



**School of Graduate Studies  
Centre for Human Rights**

**ACCESS TO LEGAL AID FOR WOMEN IN ETHIOPIA:  
THE CASE OF HAWASSA UNIVERSITY LEGAL AID CENTER AND  
ETHIOPIAN WOMEN LAWYERS ASSOCIATION**

**By:  
Yodit Zenebe**

**Addis Ababa  
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**A Thesis Submitted to the School of Graduate Studies of Addis Ababa  
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**Advisor:  
Dr. Emezat Hailu**

**ADDIS ABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES  
CENTRE FOR HUMAN RIGHTS**

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**APPROVAL OF BOARD OF EXAMINERS**

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Institute Director

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Advisor

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Examiner

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Signature and Date

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Signature and Date

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## **Acronyms**

ACHPR	African Charter on Human and Peoples' Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
DEVAW	Declaration on Elimination of all forms of Violence against Women
ELA	Ethiopian Lawyers Association
EHRC	Ethiopian Human Rights Commission
EWLA	Ethiopia Women Lawyers Association
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
LEP	Legal Empowerment of the Poor
MOJ	Ministry of Justice
MWCYA	Ministry of Women, Children and Youth Affairs
NGO	Non-Government Organization
PAS	Paralegal Advisory Service – Malawi
PDO	Public Defense Office
UN	United Nations
UNDP	United Nations Development Program
UNODC	United Nations Office on Drugs and Crime
UDHR	Universal Declaration of Human Rights

## ABSTRACT

*Due to their vulnerability women face various problems and experience discrimination, domestic violence, sexual assault and harassment. In Ethiopia although women experience violence they are not in a position to access justice due to poverty, socio-cultural factors and discrimination. Therefore, to curb this problem legal aid programs are essential in making indigent women enjoy their right to equality before the law. The main purpose of this study is therefore to examine the role of legal aid in promoting the rights of women, identify the major factors/challenges that hinder women from accessing legal aid taking Hawassa university legal aid center and Ethiopian Women Lawyers Association as case studies. Methodologically, the study is based on a qualitative approach. It relies on analyzing both primary and secondary data sources. The primary data sources are gathered using semi- structured interview questions, with focus group discussion and personal observations. The study has employed purposive sampling procedure for contacting the interviewees. The secondary data sources are gathered predominantly from literature out puts, journals and other publications. The finding of the study shows that legal aid service is inaccessible for the majority indigent women. Lack of awareness about the availability of legal aid, economic problems , culture and family pressures, lack of legal rights awareness, language in which service is provided and women's perception towards legal aid are among the barriers that deny women access to legal aid. Regardless of the above facts legal aid has great role in promoting the rights of women, women who are victims of violence are able to claim for compensation, secure their property and inheritance rights and further make them aware of their legal rights. The study recommends that it is important to have Awareness raising campaign about the availability and importance of legal aid service and disseminate legal rights education to increase women awareness about their rights and obligations under the law. Legal aid service providers shall also make legal aid centers physically accessible to the majority in need. This study also reveals the importance of having professionally competent service providers and the diversified use of non lawyers in order to reduce the shortage of man power.*

# CHAPTER ONE

## 1.1 Introduction

The right of access to justice is a basic human right which is recognized under major international and regional instruments. These includes the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural rights, the African Charter on Human and Peoples' Rights and European Convention for the Protection of Human Rights and Fundamental Freedoms.

Coming to our country Ethiopia, the FDRE constitution recognizes access to justice as a right. Thus Article 37 of the FDRE constitution guarantees access to justice to every Ethiopian citizen.<sup>1</sup> Pursuant to Article 9(4) of the constitution all the rights and standards recognized in the above international and regional instruments in relation to access to justice became part of Ethiopian law upon ratification.<sup>2</sup>

Access to justice is defined as:

The ability of poor people to seek and obtain a remedy through formal or informal institutions of justice and which is inconformity with human rights standards. Therefore access to justice is much more than improving an individual's access to courts or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable.<sup>3</sup>

Legal aid and access to justice are interrelated. Legal aid is among the programs to improve access to justice and is an essential element of the justice system. It enables all people to be treated equally before the law regardless of their sexual, religious, cultural, economic, social, ethnic or other back grounds. This is a fundamental principle of human rights enshrined in international instruments as well as national documents and legislations.

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<sup>1</sup> Article 37 of the FDRE Constitution

<sup>2</sup> Article 9(4) of the FDRE Constitution

<sup>3</sup> UNDP, Access to Justice, practice note, 2004, P.6

Legal aid plays an important role in making rights a reality in the lives of the poor. It helps to bring rights to life and increase the development of rule of law. However, our laws might be good in protecting the rights of the marginalized groups of our society they will be theoretical paper works unless practically enforced.<sup>4</sup> Efficient legal aid system is considered as a viable means of ensuring access to justice and leads to reasonable access to legal services.<sup>5</sup>

The need for legal aid scheme is to help women with legal problems achieve their rights. And for the majority of the world's women laws that exist do not always translate in to equality and justice.<sup>6</sup> It is also observed that women are faced with various legal problems including being denied basic rights in the society such as rights of inheritance, property rights and others. Many of them even did not know where to go to obtain legal services even when they know that their rights had been violated. Most of the times even, those knowing where to go to get legal representation did not have the means to get services of advocate because the cost for legal representation becomes expensive. Therefore it's essential to have legal aid scheme.

In Ethiopia women are said to have less access to justice because of geographic distance, family and work obligation, ineffective enforcement mechanisms and practices, social pressures and attitudes discouraging assertion of rights, lack of legal rights awareness, illiteracy and greater poverty levels.<sup>7</sup>

In order to ensure women access to justice, it's important that legal aid services are provided especially for those with lower income and the indigent. So that legal aid could be help full in promoting the essence of equality before the law.

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<sup>4</sup> Gloub. S, "The Importance of Legal Aid in Legal Reform" in Penal Reform International and Bluhm Legal Clinic of the Northwestern University School of Law, *Access to justice in Africa and Beyond: Making the Rule of Law a Reality*, 2007.

<sup>5</sup> Commission on Legal Empowerment of the poor, "Making the Law Work for Everyone", Volume I, 2008, p. 59

<sup>6</sup> Elana Dallas (ed.), "Progress of the World's Women in Pursuit of Justice", United Nations Entity for Gender Equality and the Empowerment of Women (UNIFEM) 2011-2012, P.8  
<http://progress.unwomen.org>

<sup>7</sup> The World Bank: Ethiopia Judicial Sector Assessment, 2004, p. 31

## **1.2. Statement of the Problem**

Women are adversely affected in terms of human rights violation and are also exposed to particular forms of discrimination. The existence of discriminatory social norms and attitudes put them in a vulnerable position from getting essential access not only to legal services but also to other public services such as; health and education. Most of the times, they do not enjoy rights they are entitled even when those rights are protected in law and when officials do not intentionally violate them.<sup>8</sup>

Apart from poverty and illiteracy, due to gender inequalities in most societies women are affected by challenges to access justice. But they account for the vast majority of those most in need of legal protection.<sup>9</sup> Therefore in order to ensure access to justice for women it's essential that there exist legal aid scheme specifically targeted for women and girls.

In our country Ethiopia, in addition to the common problem of poverty, ignorance of the law, lack of legal rights awareness and illiteracy that prevent many have access to the justice system, the absence of sufficient legal aid scheme has left hundreds of thousands people unable to enjoy their right of access to justice. This is because in order to vindicate rights poor people need access to affordable a means of redress. To this end, our well written constitution and all of the social benefits and rights contained therein remain hidden in the document, largely unheard of by those whom it was intended to benefit.

Unless women in poor economic conditions have access to free legal aid or alternative means to vindicate their rights they remain voiceless. In other words indigent women are not in a position to afford to pay privately for legal advice or representation by private attorney. But legal proceedings require a person knowledgeable in law, so that all relevant facts and arguments are presented. The mere appearance of the person in the court cannot safeguard the assertion of rights. Regardless of the above fact legal aid

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<sup>8</sup> Byrne.S, etal, Decentralization and access to justice, 2007, p.28

<sup>9</sup> UNICEF and UNDP, Outcome Report: Practitioners Meeting on Legal Aid Programming in Africa, (Dakar1-3 June 2010) p.30

services are not accessible for the majority Ethiopians due to various reasons. Services which are currently functioning concentrate their operation in urban centers. Even those with outreach services are located in towns but the majority Ethiopian women suffer in rural areas. Therefore the problem is that the existing few legal aid services are geographically inaccessible to the large segment of our society.

Moreover the fact is that, the need for legal aid is unquestionable but resource is limited and our government is unable to satisfy the needs of the poor segment of the society. So the right of access to justice of the poor is at stake.

The reality is that the majority of Ethiopians in particular women do not have adequate access to legal aid. But women grew out to be the most frequent victims of crime, violence and target of harassment. If women do not know their right and lack mechanisms to assert their rights, the fact that many international instruments, national constitutions and other laws have enshrined them is of very little impact.

These and others are then, the fundamental problems that make legal aid as an important instrument or means to protect the human rights of women by accessing justice.

### **1.3. Objective of the Study**

The research has the general objective of examining the role of legal aid in promoting the rights of women.

As a result the research has the following specific objectives:

- To show how legal aid can promote the rights of women
- To examine the accessibility of the service for indigent women
- To investigate the barriers that denies women access to legal aid

### **1.4. Research Questions**

The research will attempt to answer the following questions

- How is legal aid important in promoting the rights of women?
- How accessible is the service for indigent women?
- What are the barriers that deny women access to legal aid?

## 1.5. Research Methodology

Methodologically this research applied qualitative methods of study. This is because qualitative approach enables detailed study of social phenomenon based on the feelings, experiences and reasons that govern such behaviors of peoples.<sup>10</sup> It also assists the researcher to explore the research problem based on meanings ascribed by groups and individuals.<sup>11</sup> This approach is open to the unknown in the apparently familiar problems. And it doesn't use strictly standardized and fixed ideas about the subject under investigation.<sup>12</sup>

Due to the dynamic and subjective nature of the subject under investigation, as access to legal aid for women differ in different contexts based on the existing institutional set up of the legal aid centers and other factors, this methodology was used to investigate the realities on women access to legal aid in the selected case; this is EWLA and Hawassa University Clinical Legal Aid.

In order to set the content of the right to legal aid under international human rights framework, different international Conventions dealing on access to justice and legal aid were analyzed. Although not binding, Declarations, Resolutions, Principles and Guidelines at the international and regional level were used as they are important sources for interpreting and understanding states international legal obligations as well as important normative guidance for states in developing domestic public policy that complies with generally accepted international human rights standards and principles. At the national level the FDRE constitution, proclamations and policies were examined.

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<sup>10</sup> Dawson, C., *A Practical Guide to Research Methods: A User-friendly Manual for Mastering Research Techniques and Projects*. 3<sup>rd</sup>ed. Oxford: How to Content. 2007, p. 16

<sup>11</sup> Creswell, J.W, *Research Design: Qualitative, Quantitative and Mixed Approaches*. 3<sup>rd</sup> ed, London: Sage Publications Ltd. 2009, p.4

<sup>12</sup> Flick,U., Kardorff, V.E.,& Steinke,I, What is Qualitative Research? An Introduction to the Field ”In Flick,U., Kardorff, V.E.,& Steinke,I, eds, *A Companion to Qualitative Research*. London: Sage Publications. 2000,“pp. 3-12 at 5

### **1.5.1 Sources of Data**

Both primary and secondary sources of data are used. The primary data were generated from legislations, policy documents and other instruments and the field research by using different tools. Secondary sources of data, such as literatures, journals and other materials were used to provide the conceptual framework and acquire a general picture of the problem as well as to obtain specific information on the various aspects of the study.

### **1.5.2 Instruments of Data Collection**

The study used qualitative method of data collection. In order to collect the data different methods were employed:

Desk research, this method was used to gather data from literatures in relation to legal aid, access to justice and rights of women, research out puts and other important legal documents. In order to generate data from primary sources legal documents at the international and national level were analyzed. These include Conventions, Declarations and Resolutions.

Semi- structured interview guideline, was used based on the objective of the study. This was done by making lists of predetermined questions and enabled the researcher to compare and contrast the views of each respondents based on the respective questions and discuss with respondents. This was used to gather information from women beneficiaries, legal aid service providers and other key informants. Questions were translated in to Amharic before the field work started. Informants consent was asked for recording their responses. As they were not willing to be recorded, their responses were taken through hand written notes.

Personal observation at the legal aid centers was made in order to see how the service is provided and as the writer is unknown to the women beneficiaries it helped to see their feelings and listen their views about the service currently provided at the centers.

Focused Group Discussion was held in order to gather data that could not be generated using one to one interview. And also to validate data found from other sources.

Discussion was made with two categories of women, women in the community and women beneficiaries of legal aid services provided by Hawassa University Clinical Legal aid and EWLA. The criteria for drawing members were, age (women >18 yrs old) and those with legal problems but who had never applied for legal aid due to various reasons. Women beneficiaries of EWLA and Hawassa University Clinical Legal aid brought the women from their surroundings and neighborhood with whom they are familiar and with pressing legal needs. Seven women participated in Addis (Three women beneficiaries and four women who had never applied for legal aid but with legal problems) at Hawassa nine women participated in the discussion (three women beneficiaries and six women who had never applied for legal aid but with legal problems). Points related to the objective of the study were discussed. The researcher facilitated the discussion and all participants were encouraged to participate actively.

### **1.5.3 Procedures and Techniques of Data Collection**

Key informants are selected for interview based on purposive or judgmental research technique. People are chosen if they are believed to have valuable contribution for the research and because of the position and experience they had on the subject under consideration. Therefore, key informants who have substantial knowledge and direct information about the topic under consideration participated in the study. Women beneficiaries are taken as target groups because the research aim is primarily to find out women access to legal aid and women from 18-65 years old are taken as participants who came to the legal aid centers to get service. In conducting this study twenty eight female respondents were chosen. These respondents came to the institutions seeking for free legal aid on different matters.

Ethiopian Women Lawyers Association and Hawassa university legal aid centers were selected using judgmental sampling technique. This is because, Legal aid is one of the core programs of the EWLA and works primarily targeting on women and girls. Hence, the primary beneficiaries of the Legal aid service are women and girls who do not usually have the financial means to access legal service out in the market. Therefore women beneficiaries who came to get legal aid are available in this place. The association has six branch offices in different regions in Ethiopia (Hawassa, Assosa, BahirDar, Dire Dawa,

Nazareth and Gambella). For the sake of this research the head office located in Addis Ababa is chosen because recently starting from 2010 due to resource, man power and other problems branch offices are not effectively providing legal aid service. Hence, the head center was taken as appropriate case to investigate the role of legal aid in promoting the rights of women.

Hawassa University legal aid center has branch offices established in Yirgalem, Shashemene and Ziway. In Hawassa, legal aid centers are operational at Hawassa city first instance court, Southern Nations Nationalities and Regional Supreme Court and in the premise of Hawassa city prison. For the sake of this study three legal aid centers located at Hawassa city first instance court, Southern Nations Nationalities and Regional Supreme Court and outreach legal aid center located in Yirgalem are chosen. The three centers were taken because women beneficiaries with different legal needs are available.

Twenty eight women beneficiaries participated in the study; among these twelve were women beneficiaries of the Ethiopian Women Lawyers Association and sixteen women beneficiaries at Hawassa University legal aid center. Among these, six women beneficiaries were chosen from Southern Nations Nationalities and Regional Supreme Court, six were chosen from Hawassa city first instance court and four were chosen from outreach legal aid center located in Yirgalem. No further investigation was sought when the information begun to be repetitive.

Service providers at Hawassa university legal aid center and EWLA where the case study was undertaken are taken as key informants. Judges, Public defenders and individuals who are believed to have good knowledge on the subject under consideration are also taken as key informants, institutions like the ministry of justice, public defender's office, the Human Rights Commission, Ethiopian Lawyers Association and women's affairs who are directly or indirectly involved on legal aid are also taken as key informants in order to assert their contribution in addressing women access to legal aid in Ethiopia and examine the existing practice.

### **1.5.4 Techniques of Data Analysis**

The research employed qualitative method of data analysis. The data collected from primary sources have been carefully analyzed. Moreover, information obtained through interview, personal observation and from secondary sources has been included in the analysis. Therefore the data was carefully analyzed and a descriptive report is formulated as per results found from respondents and other secondary sources.

### **1.6. Significance of the Study**

The study will have the following significance: To enhance knowledge about the importance of legal aid in promoting the human rights of women to interested groups, like academics, policy makers, judges, advocates of human rights, students, NGOs and other institutions, groups or persons. Also will give insight to the government and other stake holders about the relevance of effective legal aid system in safeguarding the right to access to justice and indicate possible measures to be taken by the government and other potential legal service providers to make legal aid accessible for those in need and particularly for women.

The research will give adequate information to the reader about the subject under consideration because to the best of the writer's knowledge there have not been adequate researches conducted on the area. To this end it will promote other researchers to undertake further studies in the issue.

### **1.7 Scope of the Study**

The scope of the study is limited in terms of both time and coverage. This study was conducted in two institutions, EWLA and Hawassa University Clinical Legal Aid and targeted only women beneficiaries at the center. Hence, its findings may not be applicable for women beneficiaries in other legal aid centers. In addition to this, the case study was limited to clients of Ethiopian Women Lawyers Association (EWLA) and Hawassa University Clinical Legal aid center. For the sake of this research legal aid is limited to legal advice and representation.

## **1.8 Limitation of the Study**

The researcher could not find much literature on access to legal aid which specifically focuses on women in Ethiopia. Due to this fact the writer faced a problem to find a prior legal studies and reliable secondary source regarding women access to legal aid in Ethiopia. The data collection from primary source was also time taking especially in the clinical legal aid centers of Hawassa University because the writer shall stay at the centers in different times in order to contact women beneficiaries who came to get the service in the limited period of time. Interviewing Key informants has been also difficult due to various administrative procedures and long schedules. Women beneficiaries were also sometime unwilling to give information fearing disclosure of their identity and for different personal reasons. Generally, the researcher has encountered these major challenges which in one or other have limitation in terms of reviling the problem on the ground.

## **1.9 Ethical Consideration**

In doing the research ethical considerations are taken in to account. While collecting the data from primary sources participants are properly informed about the purpose of the research. For this purpose letter of cooperation was secured from Addis Ababa University, Center for Human Rights. Participants consent is also asked if they are willing to give any information on the area. While using the data, names are not disclosed in order to protect participants from any disclosure of their individual identity.

## **1.10 Organization of the Study**

The study is organized into five chapters each of which has its sections and sub-sections. The first chapter introduces the paper generally. The second chapter concerns on theoretical and normative analysis of literatures that have direct relevance to the study, includes the origin and development of legal aid, rationale for recognition of legal aid, the human rights principles underlying the right to legal aid and legal aid service delivery models are discussed. Chapter three of the study encompasses the human rights framework for legal aid in international and regional level; UN declarations and

statement of principles and Ethiopian laws with regards to legal aid are also explored. Legal aid under the women's right framework and realities on women access to justice in Ethiopia are dealt widely under this chapter. Chapter four of the paper deals with data presentation, analysis and case study of respondents. Thus the data collected is analyzed and presented. The last chapter forwards conclusion and recommendations that summarizes containing the findings in the study.

## CHAPTER TWO

### 2. Conceptual Framework

#### 2.1 Definition

The term Legal aid is defined as, free or inexpensive legal services provided to those who cannot afford to pay to get legal service.<sup>13</sup> It is normally used to describe legal assistance and representation provided by the state for free or need based payment.<sup>14</sup> With this we can infer that legal aid is a service provided by various actors with the aim of enabling those who could not be able to access justice.

Beyond legal advice and representation; legal aid also includes comprehensively, the provision of legal information, education, assistance, advocacy and mechanisms for alternative dispute resolution; to a person, group or community, either by state or non-state actors<sup>15</sup>.

