and implemented by law in Oromia state courts?

4.. Do you think the efficiency of defence lawyers is in need for Continuous awareness raising training to secure the quality of the service ?

5.Do you think the Office is supported in sufficient budget to provide full service?

6.Is there any problem if the structure and the administrative system of the Office of Legal Support and Awareness is out of the court and independent with that of the Court?

7. Do you have any suggestions or recommendations for effective implementation of legal aid services to ensure that free legal aid services are provided in the courts in accordance stipulated in the constitution?