The concept of legal aid is further expanded to include:

A range of justice services, including advice, assistance, education, alternative dispute resolution, and representation. Providers of such services include community and faith-based organizations, NGOs, traditional leaders, and paralegals: non-lawyers trained in practical aspects of the law, public education, counseling and giving legal advice. The assistance they provide can be rendered at a much lower cost and therefore at a much higher quantity than lawyers can.<sup>16</sup>

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<sup>13</sup> Bryan A. Garner, *Black's Law Dictionary*, 2005, p. 746

<sup>14</sup> UNICEF & UNDP, (First Draft) Outcome Report: practitioners meeting on legal aid Programming in Africa (Dakar 1-3 June 2010) p.13

<sup>15</sup> Preamble to The Kyiv Declaration on the Right to Legal Aid, Conference on the Protection and Promotion of Human Rights through Provision of Legal Services: Best Practices from Africa, Asia and Eastern Europe Kyiv, Ukraine 27-30, March, 2007

<sup>16</sup> Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and other Service Providers in Africa (22-24 November 2004) Lilongwe, Malawi, conference available at: <http://www.law.northwestern.edu/legalclinic/lilongweLegalAidDeclaration.pdf>

In other words legal aid is not only limited to legal advice and representation in cases of criminal matters but also encompasses civil issues that enhance the rights and legal capacities of the poor.<sup>17</sup>

## 2.2 Origin and Development of Legal Aid

Many factors contributed to the emergence of legal aid these includes the growing political significance of modern social rights; the emergence of modern legal professions and new social dynamics such as, industrialization and urbanization, democratization, migration, class conflict electoral reform etc.<sup>18</sup> Until WWI no states funded legal advice and other outside litigation services except in Germany where local governments funded legal advice and counseling services.<sup>19</sup>

During the 1st half of 20<sup>th</sup> century there was innovation and expansion on the thinking of legal aid. For example in the USA country-based public defender programs were established. In Australia public solicitors were introduced. In Sweden free process legislation and municipal legal aid plans provided assistance to the poor with legal problems. The period was characterized by growing interest of the legal professions in legal aid mainly by common law societies.<sup>20</sup>

In the post world War II era legal aid was conceived as a possible means of solving the problem of “justice for the poor” a first wave towards equal access to justice for all was projected throughout the western world and its spheres of influence, particularly over the 1960’s and 1970’s.<sup>21</sup>

Within three decades after WWII several countries reformed their legal aid mode of delivery. In order to offer the poor and low income citizens a comprehensive range of legal aid services. For example the UK, USA, Australia, Finland, Denmark, Canada,

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<sup>17</sup> Gloub. S, “The Importance of Legal Aid in Legal Reform” in Penal Reform International and Bluhm Legal Clinic of the Northwestern University School of Law, *Access to justice in Africa and Beyond: Making the Rule of Law a Reality*,2007

<sup>18</sup> Don Fleming, Legal aid and human rights, Paper Presented to the International Legal Aid Group Conference, Antwerp, 6-8 June 2007, p. 2

<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> Ibid, p. 3

France, Sweden, Netherlands and Norway established Judicial care or mixed model schemes.<sup>22</sup>

Later on the access-to-justice approach has brought important implications; the access-to-justice approach is a wider approach to legal reform. It emphasizes on full institutional and legal reforms in processing and preventing disputes in modern societies. And it's not limited to include only advocacy by the government, private advocates and the courts. Such conceptions covering a reform in wide range of institutions outside have placed legal aid within a framework of strategies targeting access to justice to the poor and disadvantaged group.<sup>23</sup>

The legal empowerment of the poor (LEP) approach has currently replaced the access to justice approach. Legal Empowerment of the Poor is defined as: "The process in which the poor become protected and are enabled to use the law to advance their rights and their interests, vis-à-vis the state and in the market."<sup>24</sup>

It involves the poor being aware of their full rights, so that they can use the opportunities and exercise them, through public support and their own efforts as well as the efforts of their supporters and wider networks.<sup>25</sup> Legal empowerment has been also defined as a rights-based strategy to promote safety, security, and access to justice through the use of legal services and related development activities to increase disadvantaged populations' control over their lives.<sup>26</sup>

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<sup>22</sup> Ibid

<sup>23</sup> Cappelletti.M and Garth. B, "Access to Justice: The Newest Wave in the World Wide Movement to Make Rights Effective, *Buffalo Law Review*, Vol.27,1977-78, p.222

<sup>24</sup> Commission on Legal Empowerment of the poor, *Making the Law Work for Everyone*, Volume I, 2008, p.26

<sup>25</sup> Ibid

<sup>26</sup> Ibid, p.27

## 2.3 Rationale for Recognition of Legal Aid

The rationale for legal aid depends on the socio economic and political agenda of the time.<sup>27</sup> It has also been observed that “in each era the rationale for legal services to the poor has been directly related to the prevailing moral, political and legal philosophy”<sup>28</sup>.

Traditionally, in the medieval period, religious notions of charity with the idea of supporting the indigent, motivated the limited provisions made for the poor in their contacts with the developing national legal system of Europe; the egalitarian ethic of the French and American revolutions and the concept of natural rights later motivated the movement for formal equality before the courts for all parties, guaranteed by law<sup>29</sup>.

As a modern rationale, Legal aid is considered as an important social service. It is legally provided and necessary for a functioning justice system as it promotes equality and justice in our society. It’s also considered that if legal needs are unmet this in turn results to social exclusion.<sup>30</sup> Legal aid can promote the practical realization of the right of access to justice based on equality. It also empowers the poor and disadvantaged to seek remedies for injustice that would otherwise be excluded and is an important tool in bringing rights to life.<sup>31</sup>

It’s also said that, “The provision of legal aid can promote human right, since without it a citizen may be denied the right to present or defend a case and so be denied a fair hearing.”<sup>32</sup>

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<sup>27</sup> UNODC, “Hand Book on Improving Access to Legal Aid in Africa”, *Criminal Justice Handbook Series*, New York, 2011, p. 19

<sup>28</sup> Metzger, B., “Legal Service to the poor and National Development Objectives” in Committee on Legal Services to the Poor in the Developing Countries, *Legal Aid and World Poverty: A survey of Asia, Africa, and Latin America*, Praeger Publishers, Inc., 1974, p.5.

<sup>29</sup> Ibid, p. 4

<sup>30</sup> Brewin. A & Govender.k., “Rights-Based Legal Aid: Rebuilding BC’s Broken System”, Canadian center for policy Alternatives, November 2010, p.23

<sup>31</sup> Gloub, S., 2007 op cit., p. 1

<sup>32</sup> Hodges.C, Europeanization of Civil Justice: Trends and Issues, *Civil Justice Quarterly*, 2007,p.2

From this one can infer that legal aid is essential in promoting human rights and equality before the law. If legal aid service exists, the poor can present and defend a case regardless of his economic status. Therefore among the rationales for provision of legal aid the promotion of human rights takes a prominent position.

There are also many possible reasons for providing legal aid whether in criminal or civil cases. Among this legal aid is essential to promote human rights and many other rights including the recognition of access to justice, fair trial and equality before the law in the human rights legal framework.<sup>33</sup> The primary benefit of legal aid is of course enabling the individuals receiving legal assistance to secure rights that would not have been protected without legal assistance. And for the marginalized groups of the society, this involves addressing basic human needs for shelter, income, healthcare, education, employment and often freedom from harm.<sup>34</sup> Here is also reason to believe that people who get proper legal representation are in a better position to take measures when future problems arise.<sup>35</sup>

Apart from individual's benefits, legal aid promotes systemic improvements. Even most government organs including courts are said to function more efficiently when people are represented.<sup>36</sup> In a similar fashion, legal aid can help promote economic development because poor people who are able to find help dealing with property claims, inheritance, domestic violence and other problems addressed by legal aid are in a better position and can be economically productive.<sup>37</sup>

On the other hand, it's also maintained that giving legal advice and support to community groups, women's groups and groups representing racial or national minorities, for example can enable them to advance their interests and make the institutions that govern their lives more responsive to their needs.<sup>38</sup>

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<sup>33</sup> Manning, D.S, "Benefits of Providing Legal Aid", in Development of a Civil Legal Aid System Issues for Consideration,2005, p.3

<sup>34</sup> Ibid, p.4

<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Manning, D.S,2005, op cit , P. 5

<sup>38</sup> Ibid

The rationale for providing legal aid is further explained for reasons such as charity, poverty reduction, and efficiency in the legal system, rule of law, lawyers' self-interest, and particularly human rights.<sup>39</sup>

Another goal for providing legal aid is to achieve individual equal access to courts. Because they are essential institutions that should be open to all members of the society, as they provide one of the means of redress for those in need of legal remedy.<sup>40</sup>

In general, legal aid can help make government institutions work for the poor by making people who are the victims of discrimination or the intended beneficiaries of government aware of their rights and provide possible mechanisms to assert their rights.<sup>41</sup>

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<sup>39</sup> Ibid

<sup>40</sup> Ibid

<sup>41</sup> Ibid , p. 23

## 2.4 Human Rights Principles Underlying the Right to Legal Aid

### 2.4.1 Human Rights and Legal Aid

The source of human rights is neither the state nor any particular system it is the person and this is the key to its universality.<sup>42</sup>

A human right is a right that every person has; it inheres in the person, it is with each of us from birth, it's ours because we are human, and it's necessary to our living with dignity, reason and conscience<sup>43</sup>.

Here one can perceive that, human right is a right that a person acquires merely because he is human. Therefore, a person shall not be deprived of vindicating his rights for reasons of economic incapability, as this is contrary to the principle of equality and non discrimination which is among the fundamental principles of human rights.

It's also argued that the right to legal aid is the cornerstone for all other human rights. Because limiting or removing the voice of the powerless through denial of access to legal assistance is often an effective means to silence the assertion of valid rights.<sup>44</sup> It's also said that the right to legal assistance has fundamental importance for the due conduct of a fair trial.<sup>45</sup> However, the right to legal assistance also is grounded in broader principles of international human rights law<sup>46</sup>.

Individuals who do not enjoy their rights are not without rights but they are deprived of their enjoyment. Poor people have human rights, but are deprived from exercising their rights<sup>47</sup>. Especially women in poor economic conditions encounter difficulty in accessing the legal system. Without access to the means of enforcing once legal rights, rights are

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<sup>42</sup> Rice.S, "A Human Right to Legal Aid", In Dalton.P and Thelle.H (Eds.), A Human Right to Legal Aid. the Danish Institute for Human Rights, Denmark: 2010, p.17

<sup>43</sup> Ibid , p.21

<sup>44</sup> Wilson. R. J, "Principles, Sources, and Remedies for Violation of the Right to Legal Assistance in International Human Rights Law" In Goemann.R, Hariharan.A and Tull.J.A (Eds.) International Legal Aid and Defender System Development manual, Prepared for the National Legal Aid and Defender Association, November, 2010, p. 17

<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> Ibid, p. 19

meaningless and this is in contrary to the very basis of the rule of law<sup>48</sup>. In such instances legal aid becomes important in safeguarding human rights.

## **2.4.2 Legal Aid and Equality before the Law**

The principle of equality is among the core principles of human rights which are enshrined under the basic international human rights instruments.

The universal declaration of human rights provides for the fundamental principle of equality before the law. Similarly the ICCPR, in article 14 and 26 stipulates equality before the law and equal benefit and protection of the law.<sup>49</sup> The ICESCR also declares that peoples should not be discriminated based on sex, property ownership or other status<sup>50</sup>, which certainly includes ones financial means and provides a conceptual basis for the right to legal aid/ assistance in both criminal and civil cases.

The FDRE constitution under Article 25 states that “all persons are equal before the law and are entitled without discrimination to equal protection of law, on grounds of sex, property or other status.”<sup>51</sup> Even if the FDRE constitution incorporates such principles it’s practically difficult unless peoples have equal access to the laws and legal remedies.

The primary conception of the right to legal aid lies in the notion that peoples should not be discriminated because of their poverty. Similarly, the right to legal assistance is very important because all other rights which are relevant to the due conduct of fair trial may be meaningless if this right is not respected. Therefore legal aid is essential for the effective assertion of human rights.<sup>52</sup> Because a person with insufficient financial means to hire a representative will not have the same advantage in pursuing or defending claims like the other party who can afford to litigate. This becomes even worth for women living in poor economic conditions and for those without having any legal awareness.

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<sup>48</sup> Brewin.A & Govender.K, Rights- Based Legal Aid: Rebuilding BC’s Broken System, Canadian Center for Policy Alternatives, November 2010, P.23

<sup>49</sup> The ICCPR, Article 14 and 26

<sup>50</sup> ICESCR, Article 2(2)

<sup>51</sup> FDRE Constitution, Article 25

<sup>52</sup> Wilson. R.J, 2010, op cit., p.24

In such instances legal aid becomes a key to guarantee citizens access to laws and legal remedies, by balancing the interest of the poor vis a vis the other party. In a broader sense access to legal aid can be taken as a vital instrument to enhance equality before the law.

### **2.4.3 The Right to Fair Trial**

The term fair trial is used in reference to the right to legal assistance in criminal proceedings. Human rights treaties however use the term fair hearing, which implies something broader than the event of criminal trial.<sup>53</sup> The ICCPR for example provides in Article 14/1 that a fair hearing must be provided in “the determination of any criminal charge against him or of his rights and obligations in a suit of law”. The term suit at law in turn has been applied to a broad array of civil or administrative matters. Thus the right to legal assistance is required when it is found to be a fundamental component of the right to fair hearing that is available to everyone.<sup>54</sup>

The FDRE constitution also envisages due process of law which requires fair trial and the constitutional guarantee shall be interpreted in line with international instruments adopted by Ethiopia such as the ICCPR.<sup>55</sup>

Access to justice is a very important element of the right to fair trial. But due to in affordable cost of professional fees, most accused persons are not in a position to enjoy their rights.<sup>56</sup> In order to make the right to fair trial more effective the government is under obligation to provide legal assistance to indigent persons.

To this hand, the right to fair trial is very essential for the protection of fundamental human rights and freedoms. It's also provided that, every person whose rights or freedoms are violated must be entitled to have effective remedy. Their cause heard and shall be equal before the courts and tribunals in determining their rights and obligations. Individuals must also have adequate time and facilities for the preparation of their

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<sup>53</sup> Ibid, p. 26

<sup>54</sup> Ibid

<sup>55</sup> Article 13(2), of the FDRE constitution, which provides fundamental rights and freedoms are to be interpreted in light of international human rights instruments.

<sup>56</sup> The Dakar Declaration: Resolution on the Right to a Fair Trial and Legal Assistance in Africa, adopted at the 26<sup>th</sup> Ordinary Session, African Commission on Human and Peoples' Rights, November 1-15, 1999, General DOC/OS (XXVI) INF.pp.9

defense and to communicate in confidence with counsel of their choice.<sup>57</sup> This means they have right to have defense counsel on their behalf, who can represent them.

Even if international human rights instruments and national constitutions recognize the right to fair trial, one cannot conclude that the right is practically implemented. Various arguments are raised against the fulfillment of this right; first criminally accused are not given wide support and providing legal representation for those criminally accused is said to cost the state too much money and additional expenditure.<sup>58</sup> But the reality is that, criminal defendants who cannot afford to have a defense counsel are interrogated, charged and convicted without a lawyer. But ensuring an adequate defense for those charged with crimes is a fundamental test of governments to the rule of law, to the principles of presumption of innocence and procedural fairness.<sup>59</sup>

An effective criminal justice system needs efficient defense advocacy. Because if there are defense attorneys free to investigate, probe and question; force prosecutors and police officers, they can regulate police and prosecutors do their jobs professionally.<sup>60</sup> But if an accused cannot consult a lawyer he is vulnerable to serious abuse like; torture, forced confessions and reliance upon legally inadmissible evidence for conviction. Absence of counsel not only endangers rights violations but undermines public trust in the legal system.<sup>61</sup> Because a person shall not be discriminated from enjoying the rights stipulated in the constitution and other international instruments merely because he cannot afford to pay for a lawyer.

#### **2.4.4 Right to Legal Aid and Access to Justice**

We don't find uniform definition on access to justice and various definitions are given in different contexts. In order to have access to justice, there must be a system by which people may vindicate their rights or resolve dispute under the general protection of the state. Primarily there is a need to have a system which is equally accessible to all. But

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<sup>57</sup>Resolution on the Right to Recourse and Fair Trial adopted on its 11th Ordinary Session in Tunis, Tunisia, in March 1992.

<sup>58</sup> Goldston, J.A, "Legal Reform and Access to Justice" in Open Society Justice Initiative, 2004, P.1

<sup>59</sup> Ibid

<sup>60</sup> Ibid

<sup>61</sup> Ibid, p. 3

having accessible system is not only sufficient; it must lead to results that are individually and socially just<sup>62</sup>.

UNDP defines access to justice as:

The ability of people to seek and obtain a remedy through formal or informal institutions of justice and which is in conformity with human rights standards. Access to justice is, therefore, much more than improving an individual's access to courts or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable.<sup>63</sup>

Based on this definition, one can understand that access to justice is given a broader scope where an individual can obtain remedy for injustice not only from the formal justice system but including the informal system such as using alternative dispute resolution and traditional mechanisms as long as they are in conformity with human rights standards. Hence access to justice is not all about an individual access to the legal service or system but focuses on the outcome or just and equitable result to be achieved.

Therefore, access to justice should be considered to encompass in its broader sense: - access to formal courts, law, procedure and if preferred to a dispute resolution forum based on restorative justice including wider community legal education both in accordance with proper or suitable regulations in order to prevent violence.<sup>64</sup> To say there is Access to justice citizens should be aware of their rights; know where to go on claiming their rights and people should be reassured of equal treatment which inspires them with confidence on the justice system.

Access to justice contains the idea that, each person should have effective means of protecting his or her rights or entitlements under the substantive law. This holds the

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<sup>62</sup> Cappelletti.M &Garth.B, Access to Justice: The Newest Wave in the World Wide Movement to Make Rights Effective, 1978, P.182.

<sup>63</sup> UNDP, Access to Justice, practice note, 2004, P.6

<sup>64</sup> Penal Reform International, "Access to Justice in Sub-Saharan Africa": the Role of Traditional and Informal Justice Systems, 2001, P.2.

concept that all people should enjoy equality before the law.<sup>65</sup> Besides Article 7 and 8 of the Universal Declaration of Human Rights enshrines access to justice as a fundamental human right by guaranteeing, the right to equality before the law and the equal protection of law without discrimination. Including the right to an effective remedy by a competent national tribunal for acts violating the provisions found in the constitution or the law.<sup>66</sup> Access to justice is also considered as a means for realizing the enjoyment of other rights.

Furthermore, the principle of access to justice tries to avoid the legal consequences an individual encounters as a result of inequality in society. Also ensure effective access to the legal system by making the poor enforce his rights and protect legitimate interests. Hence alternatives should exist to break down the barriers that prevent disadvantaged individuals and groups from using the legal system in order to enforce their rights and protect their interests.<sup>67</sup> Among these mechanisms legal aid takes the prominent position.

But prohibitive costs of service, unaffordable legal representation, lack of adequate legal aid systems and limited popular knowledge and awareness of rights. Inadequacies in existing laws which fail to protect women, children and other vulnerable groups are listed as barriers to access justice.<sup>68</sup> Therefore, even when the courts are constitutionally protected the judiciary independent, the laws drafted in fairness to the poor, the legal system will be of little benefit to the poor.<sup>69</sup>

Studies on access to justice have shown that two factors are predominant in determining whether people are able to use available legal remedies. The first one is access to financial resources to hire a lawyer and use legal institutions which is usually difficult for the poor. The second factor described is institutional skill that is the ability to understand and use them.<sup>70</sup> With regards to the first, legal aid can be taken as a viable means of

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<sup>65</sup> Sackvill, R., Some thoughts on Access to justice, New Zealand Journal of Public and International Law, June, 2004, p. 1

<sup>66</sup> OHCHR-UNDP, Lessons Learned from Rights-Based Approaches in the Asia-Pacific Regions, 2005, P.223

<sup>67</sup> UNDP, Access to Justice, practice note, 2004, P.4

<sup>68</sup> Ibid, p.5

<sup>69</sup> Anderson, M.R., "Access to Justice and Legal Process; making legal institutions responsive to poor people in LDCs", Paper for Discussion at WDR Meeting, 16-17 August 1999, P.18

<sup>70</sup> Ibid

protecting the right to access to justice for those who cannot afford to hire a lawyer; this in turn can be done by providing legal rights education and other possible mechanisms.

Therefore one can fairly conclude that legal aid service is an essential element in enhancing the right to access to justice guaranteed in the international human rights instruments and national constitutions of a given country.

## **2.5 Legal Aid Service Delivery Models**

Different countries and even particular regions in a given country take different approaches to providing legal aid.<sup>71</sup> This might be due to the existing socio economic reality of the state.

Among these we find the Public Defenders Model, in this model legal representation is provided by full time attorneys employed or salaried by a government agency on a permanent basis. They are government funded and dependent on the state in every aspect. The public defenders model is based on the theory that a staff of full-time public defender working exclusively on criminal matters should be able to provide high quality defense services for the poor than private attorneys who do not necessarily specialize in criminal law.<sup>72</sup> The professional competence of public defenders is considered to determine the quality of service provided<sup>73</sup>. Countries like USA, china, Nigeria, Chile, Russia, Brazil, Colombia and Japan use the public defenders model.<sup>74</sup>

On the other hand, skilled and experienced private advocate provide legal services to needy clients in the Judi care model in which attorneys are funded by the government. But in this model clients are given the opportunity to choose lawyers who will represent them. Then the lawyers will be directly compensated by the government public funds for their work on a case by case basis.<sup>75</sup> Despite the above facts, the expense of operating

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<sup>71</sup> Geraghty, T.F, Hamsher, D., & Katherie, S., etal, “ Access to Justice , Challenges, Models and the Participation of Non- Lawyers in Justice Delivery” in Penal Reform International and Bluhm Legal Clinic of the Northwestern University School of Law, *Access to justice in Africa and Beyond: Making the Rule of Law a Reality* ,2007 pp. 53- 85 at 59.

<sup>72</sup> Ibid

<sup>73</sup> Geraghty, T.F., 2007, op cit., p. 60-61.

<sup>74</sup> Ibid, p. 85

<sup>75</sup> Ibid, p. 62

the system is too expensive mostly in developing countries where the need for access to justice is high compared to the service available.

There is also a model where law firms, bar associations, NGOs or sometimes individual attorneys enter into a contract with the government to provide legal assistance in a certain number of cases for a fixed price. The Contracting model enables to predict budgets for legal services, control over appointments and quality of the service provided including the accountability of lawyers.<sup>76</sup>

As an alternative method of assisting the indigent, we also find the paralegal model which advocates the importance of Paralegals in providing legal service. Especially in developing countries where shortage of lawyers exists and the majority live in rural areas.<sup>77</sup> They can assist lawyers, advise people about their basic rights and provide education and training. Community based paralegals are able to deliver legal services to people outside of the traditional legal system and to those living in rural and remote areas. Malawi and South Africa highly depend on paralegals in its criminal justice system especially in rural and impoverished areas. This has spread to Benin, Kenya, Uganda and Tanzania.<sup>78</sup> They can determine and be sensitive to local community dynamics and issues this in turn assists in ensuring areas which need targeted legal service interventions.<sup>79</sup> For example, in Malawi there is a paralegal advisory service (PAS) and provides legal literacy to prisoners in order to help them understand the law on how to use it to represent themselves.<sup>80</sup>

Pro bono legal aid is also widely used as an important model of legal aid service delivery.

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<sup>76</sup> Geraghty, T.F., 2007, op cit., p. 64.

<sup>77</sup> Ibid, p.66

<sup>78</sup> Ibid

<sup>79</sup> Samaai, S., "The promotion of Access to Justice by University Law Clinics in South Africa" In Dalton. P & Thelle. H (Eds.) *A Human Right to Legal Aid*, Denmark: the Danish Institute for Human Rights, 2010, p.240.

<sup>80</sup> Msiska, C., & Igweta, R., et al., "The Paralegal Advisory Service: A Role for Paralegals in the Criminal Justice System" in Penal Reform International and Bluhm Legal Clinic of the Northwestern University School of Law, *Access to justice in Africa and Beyond: Making the Rule of Law a Reality*, 2007, pp 145-151, at 147.

Pro bono is defined as:

The provision of legal services by lawyers to poor, marginalized and indigent individuals, groups or community without a fee or expectation of compensation, in order to enhance access to justice for such people who cannot afford to pay for legal services<sup>81</sup>.

In Ethiopia the federal court advocates code of conduct requires any advocate to render at least 50 hours of legal service per annum free of charge or up on minimum fee to the poor, charitable organization, persons for whom a court requests legal services; and committees and institutions that work for improving the law, the legal profession and the legal system.<sup>82</sup> For example in Kenya “*the legal aid day*” was introduced where pro bono lawyers attend the prisons and offer free advice to prisoners. And when innovations are introduced in one country, they spread to others. In the same manner the paralegal advisory service (PAS) introduced the *legal aid day* in Malawi.<sup>83</sup>

Law School Legal Clinics, also provide legal service to indigent clients in the community using trained law students with the supervision of their instructors as part of the legal education. And in some countries their responsibility goes further to represent their clients in the court of law. Since there are different models of clinical programs, there is no generally accepted definition or description.<sup>84</sup>

The tem “Clinical Legal Education” is a term originally associated and first introduced within American law schools.<sup>85</sup> Clinical legal education is defined as a “legal-practice based method of legal education in which law students assume the role of a lawyer and

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<sup>81</sup> South African Legal Services Charter, Draft, August 2006, Article 2

<sup>82</sup> The Federal Court Advocates’ Code of Conduct Regulations No. 57/1999, Article 49

<sup>83</sup> Msiska, C., 2007, op cit. p. 147

<sup>84</sup> New York State Judicial Institute Partners in Justice: “A Colloquium on Developing Collaborations among Courts, law school clinical programs and the practicing Bar”, introduction to clinical legal education, May 9, 2005, P.7.

<sup>85</sup> Iya Philip F, Fighting Africa’s Poverty and Ignorance through Clinical Legal Education: Shared Experience with New Initiatives for the 21<sup>st</sup> Century, 2000 p. 16.

are required to take on the responsibility, under supervision, for providing legal services to real clients.”<sup>86</sup>

Many African nations have established or are currently establishing legal aid clinics associated with law schools<sup>87</sup>. At present, there are clinics in Kenya, Tanzania, Zimbabwe, Botswana, Ghana and Sierra Leone. Law school associated clinics also exist in our country Ethiopia, Nigeria, Malawi and Uganda. <sup>88</sup> It’s also argued that with the existing shortage of legal aid lawyers and financial resources in developing countries, law students should be seen as potentially valuable and inexpensive resource available to assist national legal aid schemes<sup>89</sup>.

Therefore university law clinics or legal aid clinics have great importance in a developing country like Ethiopia, where there are vast economic and social differences between the rich and the poor and where the majority of the population doesn’t have access to legal services. In recent years, law faculties of public universities in Ethiopia, has established legal aid centers. Students provide free legal aid service to communities under close supervision by academic staffs of the law school.<sup>90</sup>

Currently, many countries use a mix of different service, or combination of the above legal aid service delivery models.

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<sup>86</sup> Anne.M & Dickson.J, “Teaching Towards a New Professionalism”: Challenging Law Students to Become Ethical Lawyers, 127 *Legal Ethics*, 4(2).

<sup>87</sup> Association of University Legal Aid Institutions of South Africa et al., *Combining Learning and Legal Aid: Clinics in Africa*, 2003, p.4

<sup>88</sup> Geraghty, T.F., 2007, op cit., p. 75

<sup>89</sup> David Mc Quoid- Mason, “The Supply Side: The Role of Lawyers in the Provision of Legal Aid-Some Lessons from South Africa” in *Penal Reform International and Bluhm Legal Clinic of the Northwestern University School of Law, Access to justice in Africa and Beyond: Making the Rule of Law a Reality*, 2007, pp.97-116, at 115

<sup>90</sup> Among these universities, Gonder , Bahirdar , Mekelle , Hawassa , Jimma, and Addis Ababa University provide legal aid to the community at their centers located in different areas.

## CHAPTER THREE

### 3. Legal Aid under the International and Regional

#### Human Rights Framework

##### 3.1 Recognition under International Human Rights Instruments

The obligation to provide legal aid is essential to ensure three fundamental rights guaranteed by all international and regional human rights instruments, mainly, rights to equality before the law; the equal protection of the law and an effective remedy by a competent tribunal for human rights violations.<sup>91</sup>

The Universal Declaration of Human Rights provides that justice, freedom and peace depend on the universal recognition and enforcement of human rights.<sup>92</sup> As a member of the United Nations Ethiopia is bound by the conventions and treaties it has ratified.

If there is no legal aid for the poor and disadvantaged group, they will not be in a position to enjoy their right to access justice which is stipulated in various international human rights instruments. In order to guarantee protected rights the government must maintain adequate funding for legal aid.<sup>93</sup> Furthermore, under international law, governments are responsible for ensuring women's access to justice and eliminating discrimination in all justice systems.<sup>94</sup>

The Universal Declaration of Human Rights enumerates the principle of equality before the law as a fundamental principle. It provides that:

All are equal before law and are entitled without any discrimination to equal protection of the law. And are entitled to equal protection against any such

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<sup>91</sup> Lawyers Right Watch Canada, International Law Obligations to Provide Legal Aid , Public Commission on Legal Aid ,2010, p. 2

<sup>92</sup> Preamble to the Universal Declaration of Human Rights

<sup>93</sup> Lawyers Right Watch Canada., 2010, op cit., p.3

<sup>94</sup> Elana Dallas (ed.), “ Progress of the World’s Women in Pursuit of Justice”, United Nations Entity for Gender Equality and the Empowerment of Women(UNIFEM) 2011-2012, P.12  
<http://progress.unwomen.org>

discrimination in violation of this declaration and against any incitement to such discrimination<sup>95</sup>

As one can comprehend from the reading of this provision, regardless of socio, economic, political, religious, gender or any other background everyone is equal in the eyes of the law. Therefore any indigent person apart from his economic status shall get equal protection from the law without discrimination. The Universal Declaration of Human Rights also provides that everyone charged with a penal offence has the right to have all the guarantees necessary for his or her defense.<sup>96</sup> This might include the right to have defense counsel and be represented if the person doesn't have sufficient means and where the interest of justice so requires.

Although the right to legal representation is not explicitly contained in the UDHR, equal access to legal representation is fundamental to the enforcement of fundamental freedoms to equality before the law.<sup>97</sup>

Among the key international legal instruments, the International Covenant on Civil and Political Rights obliges states to provide legal aid. The ICCPR recognizes legal aid as a basic human right and this is expressly provided in criminal matters. Hence, a person can defend himself through legal assistance of one's own choosing, and to have counsel assigned to him in any case where the interests of justice so require. As long as the person does not have sufficient means to pay for it.<sup>98</sup>

Ethiopia has ratified the ICCPR and as a state party, Ethiopia has a duty to guarantee equal access to effective remedies for human rights violation. The FDRE constitution also declares that the rights and standards recognized in these international and regional instruments became part of the law of the land up on ratification.<sup>99</sup>

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<sup>95</sup> The UDHR, Article 7

<sup>96</sup> UDHR, Article 11

<sup>97</sup> Lawyers Right Watch Canada., 2010, op cit., p.5

<sup>98</sup> The ICCPR, Article 14

<sup>99</sup> Article 9(2) of the constitution of the FDRE provides that international instruments ratified by Ethiopia are integral part of the law of the land. In addition, the provisions of the constitution enumerating fundamental rights and freedoms are to be interpreted in light of international human rights instruments as per Article 13/2 of the constitution. .

The right to legal aid in criminal matters is specifically provided under Article 14 of the ICCPR. Article 14(3d) of the convention specifically provides that:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in the full equality, To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have assistance assigned to him, in any case where the interest of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it <sup>100</sup>.

Two grounds are set forth in order to get legal assistance; the first one is when the interest of justice so require, which is usually expressed when miscarriage of justice would result otherwise and due to economic incapability of the individual. That is when the person doesn't have sufficient means to afford for legal representation.

With regards to the first requirement, the human rights committee which oversees the implementation of the optional protocol to the ICCPR defines the "interest of justice", depending on the severity of the charge and complexity of the case.<sup>101</sup>

The right to defense counsel is specified in criminal matters. Even if the ICCPR doesn't expressly address the right to civil legal aid, various rights contained in the covenant allow broader interpretation of the duty of states to provide legal aid in civil matters; these principles include the principle of rule of law, equality, fair trial and the right to access to justice.<sup>102</sup>

Even if Article 14 of the ICCPR explicitly addresses the guarantee of legal assistance in criminal proceedings under paragraph 3(d) the Human Rights Committee under its General Comment provides that states are encouraged to provide free legal aid in other matters, for individuals who do not have sufficient means to pay for legal services. It is

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<sup>100</sup> The ICCPR, Article 14/3(d)

<sup>101</sup> Skinnider.E " the responsibility of states to provide legal aid": the international center for criminal law reform and criminal justice policy, paper prepared for the legal aid conference Beijing, China, 1999, Vancouver, Canada, p. 7

<sup>102</sup> Ibid, p.12

also stated that in some cases states might be obliged to do so.<sup>103</sup> Furthermore, it is provided that the principle of equality between parties applies also to civil proceedings, and demands that each side be given the opportunity to contest all the arguments and evidence adduced by the other party.<sup>104</sup>

Therefore, as a state party to the ICCPR, Ethiopia is obliged to provide legal aid where it is necessary to enable citizen's equal access to justice and enforce other protected rights.

The International Covenant on Economic Social and Cultural Rights, in which Ethiopia is state party to it, provides legal aid in cases of forced eviction. The committee on the international covenant on Economic, Social and cultural rights recommended that, where possible, legal aid should be provided in matters of forced eviction.<sup>105</sup> The committee considers that the procedural protections which should be applied in relation to forced eviction include provisions of legal remedies and provisions of legal aid to persons who are in need of it to seek redress from the courts.<sup>106</sup> The covenant on Economic, Social and cultural also obliges state parties to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights regardless of their socio economic status equally without discrimination.<sup>107</sup>

It's also stated that, the prohibition of discrimination based on property or other status in the covenant, certainly includes one's financial means, and provides basis for the right to legal assistance in both civil and criminal cases.<sup>108</sup>

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<sup>103</sup> Human Rights Committee , General Comment No.32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32(2007), P.2

<sup>104</sup> Ibid, p.3

<sup>105</sup> General comment No.7: The right to adequate housing: forced evictions (Article11/1 of the ICESCR )

<sup>106</sup> Ibid

<sup>107</sup> The ICESCR, Article 3

<sup>108</sup> Wilson. R.J, 2010, op cit., p.18

### 3.2 Regional Human Rights Instruments

The right to legal aid is guaranteed by the European Convention on Human Rights and the Charter on Fundamental Freedoms.<sup>109</sup>

Article 6 (3) (c) of the Convention guarantees the right to legal assistance where the defendant “does not have sufficient means to pay for legal assistance” and is “to be given it free when the interest of justice so requires”<sup>110</sup>. Like the international covenant on civil and political rights the convention guarantees the right to legal assistance but subject to limitation, where an individual can only be provided with legal support if he doesn’t have sufficient means to pay for legal assistance and where the interest of justice require by reason of the seriousness, complexity of the case or severity of the penalty.

Article 47 of the Charter also stipulates that “Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice”. By this we can understand that the charter broadens the scope of legal aid delivery to anyone who lacks sufficient means not only for those who are stringently poor.<sup>111</sup> Indigence is determined by a means test, with reference to national legal aid determinations. The Court Rules make specific reference to legal assistance by “an advocate or other approved representative, thus making representation by a non-lawyer possible.”<sup>112</sup>

The European Court of Human Rights is known for it considers the right to legal representation in civil matters. The court observed that the mere appearance of the person before a court doesn’t provide an effective right of access. And the state has a duty to secure for a person to have an effective access to the courts<sup>113</sup>.

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<sup>109</sup> Wilson, R.J., “The Right to Legal Assistance in Civil and Criminal Cases in International Human rights Law”. In Goemann.R, Hariharan.A and Tull.J.A (Eds.) International Legal Aid and Defender System Development Manual, Prepared for the National Legal Aid and Defender Association, November, 2010, pp. 24-41 at 28

<sup>110</sup> Article 6/3(c),of the European Convention for the Protection of Human Rights and Fundamental Freedoms

<sup>111</sup> Ibid, Article 47

<sup>112</sup> Wilson, R.J.,2010, op cit., p.29

<sup>113</sup> Rice. S., 2010, op cit., p.19

The court also observed that, the European Convention for the Protection of Human Rights and Fundamental Freedoms may sometimes compel states to provide for the assistance of a lawyer; due to the complexity of the procedure or the case and when legal assistance is very essential for an effective access to court. This doesn't mean for every cases in civil matters but depending on the particular circumstances of the case.<sup>114</sup>

Many countries rely on the European Court of Human Rights case "Airey vs Ireland" in case of legal assistance in civil matter. Mrs Airey was presenting her case in civil matters but lacked the capacity to hire a lawyer to represent her, she asked the trial court to provide free counsel, but the judge refused to provide her with any counsel. She applied to the highest court in Ireland and lost. Ireland is a signatory to the European convention and Mrs Airey had a right to apply to a higher court. In this case the European Court of Human Rights provided that the obligation for states to make access to courts possible and effective. This includes a right to free legal assistance in civil matters depending on the complexity of the case and the procedure involved in the case.<sup>115</sup>

In "Airey Vs Ireland", the court stipulated the duty of states to make access to the court possible and effective. By providing state paid legal aid or assistance in civil matters as long as the procedure of the case is complex. And it would be very difficult for an ordinary lay man to have effective access to court without assistance of a lawyer.<sup>116</sup>

The decision given by the European Court of Human Rights in the above case is very crucial in relation to legal aid in civil matters. Many women like Mrs Airey loss their cases due to the complexity of the procedure and lack of sufficient means to afford for a lawyer. And this decision has broadened the scope of state provided legal assistance in civil matters. It also secures the right to access to justice because access to court is not only sufficient if judicial outcomes are not just and equitable. Because the mere appearance of the person in court is meaningless if he doesn't know how to defend his

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<sup>114</sup> Ibid

<sup>115</sup> Wilson. R. J, "The Right to Legal Assistance in Civil and Criminal Cases in International Human Rights Law" In Goemann.R, Hariharan.A and Tull.J.A (Eds.) International Legal Aid and Defender System Development manual, Prepared for the National Legal Aid and Defender Association, November, 2010, p.27

<sup>116</sup> Ibid

claims and understand the legal procedures. Therefore the European Human rights system is very important with regards to legal aid in civil matters.

On the other hand, The African charter on human and peoples' rights declares that every individual shall be equal before the law and entitled to equal protection of the law.<sup>117</sup> We can clearly see that the charter provides for equality before the law and everyone has the right to equal protection of the law without discrimination on any grounds. Therefore everyone is entitled to have equal protection under the law and provided with mechanisms to get redress in cases of violation.

The charter also enumerates the right to defense counsel of an individual. It's further stated under Article7 that every individual shall have the right to defense, including the right to be defended by counsel of his choice<sup>118</sup>. Although legally non binding we find resolutions adopted by the African commission on human and peoples' rights dealing on access to justice, legal aid and fair trial <sup>119</sup>.

### **3.3 United Nations Declarations and Statement of Principles**

Although UN declarations and statement of principles are not binding they provide, important sources for interpreting and understanding states international legal obligations. Also they provide important normative guidance for states in developing domestic public policies which complies with generally accepted international human rights norms.<sup>120</sup>

In relation to this we find the Kyiv Declaration which affirms legal aid as a right and obliges governments to implement sustainable, quality controlled legal aid programs. It's

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<sup>117</sup> African Charter on Human and peoples' Rights, art.3, entered in to force October 21, 1986, OAU Doc. CAB/LEG/67/3 rev.5, reprinted in 21 I.L.M.58 (1982).

<sup>118</sup> Ibid, art.7 (1)

<sup>119</sup> These include: the Kampala Declaration on Prison Conditions in Africa and Plan of Action (1997); the Kadoma Declaration On Community Service Orders in Africa and Plan of Action (1997); the Dakar Declaration and Recommendations (1999); the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2001); the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa and Plan of Action (2002); and, the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2004).

<sup>120</sup> Lawyers Right Watch Canada., 2010, op cit., p.7

also stated that legal aid should be delivered without discrimination to all people subject to a transparent and reviewable assessment of need<sup>121</sup>.

The declaration expressly provides that in providing legal aid service; special attention to be given for women and vulnerable groups, such as indigent people, children, young people, the elderly, persons with disabilities and the mentally and seriously ill, asylum seekers, refugees, IDPs, stateless persons, foreign nationals, prisoners and other persons deprived of their liberty.<sup>122</sup> Legal aid is also expected to be provided without discrimination at all stages of the justice process i.e. in criminal, civil and administrative process.<sup>123</sup>

Governments are also obliged to diversify legal aid delivery systems, cooperate with service providers, and guarantee sustainability of legal aid, sensitize government officials about the crucial role legal aid plays in ensuring access to justice and desired societal goals<sup>124</sup> and make sure that legal information is available in all matters to the public.<sup>125</sup>

The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa also recognizes access to legal aid as a human right and obliges states to allocate funding sufficient to ensure an effective and transparent method of delivering legal aid to the poor and vulnerable. Relatively wider legal aid delivery systems are recognized in the declaration; these include government funded public defenders offices, Judi care programs, law clinics and others. African states are obliged to consider option of making pro-bono provision of legal aid mandatory and for sustainability of legal aid.<sup>126</sup> Legal literacy programs and human rights education are expected to be conducted by the

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<sup>121</sup> The Kyiv Declaration on the Right to Legal Aid, Art,1, Conference on the Protection and Promotion of Human Rights through Provision of Legal Services: Best Practices from Africa, Asia and Eastern Europe Kyiv, Ukraine 27-30 March 2007.

<sup>122</sup> Ibid, Art.1

<sup>123</sup> Ibid

<sup>124</sup> Ibid , Article 3

<sup>125</sup> Ibid , Article 4

<sup>126</sup>Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and other Service Providers in Africa (22-24 November 2004) Lilongwe, Malawi, conference available at:<http://www.law.northwestern.edu/legalclinic/lilongweLegalAidDeclaration.pdf>

government, particularly for vulnerable groups such as women, children and the urban and rural poor<sup>127</sup>.

Apart from this, access to justice is considered as an important element of the right to fair trial in the Dakar Declaration and Recommendations. It's provided that, most accused and aggrieved persons are unable to afford legal services due to the high cost of court and professional fees.<sup>128</sup> It's also stated that governments have the primary responsibility to provide legal assistance to indigent persons in order to make the right to fair trial more effective. With regards to women the declaration proclaims that women are not adequately represented in judicial positions and legal procedures are insufficient to sensitively consider issues affecting women. On the other hand, it's stated that gender discrimination affects women in accessing justice and as prospective litigants, accused in criminal trials, as victims of crime, as witnesses and as legal representatives before judicial institutions. It's also reflected that, judicial processes and institutions reflect societal discrimination against women.<sup>129</sup> Therefore governments are obliged to adopt measures to ensure the elimination of discrimination against women both as regards their appointment as judicial officials and as participants in judicial proceedings.<sup>130</sup>

Similarly, the Basic Principles on the Role of Lawyers articulates the duty to protect human rights, ensure equal access to lawyers and provide sufficient funding for legal services to the poor. It provides that:

For the adequate protection of human rights and fundamental freedoms to which all persons are entitled be they economic, social and cultural or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession<sup>131</sup>

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<sup>127</sup> Ibid

<sup>128</sup> The Dakar Declaration: Resolution on the Right to a Fair Trial and Legal Assistance in Africa, adopted at the 26<sup>th</sup> Ordinary Session, African Commission on Human and Peoples' Rights, November 1-15, 1999, General DOC/OS (XXVI) INF.19.Article 9

<sup>129</sup> Ibid, Article 10

<sup>130</sup> Ibid

<sup>131</sup> Preamble to the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27-September 7, 1990.

The preamble to the Basic Principle declares that for adequate protection of human rights in general citizens should have effective access to legal services including legal aid. With regards to access to lawyer and legal services the basic principle stipulates the following obligations on states; Governments are obliged to ensure that equal access to lawyers to all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, color, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property birth, economic and other status.<sup>132</sup>

In addition, governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources. From this principle we can understand that special attention should be given for disadvantaged groups such as women to be provided with legal assistance including the indigent groups of the society.<sup>133</sup>

The ACHPR Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, provides governments to ensure efficient mechanisms and procedures for persons without any discrimination or other status have equal access to lawyers.<sup>134</sup> States are also obliged to permit representation by a lawyer both in civil and criminal cases. Also promote programs to inform the public about their rights and duties under the law, including the importance of lawyers in protecting their fundamental rights and freedoms.<sup>135</sup> The resolution declares that any party to civil or criminal case has a right to have legal assistance assigned to him where the interest of justice so requires and without payment by the accused or party to a civil case if he or she doesn't have sufficient means to pay for it. The determination of the interest of justice varies both in civil and criminal matters. In criminal matters; it's dependent on the seriousness of the offence and the severity of the sentence.

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<sup>132</sup> Id, Principle 2

<sup>133</sup> Id, Principle 3

<sup>134</sup> Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa, G(1), Doc/OS (XXX) 247 (2001)

<sup>135</sup> Ibid, G(2)

Whereas in civil cases; the rights that are affected, the complexity of the case, the ability of the party to adequately represent himself and the outcome of the case on the wider community can be used to determine the interest of justice.<sup>136</sup> With regards to access to judicial services it's stated that states must take special measures to ensure that women and rural communities have access to judicial services. And check whether judicial and law enforcement officials are adequately trained to deal sensitively and professionally with special needs and requirements of women.<sup>137</sup> It's further stated that states shall ensure that access to judicial services is not impeded by distance to the location of judicial institutions, lack of information about the judicial system, excessive court fees and due to lack of assistance to understand the procedures and other formality requirements.<sup>138</sup> It's also expressly recommended that state parties to the ACHPR, to create awareness of the accessibility of the recourse procedure and explicitly to provide the needy with legal aid.<sup>139</sup>

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<sup>136</sup> Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa, H(1-2)

<sup>137</sup> Ibid, K(2)

<sup>138</sup> Ibid, K(1)

<sup>139</sup> Resolution on the Right to Recourse and Fair Trial adopted on its 11th Ordinary Session in Tunis, Tunisia, in March 1992.

### 3.4 Substance and Scope of Women's Right to Legal Aid

The Vienna declaration and program of action at the world conference on human rights held in Vienna in 1993, officially recognized women's human rights as an "inalienable, integral and indivisible part of universal human rights."<sup>140</sup>

The international community is under obligation to ensure the full participation of women in the political, civil, economic, social and cultural life at the national, regional and international levels and the eradication of all forms of discrimination on the grounds of sex.<sup>141</sup>

The idea of ensuring equal rights for women and eliminating discrimination against women has long been on the agenda of the international community. This was because despite the existence of various international human rights treaties discrimination against women persisted everywhere in the world.<sup>142</sup> The Convention on the Elimination of all forms of Discrimination against Women is one such instrument providing minimum standards for the human rights of women. The convention was adopted by the General Assembly Resolution in 1979. Considering that despite the existence of various international instruments dealing on women's right extensive discrimination against women still exists. Its provided that, discrimination against women violates the principles of equality of rights and respect for human dignity and is an obstacle to the participation of women on equal terms with men, in the political, socio, economic and cultural life of the country. The convention also stipulates that in situations of poverty women have the least access to food, health, education or basic needs including legal services.

Discrimination against women is defined as;

Distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of

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<sup>140</sup> Vienna Declaration and Program of Action, *adopted by the World Conference on Human Rights in Vienna on 25 June 1993*, Article 18

<sup>141</sup> Ibid

<sup>142</sup> Preamble of the CEDAW

equality of men and women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or other field.<sup>143</sup>

Article 2/c of the convention also obliges states to guarantee women legal protection equally with men and give protection against any discrimination. This can be ensured by competent national tribunals or courts and other public institutions which might further include legal aid services. The convention expressly provides:

States to establish legal protection of the rights of women on equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination<sup>144</sup>

States are also obliged to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.<sup>145</sup> And take appropriate measures to guarantee the enjoyment of human rights and fundamental freedoms of women on the basis of equality with men in order to ensure the full development and advancement of women.<sup>146</sup>

The convention also takes in to account particular problems faced by rural women and obliges states to give special attention to enhance the rights of these women. The equality before the law of men and women is further described under Article 15/1 of the convention. The responsibility of the state also extends to give women in civil matters, a legal capacity identical to that of men and the same opportunity to exercise that capacity. In particular they shall give women equal rights to conclude contract and administer property plus treat them equally in all stages of procedure in courts and tribunals.<sup>147</sup>

Although not binding we find various declarations and principles with regards to women. The declaration on elimination of violence against women is among these. The declaration was adopted by the UN General Assembly in 1993 to address gender- based

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<sup>143</sup> Ibid

<sup>144</sup> CEDAW, Article 2(c)

<sup>145</sup> Ibid Article 2(d)

<sup>146</sup> Ibid, Article 3

<sup>147</sup> Ibid, Article 15(1)

violence against women. Violence against women is defined under Article one of the declaration. And it declares that

Any act of gender based violence that results in physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life is considered as violence against women.<sup>148</sup>

Women are also entitled to equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, and civil or any other fields.<sup>149</sup>

Based on Article 4(d) of the declaration it's provided that:

Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies to the harm they have suffered.

The declaration clearly stipulates that, women who are victims of violence to have means to access to justice. The mechanisms might be through formal and informal justice systems as long as just remedies are achieved. Bearing in mind the importance of legal rights awareness for victims of violence states are obliged to inform women of their rights in seeking redress through such mechanisms<sup>150</sup>. Among these mechanisms legal aid can be the possible means to access to justice.

Furthermore the Beijing Declaration and platform for action states that, women face barriers to the enjoyment of their human rights because of factors as their race, language, culture, religion, disability or socio-economic class, migrant or refugees. Women's lack of knowledge and recognition of their human rights in addition to obstacles they meet in gaining access to information and recourse mechanisms in cases of violation of their

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<sup>148</sup> DEVAW, Article 1

<sup>149</sup> Ibid, Article 3

<sup>150</sup> Ibid, Article 4(d)

rights also contribute to their being disadvantaged or marginalized.<sup>151</sup> The declaration also states that even if women increasingly use the legal system to exercise their rights, lack of awareness of the existence of these rights is an obstacle that prevents women from fully enjoying their human rights and attaining equality<sup>152</sup>.

### **3.5 Maputo Protocol or the Protocol to the Africa Charter on Human and Peoples' Rights on the Rights of Women in Africa**

The protocol, which resulted from years of activism by women's rights supporters in the region, has attempted to strengthen the African Charter's commitment to women's equality by adding rights that are missing from the charter and clarifying government's obligations with respect to women's rights.<sup>153</sup> This is because despite the ratification of the ACHPR and other international human rights instruments by majority of state parties committed to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices.<sup>154</sup>

The protocol considers the right of women as an inalienable, interdependent, and indivisible human rights as stated on various international and regional human rights conventions relating to the rights of women.<sup>155</sup> Article 8 of the Women Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa deals with women access to justice and equal protection before the law and it explicitly states that:

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<sup>151</sup> Beijing Declaration and Platform for Action adopted by the fourth world conference on women: Action for equality, development and peace, Beijing, China, September 1995, Para 221

<sup>152</sup> Ibid, Paragraph, 227

<sup>153</sup> Dyani, N., "Protocol on the Rights of Women in Africa: Protection of women from sexual violence during armed conflict", African Human Rights Law Journal, Vol.6, no.1, (2006)p.166

<sup>154</sup> Ibid

<sup>155</sup> Preamble, of the protocol to the African Charter on Human and Peoples' Rights on the Rights of women in Africa

State parties to the protocol are obliged to take all necessary measures to ensure effective access by women to judicial and legal services including legal aid.<sup>156</sup>

By this we can infer that the protocol explicitly provides that states are obliged to take measures to ensure women access to legal aid. In order to provide women with legal aid and services governments are obliged to support local, national, regional and continental initiatives working for women. And to educate the population about the rights of women and woman's themselves about their legal rights.<sup>157</sup> On the other hand, States are also expected to make sure that law enforcement organs at all levels effectively interpret and enforce gender equality rights. Women shall be represented equally in law enforcement organs and the judiciary shall take steps to reform existing discriminatory laws and practices in order to protect and promote women's right.<sup>158</sup>

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<sup>156</sup> The protocol to the African Charter on Human and Peoples' Rights on the Rights of women in Africa, Article 8

<sup>157</sup> Ibid

<sup>158</sup> Ibid

### 3.6 Legal aid under Ethiopian law

The FDRE constitution recognizes access to justice as a right. Article 37 of the constitution guarantees access to justice to every Ethiopian citizen.<sup>159</sup> Pursuant to article 9(4) of the constitution all the rights and standards recognized in the above international and regional instruments in relation to access to justice became part of Ethiopian law upon ratification.<sup>160</sup>

Article 37/1 of the constitution expressly provides that:

Everyone has the right to bring a justifiable matter to and obtain a decision or judgment by, a court of law or any other competent body with judicial power<sup>161</sup>

Based on this article, everyone has the right to bring a justifiable matter and get remedy for any grievance. To this end the establishment of effective means of enforcement and protection is important in safeguarding fundamental rights. And this constitutional provision can be taken as the basis for legal aid.

Based on article 20(5) of the FDRE constitution:

Accused persons have the right to be represented by legal counsel 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.<sup>162</sup>

This constitutional provision expressly limits the right to legal aid in criminal matters. As the title of article 20 of the constitution uses the word, “The Rights of Accused persons” the constitution doesn’t provide that in all criminal prosecutions, an accused to have defense counsel at all stages of a criminal proceedings at the expense of the state.<sup>163</sup>

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<sup>159</sup> FDRE Constitution, article 37

<sup>160</sup> Ibid, article 9(4). It stipulates that international agreements ratified by Ethiopia are an integral part of the law of the land.

<sup>161</sup> Ibid, article 37(1).

<sup>162</sup> FDRE Constitution, article 20(5)

<sup>163</sup> FDRE Constitution, article 20

Persons who are not formally charged with crime are not entitled to get state financed legal representation. Therefore, arrested persons have no access to legal aid. But this is vital to most women, children and other vulnerable groups who face with different legal problems starting from the initial investigation process. This is also a problem for those who can afford for a lawyer and are financially capable to have legal representation.

An accused person can get support by legal counsel, where the inability of the accused person to afford legal representation would result in miscarriage of justice. In practice every indigent person accused of crime, will not have defense counsel appointed by the government and is limited to crimes such as corruption, terrorism, those resulting in life or death penalties, or rigorous imprisonment from five years to twenty years. The court is given the discretion to decide on the issue which is likely to result on miscarriage of justice and whether the indigent is in need of defense counsel.<sup>164</sup> But even within this limited scope, the state is not in a position to provide adequate legal aid due to resource constraints and many other problems.

The FDRE Constitution guarantees the right of access to justice, equality before the law and fair trial, where the concept of justice is founded more on these principles than any other. The principle of equality is found in various international instruments and is one of the basic cardinal principle and the corner stone for respect of human rights.

The principle of equality is investigated under Article 25 of the FDRE constitution which affirms:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, property, sex, language, religion, political opinion or other status.<sup>165</sup>

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<sup>164</sup> Interview with, Ato Seid Mohammed Judge at the Federal High Court, Addis Ababa

<sup>165</sup> FDRE constitution, article 25

The constitutional provision provides that everyone is equal before the law. But to ensure equality indigent women lacking the basic opportunities to access the justice system due to their financial problems must have mechanisms to assert their right. A person due to his economic and financial problems must not be discriminated from enjoying his right to access to justice and the poor through legal aid must be able to overcome the barriers in accessing justice. Otherwise the mere recognition of the right in the constitution remains paper work unless practically realized.

The right to legal aid in civil matters is not expressly provided in the constitution. But Article 37(2) of the FDRE constitution is important in relation to civil litigation. It's more than class action and allows interested groups to represent the interests of the lower section of the society, mainly the poor and the marginalized. Therefore women rights organizations working on the rights of women can represent the indigent women in civil matters pursuant to this article.<sup>166</sup>

The ministry of justice, which is the executive organ of the government, is entitled to provide legal aid in civil matters and Represent citizens in particular women and children, who are unable to institute and pursue their civil suits before federal courts.<sup>167</sup>The responsibility of our government to provide civil legal aid can be traced from the constitution. The right to equality before the law, fair trial and access to justice expressly guaranteed in the FDRE constitution provide the basis for civil legal aid. And the government has the duty to implement the rights enshrined in the supreme law of the land.

Also, all international agreements ratified by Ethiopia are an integral part of the law of the land; therefore the responsibility of the state for the protection and enforcement of human rights extends under international law. The international human rights instruments including the ICCPR, which stipulates the right to equality before the law, fair trial, rule of law and Effective remedy, obliges state party to the covenant, respect and observe the rights recognized in these document. Hence, our government has the responsibility, both

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<sup>166</sup> Ibid , article 37(2)

<sup>167</sup> Proclamation no 691/2010, article 16(11)

under the constitution and international human rights law, to provide civil legal aid to the indigent member of the society.

Therefore, the constitutional right of women to access legal aid should be seen in light of the relevant provisions of the FDRE Constitution related to international agreements ratified by Ethiopia. In this respect, article 9(4) of the FDRE Constitution provides that “all international agreements ratified by Ethiopia are an integral part of the law of the land.” Moreover, article 13(2) of the FDRE Constitution provides that the fundamental rights and freedoms recognized under Chapter 3 of the Constitution shall be interpreted in a manner conforming to international human rights instruments adopted by Ethiopia. Since Ethiopia has ratified CEDAW, the relevant provisions of these instruments on women’s access to legal aid form an integral part of the law of Ethiopia.

The Criminal Procedure Code of Ethiopia recognizes the right of access to legal aid in criminal cases, in particular for children or ‘young persons’. Article 127(1) stipulates the court to make sure the advocate of an accused person appears with the accused person for the trial to start but does not expressly provide the state obligation to provide for legal representation. Article 61 of the same code also provides that “a person detained on arrest or on remand shall be permitted forthwith to call and interview his advocate...” Article 147 of the code obliges Courts to appoint legal counsel where a ‘young person’ accused of a criminal offence has no adult representation/support or where the offence carries a punishment exceeding imprisonment for ten years or more or the death penalty.<sup>168</sup>

Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 691/2010:

This proclamation recognizes, the Ministry of justice and the Ministry of Women, Children and Youth Affairs (MWCYA) as executive organs of the federal government.

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<sup>168</sup> The Criminal Procedure Code, Articles 174

Based on article 16(11) of this proclamation, the ministry of justice is given the power to:

Represent citizens in particular women and children, who are unable to institute and pursue their civil suits before federal courts.<sup>169</sup>

Legal aid provided by the ministry of justice is coordinated by the women and children's affairs directorate and advocates licensing and supervision directorate. The directorate for women and children affairs is primarily responsible for the provision of legal aid in civil matters for women and children.<sup>170</sup>

Indigent women who came to get service are only required to prove their financial incapability from their local administration or kebele they are living in cases of legal representation. The service started in Addis in 2011 and is currently provided in the eleven sub cities, where focal persons from the directorate for women and children and focal persons who are public prosecutors in civil matters provide legal aid in the above sub cities.<sup>171</sup> The service includes legal advice and information, counseling, writing petition to court, legal representation and other related services. From July 2011-April 2012, 162 indigent women were provided with legal aid service in the above sub cities. But primary target is given for compensation for victims of crime. In cases of legal representation the focal persons, primarily contact advocates living in the above sub cities to provide legal representation for the indigent before bringing the issue to the advocates licensing and supervision directorate.<sup>172</sup>

The power and duty of the ministry of justice to license and supervise advocates is important to the provision of legal aid; as the mandate applies to supervise the legal duty of advocates to provide pro bono services.

Article 16(12) expressly declares:

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<sup>169</sup> Proclamation no 691/2010 ,article16(11)

<sup>170</sup> women and children's affairs directorate of the Ministry of Justice, monthly report for the year 2011

<sup>171</sup> Ibid

<sup>172</sup> Ibid

The power and duty of the ministry of justice to license and supervise advocates practicing before federal courts<sup>173</sup>

The directorate for women and children affairs provides civil legal aid for indigent women, in civil matters by enforcing the legal duty of advocates to provide pro bono services through assigning advocates to indigent persons who apply to access legal aid. It also refers the cases to the advocates licensing and supervision directorate under the ministry, which assigns advocates randomly who came to the directorate for renewal of their licenses.

From July 2011-April 2012 service has been provided to 141 indigent women, children and elderly. This includes cases like divorce, maintenance, labor disputes, succession, paternity and other disputes.<sup>174</sup> By the budget year 2010, the advocates licensing and supervision directorate under the ministry of justice has provided legal representation by voluntary advocates; to 121 indigent women, children and elderly.<sup>175</sup>

Although, the ministry has made good initiatives in providing legal aid for indigent in civil matters; most of the general public is not aware of the existence of such services. Initially there has been awareness creation campaign but it was in disorganized manner and didn't last long. It's also stated that beneficiaries, including women came to get legal aid after their cases has already been barred by period of limitation and after they finish their case up to the federal cassation bench.<sup>176</sup> Even if the service has been started recently, special consideration shall be made in order to make the indigent beneficiary. Therefore the ministry should primarily work on awareness creation campaigns.

Even if the law provides for an advocate to render 50hrs of pro bono services in practice there doesn't exist any controlling mechanism to follow up the implementation of such duty. The advocates licensing and supervision directorate makes advocates to give legal aid on voluntary basis to indigent whenever they came for renewal of their license. Some

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<sup>173</sup> Proclamation no 691/2010, article16(12)

<sup>174</sup> Report submitted by the women and children's affairs directorate of the Ministry of Justice, April 2012

<sup>175</sup> Report submitted by the advocates licensing and supervision directorate of the Ministry of Justice, November , 2011

<sup>176</sup> Ibid

advocates are willing to handle the cases of their client but most of them don't report the outcome of the case. Sometimes they disappear after taking the case for legal representation; in such instances the ministry doesn't have well established reporting mechanisms.<sup>177</sup> There are also instances where, after an advocate handles the case of his client and if the outcome of the case is good, he might ask money or compensation from the poor beneficiary. But the ministry based on the decision of the disciplinary committee; gives disciplinary penalties for those who do not properly discharge their professional duties to clients.<sup>178</sup> Despite the ministry effort in making legal aid available for the indigent in civil cases and particularly for women, there should be standard guidelines for the proper implementation of legal aid service.

Article 49 of the Federal Court Advocates' Code of Conduct Regulations No. 57/1999: also obliges, advocates licensed to practice law in the federal courts to render a minimum of fifty hours legal service a year free of charge or upon minimal payment as a *pro bono service*. The services could be given to: persons who cannot afford to pay; charity organizations, civic organizations, community institutions; persons for whom a court requests legal services; and, committees and institutions that work for improving the law, the legal profession and the legal system.<sup>179</sup> However, clear rules and guidelines to regulate the legal duty of advocates to provide pro bono services are not put in place. Although some private lawyers provide pro bono services informally and through the Ethiopian lawyers association the service availability is minimal compared to the general need. The pro bono obligation if properly implemented has a very great role in making legal aid available for the indigent and particularly for women.

Federal Court's Advocates Licensing and Registration Proclamation No.199/2000: According to this proclamation, the law provides for three types of federal advocates licenses that grants advocates to appear before the different levels of federal courts, namely, federal first instance court advocacy license, federal courts advocacy license, and federal court special advocacy license.<sup>180</sup> Based on Article 10 of the federal courts special

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<sup>177</sup> Ibid

<sup>178</sup> Ibid

<sup>179</sup> The Federal Court Advocates' Code of Conduct Regulations No. 57/1999, Article 49

<sup>180</sup> Proclamation No. 199/2000, Article 7

advocacy license, which has the least rigorous qualification criteria, “any Ethiopian who seeks to defend the general interests and rights of the society without receiving any payment from their clients”<sup>181</sup> shall be issued with a federal court special advocacy license. And in order to extend the service with an intention of supporting the poor, any person who has an advocacy license and meets the requirement specified in the provision can render advocacy service to the poor without having special advocacy license up on notifying the ministry before rendering the service.<sup>182</sup> This in turn has the potential of increasing the provision of legal aid by the advocates.

On the other hand, Charities and Societies Proclamation No. 621/2009: expressly provides for the activities charities and societies may involve for the benefit of the public. They are expected to participate in the advancement of human and democratic rights<sup>183</sup> and relief those in need by reason of disability, financial incapability or being disadvantaged groups. From this we can infer that women who are disadvantaged in Ethiopia due to various social and economic impediments are entitled to benefit from Ethiopian charities and societies.

The Federal Courts Proclamation No 25/1996, based on this proclamation the Public defense office is organized in Ethiopia by the president of the Federal Supreme court.<sup>184</sup> Establishing public defense office and providing legal aid services to persons accused of crimes is important in order to enforce the constitutional provision relating to the right to defense council of an individual in criminal matters.<sup>185</sup> Therefore, the Proclamation is also very important for the realization of the institutional aspect of the right of women to access legal aid services in criminal matters.

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<sup>181</sup> Ibid , Article 10(1)

<sup>182</sup> Ibid , Article 10(2)

<sup>183</sup> The charities and societies proclamation No. 621/2009, Article 14(2j)

<sup>184</sup> Proclamation no 25/1996, Article 16(2j)

<sup>185</sup> The FDRE Constitution, Article 20(5 )

### 3.7 Women access to Justice in Ethiopia

The justice system in Ethiopia is said to be generally characterized by delays, lack of institutional capacity and in efficient system of law enforcement and congestion. This creates obstacles in the promotion and protection of human and democratic rights.<sup>186</sup> Even if the government has been taking measures in order to bring improvement in the administration of justice, until recent the justice system is described as costly and complex.<sup>187</sup>

Various obstacles are said to hinder access to justice in our country. Physical distance and costs of legal proceedings is among these, even if courts exist in most areas they are still far from where much of the rural population lives. It's also stated that, it might take several days for a person from rural village to reach the closest court. Sometimes the clients simply came to courts without any idea on how to defend their claims.<sup>188</sup>

It's also provided that access to justice is seriously undermined by lack of knowledge about the law or the formal legal system. Large segment of the population are completely unaware of the existence or the nature of the laws, legal rights, official legal system, or courts. This in turn is said to be aggravated by low literacy rate, poor media coverage and little public confidence in the justice system and in particular courts.<sup>189</sup>

With regards to women access to justice, Ethiopian women have historically been the poorest, most vulnerable and marginalized members of society. Laws and customs have traditionally discriminated against women. Recently various progresses are made by revising, amending and changing the laws which reflect discrimination against women.<sup>190</sup>

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<sup>186</sup> Commission on Legal Empowerment of the Poor, (CLPE), Access to justice, *Background issue paper on legal empowerment of the poor*, Addis Ababa, Nov 12, 2006, p. 19

<sup>187</sup> Ibid

<sup>188</sup> The World Bank, Ethiopia Legal and Judicial Sector Assessment, 2004, p. 29

<sup>189</sup> Ibid at 30

<sup>190</sup> Ibid at 37

The FDRE constitution declares the equal rights of women with men in all spheres of their life, including with respect to employment, property, use and ownership, inheritance and also in the formulation of national development policies<sup>191</sup>.

Women are said to have less access to justice because of geographic distance, family and work obligation, ineffective enforcement mechanisms and practices, social pressures and attitudes discouraging assertion of rights and greater poverty levels.<sup>192</sup> In addition to this women in Ethiopia are said to be minority court users either as plaintiff or defendants, a reflection of various cultural and legal obstacles. This signifies a lesser protection of their rights by courts.<sup>193</sup>

In Ethiopia most women due to their vulnerability are subject to violence and discrimination. They usually appear to be victims of violence rather than perpetrators. The legal environment expressly, for example the constitution guarantees the right to legal aid in criminal matters. But women victims of violence due to their economic problems and other barriers are not in position to access justice. Efforts are made by the ministry of justice to provide legal aid in civil matters; especially for women and children. But still there is much work to be done to make the service accessible for the majority in need. Therefore legal aid shall be available for women both in civil and criminal matters.

Hence, Legal aid has great role in making women who are not able to access the justice system because of poverty or economic problems secure their rights such as the right to property and inheritance. For the practical realization of the right of access to justice poor women shall have the means to seek remedies for injustice. In order to safeguard equality and remove financial barriers free legal aid serves as an important tool to bring rights in to life and make rights practically realized. Women cannot assert their valid rights, if they don't have legal awareness about their rights. And at times they are aware of their rights, if they can't afford payments to access lawyers and have other alternatives to access justice.

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<sup>191</sup> FDRE constitution, Article 35

<sup>192</sup> Anderson, M.R., (1999) op cit.,p.20

<sup>193</sup> The World Bank, *Uses and Users of Justice in Africa*, The Case of Ethiopian Federal Courts, 2009 , p. 35

## CHAPTER FOUR

### 4. Data Presentation and Analysis

#### 4.1 Legal Aid in Promoting the Rights of Women

Legal aid service helps to promote universal human rights and the rights of women in particular to the full realization of both civil and political rights as well as socioeconomic and cultural rights. Women, who do not enjoy their rights, are not without rights but are deprived of them due to various obstacles including absence of legal aid service. Women cannot assert their valid rights if they don't have legal awareness about their rights. And at times they are aware because of unaffordable legal representation they will be passive to protect their rights. Regardless of the above fact, Women who are deprived of their rights due to various reasons were able to enjoy their rights because of the existing legal aid services. The idea behind establishing legal aid scheme is initially to safeguard the notion of equality between the poor and the rich. This means women in poor economic condition shall equally benefit from the justice system.

Both institutions where the case study was undergone provide legal aid services for women. EWLA with its legal aid department provide the service for women with legal problems. This includes preparation of Legal documents such as petitions, court briefs, affidavits and memorandum of appeal written to courts in the process of resolving clients' case. Previously before the enactment of the charities and societies proclamation;<sup>194</sup> the association with its belief on the need of encouraging women to go all the way through the justice system provided financial, medical and other support to women such as preparation of temporary shelter. Currently the association due to funding problems limited its operation with the provision of legal aid service. But the association used to be the primary legal aid provider for women in the country.<sup>195</sup> On the other hand, Hawassa university legal aid center also provides legal aid service for women to the extent of legal representation. This means women with legal needs and those whose rights are violated are supported by the clinics. As long as women with legal issues are

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<sup>194</sup> Proclamation No. 621/2009

<sup>195</sup> Interview with w/ro Genet Shume, program manager of the EWLA (February 7 , 2012)

provided with support this means that their rights will be protected in the long run after passing the necessary steps. Women beneficiaries at the centers who had previously encountered injustice were able to enjoy their rights.

A woman beneficiary stated that:

There used to be a misunderstanding with my husband and he asked me for separation. As I had nowhere to go from our home, I refused the idea but was not able to resist the physical violence and left the house to save my life. My partner made me sign an agreement of separation, where I was given only 1,700 birr as share of our common property. Though my share has been more, I signed the agreement to have some money at hand as I used to be a house wife and had nothing for survival after separation. I was also misled by my partner that I could not claim anything as we have lived in an irregular union. I lived out of my home for about a year, working as a house maid and passing difficulties where I used the church as a shelter. I was never aware that I had a right to claim for a common property or knew about legal aid. I was told about EWLA by the kebele officers where I went to get food aid and other supports. Legal advisors at EWLA advised me and prepared a court pleading asking for property division. On the hearing date, my partner denied our relationship and argued that I had already taken my share and our case is over. I was able to prove that there was an irregular union using witnesses as evidence and the agreement signed after our separation was due to my desperate financial situation. After passing all the necessary legal procedures; the court gave a verdict in favor of me and decided for division of our common properties equally. I was also given one of the houses we build together.<sup>196</sup>

From the above case, one can understand that the right to own common property is a right which every woman shall enjoy. But due to lack of awareness about legal rights most

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<sup>196</sup> Interview with a woman beneficiary at EWLA

women suffer without enjoying their rights. Hence, legal aid becomes a vital instrument in promoting the right of women to safeguard the equal enjoyment of their common property including other rights.

On the other hand, Women's equal rights to own, inherit and transfer property are stipulated in national laws and other important international and regional human rights instruments. For example the universal declaration of human rights provides that "everyone has the right to own property alone as well as in association with others."<sup>197</sup> And nobody shall be deprived of his property.

But in practice many women due to cultural pressure and discrimination are not in a position to enjoy their equal rights to own and administer their property. In Ethiopia where the majority of women live in the rural areas they are subject to deprivation due to traditional cultural practices. In nearly all regions of the country women have little access to land. Although the law does not discriminate against women in matters of inheritance, in practice, due to tradition or custom, women and girl children are excluded from inheriting property. In some Muslim families, male children can receive two third of the estate whereas females receive only one third and sons inherit family land. We can find many women deserted of their properties in divorce cases and succession.<sup>198</sup>

One of the informants stated that:

In Sidama culture and specifically in rural areas, when a husband dies a woman shall become an inherited wife of her deceased husband's brother or one of his families. Otherwise she has to live every property she had previously with her husband out of the marriage.<sup>199</sup>

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<sup>197</sup> Article 14 of the UDHR

<sup>198</sup> Ye Ethiopia Goji Limadawi Dirgitoch Aswogaj Mahiber, "Old Beyond Imaginings": Ethiopia Harmful Traditional Practices, Addis Ababa, 2008, p.68

<sup>199</sup> Interview with Tigist Mulugeta, a paralegal at the outreach clinical legal aid Center of Hawassa University at Yirgalem town (March 13, 2012 )

A woman beneficiary also noted that:

Up on death of my husband, I refused to marry anyone from the family and told them that I wanted to live alone and raise my four children. Up on my refusal, my deceased husband families took every property including the land I spent many years tending and farming. They gave me only a small cottage where I stayed for about four year with my children. Life became hard as I had no land to plough and support myself and the children with food and other basic needs. As a result I gave one of my daughters to an organization who support children in the area. After passing hardship I was told by a relative to present my case in the district (woreda) court where I filed my case. Nevertheless the court decided in favor of the deceased family. As I had nowhere to go, I brought the case to the district administration office seeking for justice. The officers send me to the clinical legal aid center located in yirgalem town. I was given legal advice and representation by one of the instructors. The center prepared me a memorandum of appeal to sidama zone high court.<sup>200</sup>

Although the law prohibits discrimination in any grounds, in practice women are subject to discrimination from enjoying their rights. We can imagine hundreds of thousands of Ethiopian women living in such cultural communities where they cannot even administer the land they had been using for long.

Specifically, the protocol to the African charter on human and people's right on the rights of women in Africa reaffirms that:

Widows shall have the right to an equitable share in the inheritance of the property of her husband including the right to continue to live in the matrimonial home and that women and men shall have the right to inherit in equitable shares of their parent properties.<sup>201</sup>

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<sup>200</sup> Interview with a woman beneficiary at the outreach legal aid center located in yirgalem Town

<sup>201</sup> Article 21/1, of The protocol to the African Charter on Human and Peoples' Rights on the Rights of women in Africa

The protocol expressly provides that, a woman has a right to inherit equitable share of her deceased husband property this includes her right to live in their matrimonial home. But we can see from the above case that it is a living dream for most women who are discriminated from enjoying their rights in the name of culture.

The convention on Elimination of all forms of Discrimination against Women, in which Ethiopia is a state party to it, also obliges state parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular to ensure, on basis of equality of men and women and the same rights of ownership of both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.

It is also a fact that denial of women's equal property rights led to their economic and social disempowerment and in turn led them for further abuse or victimization. In some cultures, women are not allowed to inherit their husbands and parents property. And very far relatives of a deceased husband may come to claim homes and lands that a woman has lived for long. Therefore they should be empowered to enjoy their right to access to justice regardless of their economic, social, cultural and other backgrounds and by providing them at least with free legal aid. From the above case we can see how legal aid can help women enjoy their right to property in a country like Ethiopia where there are different obstacles such as cultural barriers that hinders women from enjoying their equal rights.

Due to their socio, economic problems and cultural pressures women remain voiceless. Even if they are aware of their rights, mechanisms to enforce their rights are not easily accessible for the majority. Therefore, traditional dispute resolution mechanisms became the only option in protecting their rights as they are often more accessible to poor and disadvantaged people. But they are not always effective and do not fully respect international human rights standards such as gender equality and non discrimination for reasons of age or social status. Hence, legal aid can be used as an important tool in improving the poor access to the formal justice system. Particularly women victims of violence and those in need of legal support can benefit from the service. This in turn

makes them capable to assert their rights and promote the entire human rights of women. As per the data collected, women who are denied for child maintenance by their partners were able to secure an order for child maintenance.

Legal aid also can promote the protection of women rights from violence. The Declaration on the Elimination of all forms of Violence against Women, affirms that women who are subject to violence, to be provided with access to mechanisms of justice and as provided for by national legislation, to just and effective remedies for the harm they have suffered.<sup>202</sup>

One can also justify that if a woman will be supported when there is violence; it means a woman with severe problem can apply at the legal aid centers for support where she will be advised how she can benefit from the justice system.

In order to make women victims of violence get redress from the formal justice system they must be capable of accessing mechanisms of justice including legal aid. In one hand they must have legal awareness about the law and their rights and means to assert their rights. Their economic problems also hinder them from getting remedies for the harm they have suffered. Therefore they will not be in a position to afford a legal representative. Hence, legal aid becomes one means to access justice and can make women victims of violence get remedy for injustice. Because increasing access to justice requires that women knew about their rights and had a possible means to exercise them.

A woman beneficiary illustrated:

My husband physically abused me every time and one day, when there was no one around the house he tied me with a rope and cut my nose using a knife. Up on the injury I was in hospital for four months. Despite my continuous medication I am still suffering from pain and it has been difficult for me to breathe properly starting the moment of my injury. My husband was accused of crime, where the woreda or district court of Sebeta decided only for a year and six months of imprisonment. I was told

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<sup>202</sup> Article 4/1 of DEVAW

about EWLA by a person I meet in the hospital. The officers at the center advised me about the legal issue and requested the hospital cooperation to provide me with the necessary medical evidence on the part of the physical injury. And I was capable of claiming for physical and moral compensation as a result of grievous bodily harm. Where I could never realize I had right to ask for compensation without the legal advice I got from the legal aid center.<sup>203</sup>

Violence against women is defined in 1993 by the UN General Assembly, it means

Any act of gender based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life.<sup>204</sup>

This includes acts of physical aggression (beating, slapping, kicking etc), psychological abuse and forced sexual interaction. Even if a woman has a right to live a life free of violence they are victims of various sufferings due to their subordinate status and often rooted in manifestation of gender inequalities. Therefore, strong commitment is needed both individually and institutionally. Institutionally legal aid services can help women victims of violence get redress for any act of injustice.

One of the informants also pointed out that,

Sometimes women appear in the legal aid center after severely bitten by their partners. Where their body might be paralyzed or encounter serious nerve injury. In such instances the legal aid department will give them legal advice and if they are unable to make self representation will provide them representation by an Attorney on voluntary basis. Depending on the client centered approach based on the needs of the client, the women herself determines what legal action should be taken. Where she might ask for divorce

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<sup>203</sup> Interview with a woman beneficiary at EWLA

<sup>204</sup> Article 1, DEVAW

and separation of matrimonial property to end the violent relationship or seek other alternatives that could best suit her needs.<sup>205</sup>

With regards to legal aid service one can fairly conclude that, women victims of violence can benefit from the service and get remedy for the harm they have suffered. Therefore legal aid can be seen as a gateway for the indigent women to access justice.

Among the twenty eight women respondents, type of legal issues raised by women beneficiaries is illustrated as follows:

<b>Legal issues by women beneficiaries</b>	<b>No of women beneficiaries</b>
Divorce /matrimonial property claims	8
Employment disputes	3
Succession	4
Property right	2
Child maintenance/ paternity claims	9
Grievous bodily harm	2
<b>Total</b>	<b>28</b>

In terms of need, (9 out of 28) respondents accessed legal aid for child maintenance and paternity claim Whereas (8 out of 28) received legal aid for divorce and matrimonial property claims, (4 out of 28) respondents accessed legal aid for issues of succession and (2 out of 28) accessed legal aid for property right, grievous bodily harm and other issues.

Depending on the case service providers at EWLA and Hawassa University Clinical legal Aid provided Legal advice, write Court pleadings, issued Summon for reconciliation and provide other services to their client. It is a fact truth that, legal aid can promote the rights of women. Women with different legal problems did not remain voiceless, for example women who were exploited to work without proper remuneration were able to ask for compensation and safeguard their rights. Although they are poor they are not discriminated from protecting their rights due to the existing legal aid services.

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<sup>205</sup> Interview with w/ro Genet Shume, program coordinator of the EWLA (February 7 , 2012 )

Even if the legal aid centers are providing support for women with legal needs and had positive impact in promoting the rights of women. The current legal environment for example for the Ethiopian Women's Lawyers Association is not conducive. The new charities and societies Proclamation, proclamation No.621/2009 places restrictions on the work of human rights non-governmental organizations (NGOs) in Ethiopia, including an explicit restriction on work on gender equality. The law states that organizations which receive more than 10 percent of their funding from foreign sources are prohibited from working on a number of human rights issues<sup>206</sup>

EWLA which was primarily dependent on foreign funding had currently re-registered as local charity as per the proclamation which entails the mobilization of resources from local sources. Hence as the association is struggling to raise fund from local sources it has been obliged to rely almost fully on volunteer members who are lawyers to carry out the legal aid counseling. It has been also supported by the Ethiopian Human Rights Commission to undergo some of its activities. It is also stated that the public education and awareness creation department is not currently functioning and this has a negative impact in making women benefit from the service and the whole organization accessible. Because the public should be primarily aware at grass root level in order to benefit from the service<sup>207</sup>.

Apart from this due to budget problems at the EWLA, sub-cities in Addis Ababa, 6 branch offices and some committees as all the 53 committee cannot function and are not currently providing legal aid services actively for the indigent.<sup>208</sup> Therefore the existing legal environment is not suitable for EWLA, women human rights defenders and former legal aid service providers. Thus one can fairly conclude that legal aid is not accessible for the majority of Ethiopian women because on one hand the government is not in a position to provide free legal aid for its citizens due to the existing socio economic reality

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<sup>206</sup> Based on Article 14 (2(k) of the proclamation no 621/2009 Areas of human rights work restricted under this section of the law include, "(j) the advancement of human and democratic rights; (k) the promotion of equality of nations, nationalities and peoples and that of gender and religion; (l) the promotion of the rights of the disabled and children's rights; (m) the promotion of conflict resolution or reconciliation; (n) the promotion of the efficiency of the justice and law enforcement services."

<sup>207</sup> Interview with Zenaye Tadesse , director of the Ethiopian Women Lawyers Association, Addis Ababa. (February 5, 2012 )

<sup>208</sup> Ethiopian Women Lawyers Association, annual report for the year 2011

of the country and those Non Governmental Organizations who are engaged in the activity are not even encouraged to pursue their activities in the promotion and protection of the rights of women.

## **4.2 How Accessible is the Service Provided for Women Beneficiaries**

Legal aid service helps women access the justice system. This is done by improving women access to courts, the law and further to legal representation. It also empowers women to know their rights and stand by themselves to fight injustice. But in order to enhance women access to justice the service shall be provided based on the human rights based approach to access to justice by making the most marginalized and disadvantaged at the forefront.<sup>209</sup> This can be done as long as the legal aid centers are affordable, timely and barriers are alleviated using different mechanisms by the providers.

Based on the annual report made by Hawassa University clinical legal aid for the year 2010, many women were able to benefit from the legal aid services provided by the clinical legal aid centers. Among the total number (370) of beneficiaries 117 were women beneficiaries of the service with different legal issues.<sup>210</sup>

On the other hand, EWLA legal aid department provided legal aid and assistance services to 3,037 new cases and 1144 existing cases which are totally for about 4,181 women from January-December 2010.<sup>211</sup> Although the number is high compared to the number of beneficiaries at Hawassa University clinical legal aid center, it has to be taken in to account that the association had previous experience and is the only organization working exclusively in providing legal aid and assistance targeting specifically women.

Similarly the Ethiopian Women Lawyers Association, by the budget year 2011, provided legal aid and assistance services to 1767 new and 841 existing cases at the head and branch offices. The committee members provided legal aid and assistance to 1508 cases.

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<sup>209</sup> UNDP, Access to Justice, practice note, 2004 at6.

<sup>210</sup> Hawassa university clinical legal aid program. Annual report for the year 2010, A report submitted to the Ethiopian Human Rights Commission

<sup>211</sup> Ethiopian Women Lawyers Association, annual report for the year 2010

Totally 4116 cases have been entertained during the reporting period.<sup>212</sup> Compared to the number of cases entertained in 2010 we can see a slight decrease in the year 2011, which might be a result of different challenges the association encountered in pursuing its activities. But in any manner more than four thousand indigent women had benefited from this organization by the budget year.

By this we can infer that poor women with basic legal need and severe problems were able to benefit from legal aid service provided by these organizations.

#### **4.2.1 Affordability**

The legal aid services provided by the institutions are for free and clients access legal aid without being exposed to direct costs. Women beneficiaries at the legal aid centers of both EWLA and Hawassa university legal aid center are provided with legal aid services without payment of fees. At Hawassa university legal aid center women beneficiaries are expected to cover the cost for photocopying necessary legal documents and applications. But EWLA provides support in such instances to prevent women from expenses as most of them are economically poor. When legal representation is needed at the clinical legal aid centers women beneficiaries are expected to bring document from their local administration testifying their economic status. Apart from this we don't find any means test with regards to eligibility criteria in both institutions. EWLA renders the service for women with legal problems as long as the merit of the case can be handled by the center. Although the service provided by the institutions are for free indirect costs affect women from accessing legal aid such as transportation fees, court fees and when they are in need to bring evidence from their local districts they might be in need for extra costs.

#### **4.2.2 Timeliness**

This is to find out whether services are provided timely depending on the need of clients not on what service providers are intending to offer. At Hawassa university legal aid center, women beneficiaries came to the centers to get service at different times and

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<sup>212</sup> Ethiopian Women Lawyers Association, annual report for the year 2011

adjourned to the days the legal service providers are available. For example, the center at the outreach clinical legal aid located in yirgalem town gives legal aid service twice a week only on Monday and Wednesday. But the center is opened five days a week where, clients who came to get the service are adjourned to come in the days the legal advisors are available.

A woman beneficiary at the outreach center stated that:

I came to get the service last Thursday but I was told to come on Monday to get the service because the legal aid service providers are not available. It took me three hours (3.00 hrs) by walk to reach the center from my rural village and the first time I contacted the legal service providers they asked me to bring evidence from the local land administration about the ownership of the land I am claiming for. I will be provided with the service only if legal officers came to the center, otherwise you will be adjourned to the days the legal aid providers are available.<sup>213</sup>

Due to shortage of man power providing legal aid, women will not be provided with legal aid service on a timely basis. They might not get the chance to come again due to family pressures or other matters and became tired to contact the centers as they are too far from their rural village. Clients are also adjourned at EWLA depending on the gravity of the case, number of caseloads and the availability of legal aid lawyers. Compared to the number of service providers available the demand is high or exceeds the service which is currently provided. Sometimes the day in which clients are adjourned and the time the court asks for documentary evidence or women beneficiaries are asked for statement of defense might clash and they cannot get services apart from the day of their adjournment at the legal aid centers. In such instances they will be forced to cover expenses for legal writers usually known as *Rappor tshafis* or left their cases due to their indigence. In such instances the court might decide against the client due to inability to defend their claims using the necessary legal evidence.

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<sup>213</sup> Interview with a woman beneficiary at the outreach legal aid center located in yirgalem Town

Time taken to attend beneficiaries also reflects on the quality of service that is given for clients. Because a legal aid lawyer who attends to the clients in time ensures that justice is not delayed.

Therefore it is essential to provide legal aid service for women beneficiaries on timely basis considering the hurdles women shall pass in order to benefit from the justice system.

### **4.2.3 Professional Competence**

Professional competence is very essential in providing the service. Unless service providers are competent and well trained they will not have the capacity to render proper service. Especially there is a need to have experience on gender sensitive issues and treatment of women victims of violence. In a country where there is shortage of lawyers paralegals and other service providers have importance in making legal aid available for the poor. But it is also important to note that members of the communities or paralegals engaged in legal aid activities are well trained both on the substantive and procedural legal matters. In some countries legal aid is provided by legal aid providers who are specifically expert on the area and in criminal matters for example legal aid lawyers who have specialized in criminal law will provide legal aid and the same is true in cases of civil and other administrative issues.

When we came to the clinical legal aid center of Hawassa University the service is provided by paralegals and law school teachers as part of the teaching and learning process. Students can provide legal aid except legal representation such as legal advice, writing statement of claim and defense and others as a matter of rendering community service. But instructors provide legal representation in the court using the special advocacy license they have got from the Southern Nation and Nationalities Justice Bureau. Students are assisted by their instructors at the law school but we cannot say service will be provided in a professionally competent manner. A women beneficiary also stated that, there are instances where law students working as paralegals did not properly write applications and adjourn clients until they check it with their instructors. She added that most students care about their grades rather than concern about the legal needs of

their clients.<sup>214</sup> But any information given and applications written to clients shall be clear, correct and in professionally competent manner. Otherwise wrong information creates fundamental problem and leads to further victimization of clients.

It's also stated that other clients and women beneficiaries sometimes are not confident on the services provided by young students (paralegals) because in a country like Ethiopia where elders are given greater position in the community beneficiaries are not willing to settle their matters amicably using the paralegals as mediators. Even when women beneficiaries are willing opposing parties under estimate the paralegals as they are too young because in most culture in our country elders or people with old age are respected. This does not mean that elders in the community do not have great importance in solving disputes. They have great values because they know more about for example family matters the bond in the relationship and the importance of reuniting a family. But students at this stage of maturity will encounter problems in handling family matters. Therefore apart from professionals providing the service, it is important to make members of the community take part in providing the legal aid services because they know more about the culture of the community and addressing problems based on the needs of the community.

With regards to EWLA service is provided in a professionally competent manner and experienced lawyers provide legal aid service to indigent women. In cases where, volunteer legal practitioners handle cases they are supported by legal officers at the center.<sup>215</sup> When legal representation is needed voluntary advocates who are known and having good will represent the indigent in the court.

#### **4.2.4 Existence of Follow Up Mechanisms with Women Beneficiaries**

The writer has observed that the legal aid center where the case study was undertaken do not have organized follow up mechanisms. Most of the times after women beneficiaries has received the service, which might be legal advice, counseling or after statement of

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<sup>214</sup> Interview with former legal aid beneficiary, at the clinical legal aid

<sup>215</sup> Interview with Zenaye Tadesse , director of the Ethiopian Women Lawyers Association, Addis Ababa. (February 5, 2012 )

claim is written to the court and start their case; self representing women disappear leaving their case. Follow up mechanism is an important issue because the legal aid centers cannot justify whether desired results or outcomes are achieved. And if a legal aid center is established to promote women right follow up mechanisms shall exist for clients at least in order to alleviate user's barriers to access to justice.

One of the key informants expressed that, service providers shall make close contact with their clients and follow the stages women beneficiary reached with their cases. He further explained that at the legal aid center of the Ethiopian Lawyers Association located at Lideta High Court for instance if self representing women beneficiaries disappear without reporting the outcome of their case the legal aid officers at the center goes to the extent of checking client files to see decisions or any order given by the court through smooth contact they make with the court officers at the premise.<sup>216</sup> But most of the times contacts are made initially with the beneficiaries using their address from the document recording files.

This is because; different obstacles make women passive from vindicating their rights. And service providers shall make close contact with their client so that women with different difficulties are supported to find solution for their problems.

This might include victim through the victim fund package which provide financial support to those women who cannot afford to pay court fees in order to get an expeditious trial and transportation to follow up their cases. It's also important to facilitate temporary shelter for victims of violence otherwise women will be left with their problems unsolved.

It is also important to find out, whether advocates voluntarily providing the service are rendering the service in a professionally competent manner, follow the stage the case has reached and whether women beneficiaries encountered problem at times of representation. For example if they are asked by the advocate any payment or separation of share from the outcome of the case from the indigent women.

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<sup>216</sup> Interview with Ato Yemane G/ Mariam legal aid coordinator of the Ethiopian Lawyers Association, legal aid center located at the premise of Lideta High Court (March 18, 2012 )

In order to make close contact and follow up with women beneficiary service providers shall properly keep records of legal aid services provided or there is a need for documentation. EWLA properly keep record of their clients using client files and it is easy to get the address of the beneficiaries and make close contact using their address.

When we came to the legal aid centers of Hawassa University, it is recently established and is in infant stage in the provision of legal aid. Apart from lack of uniform client recording system we do not find this in a gender disaggregated manner. In one center documents are kept in a hand written manner in a hard copy. For example we can find this at the clinical legal aid center located at the first instance court and with proper document recording in other centers. It has been also difficult for the writer to contact former women clients of the center because sometimes addresses are not even written properly. Documentation is not only important to make follow up with clients but is also very essential in order to process the data for further research in the future.

With regards to follow up mechanism we can see annual report made by the EWLA:

**Report Period: January to December 2010**

<b>Type of cases</b>	<b>No. of cases</b>	<b>Court pleadings written</b>	<b>Decision Reported</b>
Divorce/matrimonial property claims	538	165	1
Paternity and maintenance claims	175	55	1
Employment dispute	14	3	-
Succession	12	4	-
Rape	10	-	-
Murder and attempted murder	1	-	-
Grievous bodily harm and related treats	9	-	-
Abduction	3	-	-
Others	186	47	-
<b>Total</b>	<b>948</b>	<b>274</b>	<b>2</b>

For example at the legal aid center of EWLA among 948 total numbers of cases court pleadings were written to 274 cases. But among this cases only the decision of the two cases were reported. The organization apart from giving legal aid service which includes legal advice, writing petitions, reconciliations, making written agreements and referral to other organizations. It does not properly follow the stages the client and the case have reached. Among 538 Divorce/matrimonial property claims court pleadings were written to 165 cases only the decision of one case is reported.

Similarly among 175 Paternity and maintenance claims court pleadings were written to 55 cases, only the decision of one case is reported. The organization does not have any information about the rest cases. But due to various problems many women encounter in pursuing their case or due to various barriers such as social, economic and other factors there must be follow up mechanisms on the stages women beneficiaries has reached. In order to find out whether if there is any barrier that hinders the women from vindicating her rights.

**Report Period: January to December 2011**

**Table 1 - Existing Cases at head office**

<b>Type of Cases</b>	<b>No. of Cases</b>	<b>Court Pleading Written</b>	<b>Decisions Reported</b>
Divorce/matrimonial property claims	398	170	16
Paternity and maintenance claims	70	26	3
Employment dispute	39	12	3
Succession	61	31	-
Rape	2		-
Murder and attempted murder	1		
Grievous bodily harm and related treats	1		
Early Marriage	-		
Abduction	-		
Others	89	30	5
<b>Total</b>	<b>661</b>	<b>269</b>	<b>27</b>

In the budget year 2011, case decisions are reported for existing files in cases of, Divorce and matrimonial property claims, Paternity and maintenance claims, Employment dispute, and others. Compared to the year 2010, where court decision was reported only for two types of cases, in the year 2011 court decision was reported for three types of cases including others which are not specified.

From total number of existing cases which is 661 cases court pleading has been written to 269 cases. Among these divorce and matrimonial property claims take the leading in number of application for legal aid, from total number of 398 cases court pleadings were written to 170 cases and court decision of only 16 cases were reported to the center.

There were 70 applicants for Paternity and maintenance claims and court pleadings has been written to 26 women beneficiaries, where only decision of 3 cases has been reported. On the other hand 39 women beneficiaries applied for cases of employment disputes and court pleadings has been written to 12 women beneficiaries, similarly only decision of 3 cases has been reported.

**Table 2- New cases at head office**

Type of cases	No. of Cases	Court pleading written	Decisions reported
Divorce/matrimonial property claims	543	234	12
Paternity and maintenance claims	87	20	1
Employment dispute	52	16	-
Succession	88	31	1
Rape	12	-	-
Murder and attempted murder	4	-	1
Grievous bodily harm and related treats	11		
Early Marriage	2		
Abduction	-		
Others	171	25	3
<b>Total</b>	<b>970</b>	<b>326</b>	<b>18</b>

The Ethiopian women lawyers association from January- December 2011 entertained 543 cases in matters of Divorce/matrimonial property claims and court pleadings has been written to 234 cases and only the court decision of 12 cases has been reported and due to lack of proper follow up mechanisms with their clients it was not possible to come up with the rest data. And information cannot be obtained on the other cases.

In cases of Paternity and maintenance claims court pleadings has been written to 20 cases and the court decision of only one case has been reported. In matters of succession 88 women beneficiaries applied for legal aid and court pleadings has been written to 31 cases and the court decision of only one case has been reported. In cases of Murder and attempted murder four applications were brought to the center and only the decision of one case has been reported.

Even if it takes lots of time for a given cases to reach in to final judgment, issues of women beneficiaries shall be properly followed or follow up mechanisms shall exist. The main problem is that most of women beneficiaries even after court pleadings are written for them disappear living their cases. As a result of combining factors mainly due to financial problems, culture and family pressures. Therefore it is essential to have proper follow up and reporting mechanisms on the stages the case has reached so that beneficiaries will not be left without getting remedies.

With regards to Hawassa university legal aid center, we do not find data on the type of legal aid service provided in an organized manner apart from specified issues raised by women beneficiaries, such as employment disputes, succession, family and property matters and other issues. Therefore it was difficult to analyze the information.

#### **4.2.5 What is the Eligibility Criterion to Select Women Beneficiary for Legal Aid?**

In determining eligibility criteria both the merit and means test is used. Merit test mainly focuses on the grounds of the case that is whether the case is groundless in law or fact. Baseless applications are also in acceptable, where the case has no any evidence. For example in cases of defamation legal aid is not provided for clients appearing before legal aid centers in most countries. The same is applies in the legal aid centers of EWLA and

Hawwas University legal aid center, in both institution legal aid is not provided in cases of defamation and other matters when the case doesn't have ground in law or fact.

Means test is initially used to determine those who can benefit from free legal aid service. And prevent anyone who can afford to pay from benefiting in the names of the poor. In a country like Ethiopia where resources for legal aid are limited the idea for setting eligibility criteria is unquestionable. Different countries use different mechanisms in setting the eligibility criteria. In some countries exemption from costs is made based on decision by certificate from organ entrusted to administer legal aid. For example in Israel, the means test mainly in civil cases depends on financial capacity of the person applying for legal aid. Israel means test ceiling is determined using (2/3 of gross average income; assets of the person; 3 months of average salary, also takes in to account the value of the house where the applicants live.) others assessed only locally by a territorial administration and by tax receivers, which issue certificate of poverty to be submitted to the judge. If the applicant is believed to have sufficient income then he will be exempted on a case by case basis based on the discretion of the judge.<sup>217</sup>

In Zimbabwe, merit test is done in order to determine whether the client is likely to succeed in the case and application is denied in cases of defamation, adultery and seduction damage. With regards to means test, the place where the client lives, furniture in the house is considered. And clients are expected to fill in a form to find out whether the client can afford a private lawyer by testing his means against the income. The form contains sections on expenditure and other details which make it easier to deduce the truth.<sup>218</sup>

In Kenya, any legal action by the wife would be presumed as being beneficial for her husband's. Meaning, if the husband is capable to pay for the service, the wife is not qualified to receive any pro bono legal assistant. But the advocate could demand

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<sup>217</sup> The European Union, Conditions in which legal aid is granted or withdrawn, in Access to Justice in the Mediterranean partner countries, 2011, p.47

<sup>218</sup> Murinda.P "Access to Legal Aid for Indigent Women": An Analysis of the Services Offered by the Legal Aid Directorate in Harare, Zimbabwe, 2008, p.32

comparable amount of charge from the husband once she provided the service to the wife freely.<sup>219</sup>

On the other hand some countries use principle of unlimited eligibility criteria, for example in Chile legal aid is provided for everyone who came to get the service as long as the individual is in need.<sup>220</sup> Based on the unlimited eligibility criteria it is considered that making a poor person prove his indigence might need serious of procedures and **bureaucratic** steps which lead to lose their right to legal aid.

Also in our country Ethiopia we do not find a standard guide line to determine eligibility criteria. In criminal matters a person may be allowed to have a defense lawyer depending on the seriousness of the offence and the economic status of the person. In an interview held with Ato, Yusuf Mohammed a presiding judge at Federal high Court, it was learned that if the accused claims that he is unable to appoint attorney at his own cost, the judge orders the accused to bring an oath as to his financial problems or a certificate proving his indigence from the prison administration.<sup>221</sup> Therefore the judge orders the public defender's office to assign a defense counsel to the accused.

In civil matters, apart from the independent criteria set by the legal aid service providers themselves we do not find uniform standards. For example the Ethiopian Women's Lawyers Association provides legal aid for every women appearing before the center seeking for legal assistance. The director of the association stated that, it is only if the legal officer thinks the applicant had income that service will only be provided to the extent of legal advice. She added that it would be important if there is an income test in order to differentiate the poor from the rich save the limited man power, resource constraints and increasing demand for legal aid. But currently the organization provides the service with unlimited eligibility due to the fact that sometimes women who used to be in good economic conditions are totally dependent on their husbands or parents

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<sup>219</sup> Ethiopian Bar Association, "Enforcement of the Law on Pro Bono Responsibility of Federal Courts Advocates in Ethiopia", 2010,p.6

<sup>220</sup> UNICEF & UNDP,(First Draft) *Outcome Report: practitioners meeting on legal aid Programming in Africa*, Dakar1-3 June 2010, p.23

<sup>221</sup> Interview with Ato Yusuf Mohamed, judge at the federal high court, Addis Ababa (February 13 , 2012 )

income. In such instances the moment problems arise they might be deserted of their homes and appear to be without any income let alone to cover for legal representation.<sup>222</sup> Similarly, Hawassa University Clinical Legal Aid does not have its own uniform mechanism to distinguish the poor from those having alternative opportunities to find for legal assistance. It is expressed that, the organization uses general conditions and circumstances to decide on who shall benefit from the service for example by looking at the personal look of the individual and the seriousness of the case. It is also stated that in case of legal representation the clinic asks for certificate notifying the indigence of the person from their local administration.<sup>223</sup> But in cases of child maintenance and if the legal issues need urgent solution then legal assistance is provided for women without making any pre conditions.

The notion behind providing free legal aid is to support those who are incapable to afford for legal representation and those with insufficient means. This is because without adequate legal assistance the poor will give up on their valid rights. Especially women are with the least opportunity to get access to justice and at the same time, most exposed to multiple forms of vulnerability which includes injustice, violence and many other unlawful activities.

The human rights based approach to access to justice, also provides the importance of identifying whether the beneficiaries are the most vulnerable, such as the rural poor, women and children. With regards to enhancing access to justice legal aid services are also expected to provide remedies for grievance by making the poor and marginalized at the forefront.

Therefore legal aid centers shall provide legal assistance primarily targeting on the poor. One of the mechanisms to assure whether services are rendered for those with pressing needs is using the means test. Even if certificate proving the indigence of the person is requested by some legal aid centers in cases of legal representation, we do not find uniform and standardized mechanisms to assert whether poor and marginalize women are the primary beneficiaries of the services that are currently provided by the institutions.

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<sup>222</sup> Interview with Zenaye Tadesse , director of the Ethiopian Women Lawyers Association, Addis Ababa. (February 5, 2012 )

<sup>223</sup> Interview with Ato Admasu Alemayehu, director of Hawassa university legal aid program (March 3, 2012 )

## **4.3 Barriers that Deny Women Access to Legal Aid**

### **4.3.1 Awareness about the Availability of Legal Aid**

In order to make women have full access to legal aid, they must be aware of the services that are available to them. The finding shows that for beneficiaries of legal aid services, individuals were their primary source of information.

(7 out of 28) Women beneficiaries received information about the legal aid providers from neighbor. (6 out of 28) were informed by friends, (5 out of 28) were informed by government officials and (4 out of 28) from former legal aid clients. A lesser number received information from police which is (2 out of 28), (3 out of 28) received information from other legal aid service Providers and (1 out of 28) got information from media.

Most of women beneficiaries interviewed received information about the legal aid providers from neighbor, friends, and close relatives. Some of them were informed by government officials and from former legal aid clients. A lesser number received information from police, other legal aid service Providers and got information from media. Reliance on information provided by the police, government officials and media was low compared to the above sources.

Focused group participants also stated that, the majority women do not know about the existence of any legal aid service. Therefore they will not be in a position to find solution to their problems due to in affordability of legal services.<sup>224</sup> Unless women had good social interaction, in the community or in their surrounding environment including in the neighborhood it would be difficult for such women to access information in every manner including about the availability of legal aid because their families or close relatives will become the only source of information.

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<sup>224</sup> FGD, with women

A woman beneficiary stated that:

Previously I never knew about the existence of any legal aid service and lived in a violent relationship for about 15 years. I never thought I could at least find a solution without payment which is for free as I am economically poor. Even if I have discussed the problem with my close relatives, no one had the information about the availability of legal aid services and its criteria. Luckily, I was told about legal aid by my old friend who has been a former client at the center<sup>225</sup>

Apart from the role of legal aid service providers in creating awareness about legal aid through their public education campaigns and other activities. The finding also revealed the importance of awareness and positive attitude of the police, judges and government officials in making women benefit from legal aid, which otherwise lack access to such information's.

One of the key informants stated that: legal aid centers located in the premises of the court had great importance in supporting women and other indigent people to benefit from the service. She added that as the centers are located in the court they are physically accessible but clients sometimes are not aware about the service even if they came to the court to attend their cases. In such instances judges play a vital role in making women aware about the availability of legal aid by referring them to our center located in the court. As it will not be just and fair to decide on matters when one of the parties to the dispute is without capacity to defend his claims and is without any legal knowledge. Therefore, judges can also make women aware about the availability of legal aid so that they can benefit from the service.<sup>226</sup>

On the other hand, Legal aid providers must do a better job with regards to creating awareness about the availability of legal aid to the police and other government officials. Judges can also play a great role in making women access legal services by referring

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<sup>225</sup> Interview with a woman beneficiary at EWLA

<sup>226</sup> Interview with w/ro Alemnesh Teklu , legal advisor of the Ethiopian Lawyers Association, legal aid center located at the premise of Lideta Federal High Court (March 18, 2012)

them to legal service providers. Especially those with poor pleading works and who lack legal awareness to defend themselves can be informed about the availability by judges in the court so that they can be provided with legal aid.

It is also stated that, when the judge believes it is important for the proper administration of justice and to avoid impartiality in giving decisions, he will appoint an advocate who is available around the court to give legal assistant for a client who is believed to be in need of legal support by the judge or otherwise refer the client to the legal aid centers located in the premise of the court.<sup>227</sup>

Women who are victims of violence also initially contact the police and at this stage information about legal aid becomes vital. They can assist women by informing them about legal aid because women in poor economic conditions will not be in a position to safeguard their rights and are forced to give up on their rights.

Focus Group Participants also revealed that, most of the times women consider the police as the only option that could help when they have problems regardless of the matter at hand whether its civil, administrative or criminal issue. Because most women who appear to be house wives are not aware about which organ provides what type of services. On one hand it is easy to access the police near their districts or villages they are living. Therefore they will primarily contact police in order to find redress for their grievance.<sup>228</sup> Here we can imagine how the police become important in informing women with various legal needs about the availability of legal aid.

Unless women had good social interaction, in the community or in their surrounding environment including in their neighborhood it would be difficult for such women to access information in every manner. Therefore they will not be in a position to benefit not only from legal aid but will not have information about availability of other basic services such as education, healthcare, employment and others.

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<sup>227</sup> Interview With Ato Seid Mohammed, Judge at the Federal High Court, Addis Ababa (February 13 , 2012)

<sup>228</sup> FGD, with Women

Therefore, the fact is that the majority of women are not aware about the availability of legal aid service and even those who came to get legal aid were informed about the service by third parties. Who are either persons close to them such as friends, neighbors, relatives or former legal aid clients. The above discussion signifies that, legal aid service providers shall also make the community, police, government officials, judges and others to be aware about the availability of legal aid because they have great potential in informing women about availability of legal aid so that they can benefit from the service.

The forgoing discussion leads to conclusion that lack of awareness about the availability of legal aid appears to be one of the barriers that deny women from accessing legal aid services. And current awareness creation campaigns are not sufficient and there is a need to do more in order to ensure the service becomes known and accessible to the majority in need at grass root level and particularly for women.

#### **4.3.2 Economic Problems**

Economic problem is raised as one of the primary reasons hindering women from accessing the justice system. Most procedures demand the assistance of lawyers, ability to pay for litigation and at least personal income to cover their transportation fees to reach the court and other alternatives such as legal aid centers. Lack of income and resources to travel large distance and meet service providers becomes a living dream for most women.

Based on the finding of the data, (17 out of 28) women beneficiaries had no personal income and were totally dependent on their husband and families, (6 out of 28) beneficiaries were having monthly income which is less than 500 birr per month, (3 out of 28) respondents had personal income ranging from 500-1000 birr per month and only (2 out of 28) respondents had personal income which is more than 1000 birr per month.

Majority of the respondents where the case study was made, that is at EWLA and Hawassa University Clinical Legal Aid were without personal income and fully dependent on their husband. Those who had been with pressing legal needs for long

period of time before knowing about legal aid raised that financial constraint used to be a significant barrier from accessing legal aid.

Even if the majority of the respondents are without personal income, they were able to benefit from legal aid services. By this we can see how legal aid becomes an important tool in making the poor safeguard their rights regardless of their economic status.

It is also stated that, women in poor economic condition will get the opportunity to claim remedies against infringements of their rights. Regardless of their economic status they are able to claim for compensation in cases of grievous bodily injury, if forced to work without remuneration and in any instances of rights violation.<sup>229</sup> But, indigent women do not always know how to access these remedies, or may require information about the availability of legal aid and financial capacity to travel and meet service providers.

In the same manner it's argued that, financial constraints also affect women after they have received legal support from legal aid providers. Most women beneficiaries after petitions, affidavits and memorandum of appeals are written for them and start their suit in the court disappear leaving their cases. Due to financial problems they will not be in a position even to cover for their transportation cost and attend their cases in court.<sup>230</sup>

One of the Focused Group Participants expressed that, legal procedures are time taking and it takes time to find a solution for a given problem. After a woman in poor economic conditions started her case it would be important if she could have someone or relative who can financially support her at least to fulfill her basic needs. If she is for example, claiming against her husband who is the only source of income she will be without capacity to pursue her claim as she totally depend on his income previously.

Hence, based on the finding of this research economic problem is one of the barriers that deny women from accessing legal aid.

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<sup>229</sup> Interview with Hibret Abahoy, women, children and youth coordination office head of the Ministry of Justice (February 21, 2012 )

<sup>230</sup> Interview with Zenaye Tadesse , director of the Ethiopian Women Lawyers Association, Addis Ababa. (February 5, 2012 )

### 4.3.3 Awareness of Legal Rights

Women's lack of knowledge of their legal rights and the existing remedies make them passive in protecting their rights and most of the time they will be taken of advantage. This in turn makes them reluctant in seeking assistance for legal problems. But legal rights awareness is a key to fight towards injustice and empower women in exercising their right to access to justice.

Majority of the respondents does not have awareness about their legal rights which can cause lack of self-confidence and powerlessness in order to assert their rights. But legal rights awareness can make them realize their rights are violated and search for means of solving their problems. But most women do not benefit from legal aid services, provided by organizations such as EWLA and other clinical programs.

Most people in Ethiopia are not aware of their legal rights and this is one of the reasons for rights violation. There are also instances where a woman making self representation most of the times do not understand the legal words, procedure and even decision given by the court and appear only in the court without knowing how to defend her claims; there she needs someone to represent her.<sup>231</sup>

One of the respondents stated that,

I never asked for child maintenance for seven years and raised my child alone even if am poor and was unable to send my child to school. I assumed that as I have lived in an irregular union with my partner I had no right to ask for child maintenance.<sup>232</sup>

Here we can see that the woman do not know anything about the law regarding irregular union and whether she can claim maintenance for a child born out of wedlock.

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<sup>231</sup> Interview with Ato Abrham Takele, Federal public defender's office director, Addis Ababa (February 10 , 2012 )

<sup>232</sup> Interview with a woman beneficiary of Hawassa University clinical legal aid at the first instant court

It is also argued that most women who live in abusive relationship are not in a position to claim for their rights as a result of lack of knowledge about their legal rights.<sup>233</sup> Also women who does not have good social life or those who are socially isolated are reliant only on their husband and members of their family, who are the only source of information and support. Hence they know little about their legal rights and the mechanisms available to assert them.<sup>234</sup> It is also found that most women do not identify violence and they believe it's their fate.<sup>235</sup>

Another fact is that, women who seek legal aid sometimes came to the legal aid centers after their right has been already barred by period of limitation and there are also instances where women do not know about their right to appeal to the higher court and loss hope thinking that the decision of the first instance court will not be reversed and is a final decision even if there exist error of law<sup>236</sup>. And sometimes they also ask for legal aid support after finishing their case up to the cassation bench and the entire step is over.<sup>237</sup>

In one of the interviews conducted with a woman beneficiary, she stated that: Her husband made her sign false agreement as if she took share of their common property<sup>238</sup>. From this we can understand that women without legal knowledge are subject to deprivation of their rights and can be easily taken advantage.

In an interview conducted with Ato Yusuf Mohamed, a judge at the federal high court, it has been learned that, Sometimes self representing women are not able to express themselves and those with poor pleading work or inability to present evidence at trial lose a case that would have been won. He also stated that, if self representation is made by a person with little knowledge about his legal rights then this has an effect in denying a

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<sup>233</sup> FGD with women

<sup>234</sup> FGD with women

<sup>235</sup> Interview with Zenaye Tadesse , director of the Ethiopian Women Lawyers Association, Addis Ababa. ( February 5, 2012)

<sup>236</sup> Interview with Ato Andualem Aweke, legal aid center coordinator at Hawassa university clinical legal aid. (March 7, 2012 )

<sup>237</sup> Interview with Ato Jembere Geneme, former director of the advocates licensing and administration directorate of the ministry of justice.( February 23, 2012)

<sup>238</sup> Interview with a woman beneficiary at EWLA

litigant from vindicting his rights.<sup>239</sup> In such instances the importance of legal representation by legal aid service providers becomes unquestionable.

The finding shows that, its essential for a woman to recognize the existence of an enforceable right in order to be conscious when rights are violated. Because lack of awareness about legal rights is a fundamental barrier not only for the vulnerable but affects the entire population whether rich or poor. Bearing this in mind, awareness of legal rights is not only sufficient if some one does not have the means to assert those rights.

#### **4.3.4 Physical Accessibility**

Physical accessibility is an important element in making women access legal aid and appear to be an obvious factor in gaining access to justice. In Ethiopia where the majority of legal aid centers are urban based they appear to be inaccessible for users especially for those in rural areas. Even those found in urban cities are limited in number to provide effective access.

In the areas, where the case study was undergone the majority of the respondents found legal aid centers physically inaccessible. It is also difficult for severely marginalized poor women at lower level to reach the service providers at far distance.

To this end a woman beneficiary stated:

My home is too far from the center and I feel to stop my case because it is hard for me to cover my transportation fee to reach the center. I usually came to the center by walking but it is difficult to walk when you are hungry because you need energy.<sup>240</sup>

Physically accessible legal aid centers are important for poor women with various problems and can help them from giving up on their rights because indirect costs such as transportation fees hinder poor women from vindicating their rights.

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<sup>239</sup> Interview with Ato Yusuf Mohamed, judge at the federal high court, Addis Ababa (February 13 , 2012)

<sup>240</sup> Interview with a woman beneficiary at EWLA

On the same footing from a rural village known as Dagia and Wonsho around yirgalem town a woman shall travel two and half hours (2:30 hours) by walk to reach the clinical legal aid center of Hawassa University located in yirgalem town.<sup>241</sup>

A woman beneficiary at the outreach legal aid center explained that:

I came to get the service from a rural village known as “Dagia” it’s too far from the center and I have to walk for two and half hours (2.30) to come to the center and today I came to the center because I had someone to take care of my child otherwise it would be difficult for me to reach the center as its too far from our village.<sup>242</sup>

FGD participants also revealed that , legal aid centers are not most of the times found in the local community areas or near to those who are specially in need rather located at big buildings in the inner part of the city mainly in the urban areas or at the premises of the court and police offices.

The physical setup of the centers is also important, the clinical legal aid center of Hawassa University had its two centers located in the first instance and Supreme Court respectively and this is important where majority of litigants bring their cases to the court and can access the service easily. But this does not mean that the centers are accessible to the majority of women who does not appear in the court to vindicate their rights. The writer has also observed that most women who came to the court to attend their cases even do not know about legal aid service provided in the premise of the court.

One of the informants also suggested that, sign posts should be written in the local language of the area to indicate the existence of the service and in order to guide new visitors either using local language of the area.<sup>243</sup> Because most of the times sign posts are written in English and Amharic languages

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<sup>241</sup> Interview with a woman beneficiary at the outreach clinical legal aid Center of Hawassa University at Yirgalem town

<sup>242</sup> Interview with a woman beneficiary at the outreach clinical legal aid Center of Hawassa University at Yirgalem town

<sup>243</sup> Interview with Ato Andualem Aweke, legal aid center coordinator at Hawassa university clinical legal aid. (March 7, 2012 )

The geographic location of the centers must also provide effective access for those who are in need of the legal service because physical access is one of the means to gain access to justice.

Therefore, geographical inaccessibility where the majority of the legal aid centers are located in urban centers and towns in addition with shortage of public transportation are major constraints to access. Even if the majority of women beneficiaries found the legal aid centers physically in accessible some of them were able to easily access the center. Especially those whose homes are located near the centers and who are able to cover their transportation fees found the legal aid centers physically accessible.

But the majority of the respondents found the centers physically in accessible, therefore the legal aid centers shall use different mechanisms in order to make the service accessible to the majority indigent women at community level.

#### **4.3.5 Culture and Family Pressures**

Family pressure has a negative effect on women access to justice and particularly to legal aid. It's clear that woman has greater responsibility in the family; she is a mother, a wife and bears the primary obligation in taking care of her children.

FGD participants stated that, Mostly women who are dependent on their husband income bother about feeding the family rather than searching for legal needs in cases of violence. Even if they are abused by their husbands they prefer to buy bread for their child rather than going out to assert their right and cover their transportation cost.<sup>244</sup> There is also a saying that: *“A woman shall suffer for her child.”*

One of the informants also stated that: women sometimes do not seek to find solution for their problems even if they recognize violence. This is because they think jailing the perpetrator would cut off the family economic support. Also they are afraid of additional violence from the perpetrator or their families.

When we came to the issue of culture, women are not expected to reveal their secret in the public because it's believed that personal family matters should be solved by the elder members of the community or the family otherwise the women will be isolated as if she

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<sup>244</sup> FGD, with women

has brought shame to the community and her families <sup>245</sup> It was also said that a woman whose husband has raped her 12 years old little sister and had one child from the girl still lives with her husband. The little girl told her problem for the neighbor feeling guilty on what has happened to her elder sister. While the woman was told the issue by her neighbors, she refused to report the case to the police. The reason given was that, she does not have any where to go with her four children, fears her husband will kill her and did not want to expose the issue to the public.<sup>246</sup>

And a woman has also revealed that, people in the neighbor are not willing to testify as witness even if they have seen her physically abused by her husband.<sup>247</sup>

It is also stated that, in the community a person who tries to support and advice women living in an abusive relationship and with legal problems will be isolated because it is believed that no one shall interfere in the family affairs and someone's private life.<sup>248</sup>

In an interview held with a paralegal, he stated that sometimes women who came to the clinical legal aid centers are not willing to tell their problems clearly. He added also some of them even do not want their name written in the document recording file. Even if we tell them we are confidential.<sup>249</sup> We can understand from the above fact that, most women does not want to disclose their problem due to cultural and family pressures and prefer to remain voiceless.

The above paragraphs lead to a conclusion that, culture and family pressure is one of the barriers that deny women from accessing legal aid.

#### **4.3.6 Women Perception towards Legal Aid**

Women perception about legal aid has an impact in making women access legal services, particularly legal aid. Various reasons are raised why women does not seek help from legal aid and the legal system in general. The finding shows different perceptions denying women from accessing legal aid among these the writer found that the term even legal aid

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<sup>245</sup> Interview with Zenaye Tadesse , director of the Ethiopian Women Lawyers Association, Addis Ababa. (February 5, 2012 )

<sup>246</sup> FGD with women

<sup>247</sup> FGD with women

<sup>248</sup> FGD with women

<sup>249</sup> Interview with Abebe Gebreab, a paralegal at Hawassa University clinical legal aid located in SNNPR supreme court (March 9, 2012 )

which is considered to be given for free is not trusted by women. It is also said that anything which is provided for free will not have equal value with what you purchase with confidence by your own money; believe that the case will not be solved, most women believe that their cases will not be solved if they go to legal aid service providers. It has been also stated that sometimes women do not want to tell their names in the centers they came to get services. A legal aid service provider stated that, there was an instance where a woman said her name to be documented as “X and Y”.<sup>250</sup> This is because of lack of trust in the service and did not want their names to be disclosed even if confidentiality of the service is explained to beneficiaries.

A woman beneficiary also expressed that:

I lived in a marriage relationship for about 24 years, all those years I was physically abused, had financial problems and morally tortured. I don't trust in the justice system and belief I will not find any solution from the justice system as a whole not only from legal aid. Even if I had lots of problems no one had ever understood me, even my parents always settle the dispute and sent me back to my home. I always taught I could not find any one who can understand me. I knew about legal aid services but I used to think my case will not get a solution. But today am supported by the center and realized that my former perception about legal aid was totally wrong.<sup>251</sup>

One of the FGD participants also expressed that, most women believe that legal aid is not a service which is specifically provided for the poor rather for those who can at least have means to attend the service and cover transportation cost to apply for the service.<sup>252</sup> And we can see that women perception about legal aid as a service for the poor is very low and some of them do not believe that they are entitled to get the service. This predetermination has also a negative effect from accessing the service.

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<sup>250</sup> Interview with Berhan Mekuria, legal service provider at EWLA (February 7, 2012)

<sup>251</sup> Interview with a woman beneficiary at EWLA

<sup>252</sup> FGD with women

### 4.3.7 Language in which Services were Provided

This is a concern because even where legal aid services are available, legal aid centers may not be providing services in a language that their clients can understand and this may limit access to legal aid services. The finding shows that Legal service providers appear to be making a strong effort to provide services in language that their clients understand. The majority of beneficiaries were satisfied with the language service provision. But some women beneficiaries interviewed were given long adjournment until an interpreter is found who can understand their case.<sup>253</sup> For example, beneficiaries coming from surrounding areas of Addis like Sebeta and Sululta are not provided with the service from EWLA even if they travel long to benefit from legal aid. This is because service providers who can speak Oromifa language are not currently found in the center.<sup>254</sup>

Hawassa university clinical legal aid uses paralegals in the legal aid centers and consideration is also given in assigning students to the centers. It is also stated that, as universities are diversified with students from different ethnic groups, paralegals with Sidamegna language ability are sent to outreach legal aid center located in Yirgalem town. Whereas, those with oromifa background provide services in Shashemene center.<sup>255</sup> Regardless of the above efforts it is stated that, paralegals who are law students learn the theoretical aspect in English and this makes difficult in providing even the service in Amharic.<sup>256</sup> Therefore, training manuals are currently recommended to be provided in Amharic language and local languages of the areas where legal aid is provided.

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<sup>253</sup> Interview with a woman beneficiary at EWLA

<sup>254</sup> Interview with Ato Shimeles Ali, legal officer at EWLA (February 7 , 2012 )

<sup>255</sup> Interview with Ato Admasu Alemayehu, director of Hawassa university clinical legal aid program, (March 3, 2012 )

<sup>256</sup> Interview with Ato Yidnekachew Ayele, Addis Ababa University Institute of Human Rights, Legal Literacy, Rights Advice and Information Project, Hawassa branch coordinator, (March 11, 2012)

## **CHAPTER FIVE**

### **5. Conclusion and Recommendations**

#### **5.1. Conclusion**

Examining the role legal aid plays in promoting the rights of women; ascertaining the accessibility of the legal aid service delivery for indigent women and investigating the barriers that hinder women access to legal aid was the venture of this study. Based on the analysis of the data it was possible to come up on the following conclusions.

Legal aid programs enabled women, regardless of their income to obtain supportive legal advice and representation. Due to cultural and social values that still dominate, women tend to settle their dispute with traditional mechanisms which mostly give biased decisions. Women who are with pressing legal needs and victims of violence were given immediate means of redress and protection. Therefore, legal aid plays an important role in promoting the rights of women.

The recent engagement of public universities, in the provision of legal aid has eminence role in increasing the accessibility and the geographic coverage of the service to the wider community. On the other hand, the current activities taken by the ministry of justice based on its mandate to provide legal aid to women and children in civil matters had great importance on the provision of legal aid in civil matters. Despite the above facts, the service is not accessible to the majority, particularly for women as this legal aid programs operate in limited geographical areas. The legal environment is also not conducive for civil society organizations engaged in the provision of legal aid. Hence, there is much work to be done in order to increase the accessibility of the existing legal aid service to the majority in need.

This study depicted that, various factors hinder women from accessing legal aid. Among these the study found lack of awareness about the availability of legal aid, economic or financial problems, culture and family pressure, lack of legal rights awareness, physical

inaccessibility, women perception towards legal aid and language in which the service was provided.

In light of this, current awareness raising efforts are not sufficient. The finding shows that the majority women beneficiaries of legal aid are not aware about the availability of legal aid in their personal capacity. Neighbors, friends, Family members, former recipients of legal aid, government officers , although less in number police has been source of information about the availability of legal aid for women beneficiaries. Therefore the availability of the services shall be publicized to ensure information reaches women at grass root level. Also the importance of the police, judges and government officials shall not be neglected in assisting women to access legal aid services.

It has been also found that, economic and financial problems are one of the major barriers to access legal aid. Lack of income and resources to travel large distance and meet service providers appear to be one barrier. The majority of women are without personal income and dependent on their husband and families. Due to their desperate financial problems even women who had the chance to meet legal aid service providers disappear living their cases.

Culture and family pressure also have a major impact on access to legal aid; women sometimes do not seek to find solution for their problems even if they recognize violence. This is because they think jailing the perpetrator would cut off the family economic support. They are also afraid of additional violence from the perpetrator or their families.

When we came to the issue of culture, women are not expected to reveal their secret in the public because it is believed that personal family matters should be solved by the elder members of the community or the family otherwise the women will be isolated as if she has brought shame to the community and her families. Women sometimes do not seek to find solution for their problems even if they recognize violence.

Legal rights awareness is essential to struggle against injustice and empower women in exercising their right to access to justice. Majority of women does not have awareness about their legal rights which is one of the barriers from asserting their rights. But legal

rights awareness can make them realize their rights are violated and search for means of solving their problems. It was found that, women who seek legal aid sometimes came to the legal aid centers after their right has been already barred by period of limitation. Therefore lack of legal rights awareness had impinged the opportunity of women from accessing legal aid service.

The legal aid centers are located in urban centers and towns which prevent many indigent women from accessing the service. In addition with shortage of public transportations in rural areas to reach the outreach legal aid centers, financial problems are major constraints for women to afford for transportation and other costs to meet legal aid service providers which are located far away from their residence. Even if efforts are made to make the service accessible by opening centers at the premise of the court and police office, this does not mean that the centers are accessible to the majority of women who does not appear in the court to vindicate their rights. The writer has also observed that most women who came to the court to attend their cases even do not know about legal aid service provided in the premise of the court. There is also only one center operating in the police office. Further sign posts are used to indicate the existence of the service but it does not fully guide new visitors with different language capacity and those who cannot read Amharic and English language are excluded from accessing the service. Women who cannot read and write are not in a position to understand address written in the sign posts.

Apart from this, women perception towards legal aid has negative effect in making women benefit from legal aid service. This includes lack of trust in the service as it is provided for free, believe their secret will be revealed in the public, most women do not know about the service and consider that their problem will not be solved. Even though, the service is initially provided to make the poor to seek justice and assure the protection of their rights. The majority, Indigent women do not think they are entitled to get the service.

As per the data collected by the writer, the language in which the service is provided also limits access to legal aid services. Beneficiaries coming from surrounding areas of Addis

are not provided with the service even if they travel long to benefit from legal aid. This is because service providers who can speak local language are not currently found in the center. In contrast, Legal service providers at the clinical legal aid centers appear to be making a strong effort to provide services in language that their clients understand. Paralegals with language capacity of the local area are assigned to provide service or assist other students as an interpreter.

In terms of affordability, the service is affordable for women as it is provided for free. But indirect costs such as transportation fees affect women beneficiaries as the centers are located at far distance from residence of beneficiaries.

Due to shortage of manpower providing legal aid service, high number of case loads and increasing demand for legal aid; services are not provided based on the needs of clients on timely basis. The clinical legal aid centers also provide service on some fixed days weekly. As the service is provided by legal aid lawyers on voluntary basis especially in cases of legal representation strong commitment and willingness is not seen by pro bono lawyers.

The study also found that, the professional competence of legal aid lawyers as an essential input in order to provide women with quality legal aid service and help them with various legal problems. There had been efforts to equip paralegals by trainings using different training manuals but it is still not sufficiently provided within fixed intervals. And Legal aid shall not be considered only as a training ground for paralegals and new inexperienced lawyers.

Service providers shall make close contact with their clients in order to find solution for their problems. The finding shows that, women beneficiaries after receiving legal advice and other services disappear leaving their cases. And due to lack of proper documentation addresses of women beneficiaries are not properly found in some of the centers. Therefore proper documentation and case recording is essential in order to make organized follow up mechanisms.

The institutions do not have standardized guideline to determine eligibility criteria of beneficiaries. Even if sometimes women are expected to bring certificate declaring their indigence from their local administration in cases of legal representation. The legal aid service providers were not able to assert whether poor and marginalized women are the primary beneficiaries of the service.

## 5.2. Recommendations

Based on the findings, this study forwarded the following recommendations.

- There is a need to have legal aid law to regulate legal aid service which is currently provided in the country. Taking in to account the importance of legal aid in enforcing the constitutional right of access to justice the government shall priorities the service.
- Awareness raising campaign about the availability and importance of legal aid service shall be made to the public. Special consideration shall be given for women and other disadvantaged groups. Government officials at the community level, the police and judiciary must also be equipped about the availability of the service as they have great role in referring beneficiaries who had no access to such information.
- Legal rights education shall be made available to increase women awareness about their rights and obligations under the law. But this doesn't mean that educating only women will lead to change in attitudes rather the whole community shall be educated about women rights. Awareness of rights in turn make women active to seek for legal aid at times need arise.
- Need assessment shall be properly undertaken in areas where legal aid centers are established. In order to identify the exact place the service shall be provided for those in actual need. Particularly, whether indigent women, marginalized and vulnerable groups; those facing cultural discrimination are capable of accessing the service. This will in turn make the legal aid centers physically accessible to the majority in need.
- The establishment of legal aid centers in the premise of the court shall be encouraged in order to enhance the physical accessibility of the legal aid centers. This will in turn save the time, cost and energy of the client.
- In order to change the negative attitudes of women about legal aid, service providers shall educate women about the importance of legal aid. This can be made by using former women beneficiaries of legal aid at the community levels and especially in areas where women traditionally gather. This can be in their *Idir* and *Iqub (saving institutions)* and in their religious associations like *Religious mahibers*.
- Legal aid centers shall have service providers having language capacities of the areas where the service is provided. Or use paralegals that are members of the community

with language proficiency and those understanding the culture and values of the society.

- Legal aid service providers shall make strong efforts in order to provide the service on timely basis. In order to reduce shortage of man power providing the service, diversified use of legal aid providers is important. Non lawyers shall actively take part in the provision of the service.
- Non lawyers who are paralegals and law students must be equipped with the necessary trainings both on the substantive and procedural matters of the law. In order to increase their professional competence. Also must take ethical courses on how to handle clients and deal with their problems. Apart from this they must be assisted and supervised by professionals and in cases of legal clinics by their instructors.
- Advocates providing voluntary legal representation shall be motivated and encouraged. At least the service they provide shall be considered as fulfilling their pro bono obligation. Legal aid service providers must issue certificate for the case they handle to the Ministry of justice.
- There should be standard guideline to determine eligibility criteria of beneficiaries. To ensure the indigent and marginalized women are the primary beneficiaries of the service.
- An independent organ monitoring and evaluating the quality of legal aid service delivery is needed in the country. The organ may be organized from members of the government, legal profession, the Bar, civil society organizations, disadvantaged groups and legal aid beneficiaries.
- Coordination among legal aid service providers is essential in order to share experiences, avoid duplication of efforts and fragmentation of activities. It is also important to increase referral systems to service providers specializing in specific areas of legal aid.
- Data's should be properly gathered in order to improve documentation and use of information for further research
- Encourage the establishment of one stop shops legal aid centers which can be established in hospitals, clinics and police office so that victims of violence who initially contact the police or went to hospitals for medication could get legal advice,

counseling and court preparation immediately before necessary evidence is lost. This will reduce re -victimization and increase the accessibility of the service.

- The government shall make conducive environment for legal aid service providers and encourage civil society organizations engaged in legal aid service delivery. There should be also separate budget for legal aid in order to provide sustainable service.
- The writer also recommends further research to be undertaken on the importance of legal aid for women prisoners and other vulnerable groups such as children, person with disabilities and others. Also its role in legal empowerment of women.

## Reference

### Books, Articles and Journals

- Anderson, Michael R, "Access to justice and legal process: Making legal Institutions Responsive to Poor People in LDS", *Institute for Development Studies*, Sussex: 2003
- Arkin, Kelly D. and Dorean M. Koenig (eds.), "Women and International Human Rights Law", Vol.1, *Transitional Publishers*, Inc. 2000
- Brewin.A & Govender. K, "Rights-Based Legal Aid: Rebuilding BC's Broken System", *Canadian Center for Policy Alternatives*, November 2010
- Burgenthal, Thomas, "International Human Rights in a Nutshell", (2<sup>nd</sup> ed., *St Paul minn, West Publishing Company*, 1995)
- Cantrell, D. & D. Rhode, "Access to Justice: The Obligation of Legal Aid Lawyers to Champion Practice by Non lawyers." *Fordham Law Review*, 2004
- Cappelletti. M, "Access to Justice as a Theoretical Approach to Law and a Practical Program for Reform", *South African Law Journal*, 1992
- Cappelletti.M and Garth. B, "Access to Justice: The Newest Wave in the World Wide Movement to Make Rights Effective", *Buffalo Law Review*, Vol.27, 1977-78
- Commission on Legal Empowerment of the Poor, "Access to Justice": Background issue paper *on Legal Empowerment of the Poor*, Addis Ababa, 2006
- Commission on the Legal Empowerment of the poor, "Making the Law Work for Everyone", Report of the Commission on the Legal Empowerment of the poor and UNDP, Volume I& II, UN Plaza, New York, 2008
- Cook, Rebecca G. (eds.) "Human Rights of Women: International and National Perspective" *University of Pennsylvania Press*, Philadelphia, 1994

Dessalegn. R, Akalewold.B and Yoseph.E, “CSOs/NGOs in Ethiopia Partners in Development and Good Governance”: A Report Prepared for the Ad Hoc CSO/NGO Task Force Addis Ababa, 2008

Elana Dallas (ed.), “Progress of the World’s Women in Pursuit of Justice”, United Nations Entity for Gender Equality and the Empowerment of Women (UNIFEM) 2011-2012, <http://progress.unwomen.org>

Fleming. D, “Legal aid and human rights”: Paper presented to the International Legal Aid Group Conference, Antwerp, 2007

Golub.S and McClymnt .M (Eds.), “Many Roads to Justice”: The Law-Related Work of Ford Foundation Grantees around the World, *The Ford Foundation*, United States of America,2000

Golub.S, “Forging the Future: Engaging Law Students and Young Lawyers in Public Service, Human Rights, and Poverty Alleviation”, *An Open Society Justice Initiative Issues Paper*,2004

Habtamu E, “The need for State Sponsored Legal Aid in Civil Cases”, Addis Ababa University, 2006, unpublished.

Hardy .G, “Public Legal Education and Access to Justice”, *International Legal Practitioner*, 1997

Hodges. C, “Europeanization of Civil Justice”: Trends and Issues, *Civil Justice Quarterly*, 2007

Human Rights Fact Sheet, “Human Rights Defenders”: Protecting the Right to Defend Human Rights, Fact Sheet No. 29

- Iya Philip F, "Fighting African's Poverty and Ignorance through Clinical Legal Education": *Shared Experiences with New Initiatives for the 21<sup>st</sup> Century*. International Journal of Clinical Legal Education, 2000
- Manning, Daniel S., "Development of a Civil Legal Aid System": *Issues for Consideration*, 2005
- McQuoid-Mason, D. "The Delivery of Civil Legal Aid Services in South Africa". *Fordham International Law Journal*, 2000
- Namoradze. Z., "Access to Justice: Synopsis of introductory notes", *Human Dimension Implementation Meeting*, Warsaw, 2006
- Onbi Sunday O, "The Challenges to Legal Studies in an Era of Transformation", *the South African Law Journal*, 1998
- Open Society Institute, Justice Initiatives: "Legal Aid Reform and Access to Justice", February, 2004
- Penal Reform in Africa: "Index of Good Practices in Providing Legal Aid Services in the Criminal Justice System", *Version 2*, February 2006.
- Penal Reform International, "Access to justice in sub - Saharan Africa": the role of traditional and informal justice systems, 2000
- Penal Reform International and the Bluhm Legal Clinics of the Northwestern University School of Law, "Access to Justice in Africa and Beyond" *Making the Rule of Law a Reality*, Chicago, Illinois, 2007.

- Public Interest Law Institute, “Making Legal Aid a Reality”, *A Resource Book for Policy Makers and Civil Society*, Hungary, 2009
- R Stucky “Teaching with purpose: Defining and Achieving Desired Outcomes in Clinical law Courses”, (2007)
- Richard J. Wilson, “The Right to Legal Assistance in Civil and Criminal Cases in International Human Rights Law”, *In International Legal Aid & Defender System Development Manual*, Warren. C. S (Ed.), 2010
- Sackville, R, “Some Thoughts on Access to Justice”, *New Zealand Journal of Public International Law*, (2 N.Z.J.Pub. & Int’l L.85), 2004
- Skinnider.E, “The Responsibility of the states to provide legal aid”: *The international center for criminal law reform and criminal justice policy*, paper prepared for the legal aid conference Beijing, China, 1999
- Steiner, Henry J. Alston, Philip (eds), “International Human Rights in Context: Law, Politics, Morals,” 2<sup>nd</sup>ed, *Oxford University Press*, 2000
- Golub. S, “ Legal empowerment, A rights-based strategy for improving governance and alleviating poverty”, 2000
- The World Bank, Ethiopia Legal and Judicial Sector Assessment, 2004
- Thelle. H & Dalton.P, (Eds.) “A Human Right to Legal Aid” *The Danish Institute for Human rights*, Denmark, 2010
- UNDP, “Access to Justice for Disadvantaged Groups”: *The Case of Women in Iran, Thailand*, 2007
- UNDP and OHCHR, “Lessons Learned From Rights Based Approaches in the Asia-Pacific Region: Documentation of Case Studies”, Banerjee Upala. D (Ed.), 2005

UNDP, “Access to Justice, Practice Note”, New York: *Oxford University Press*, 2004

UNDP, UNICEF and UNODC, “Child Friendly Legal Aid in Africa”, 2011

UNICEF and UNDP, Outcome Report: *Practitioners Meeting on Legal Aid Programming in Africa*, Dakar, 2010

United Nations Development Program (UNDP), “Programming for Justice: *Access for All; a Human Rights-Based Approach to Access to Justice*”, 2005

UNODC, “Access to legal aid in criminal justice systems in Africa”, *Survey Report*, United Nations, 2011

UNODC, “Hand Book on Improving Access to Legal Aid in Africa”, *Criminal Justice Handbook Series*, New York, 2011

Vibhute. K. I, “Comprehensive justice system in Ethiopia”: *The baseline study report. A review*, Volume 6, No.6, Addis Ababa University, Addis Ababa, 2009

Wölte. S, “The International Human Rights of Women”: *An overview of the most significant international conventions and the instruments for their implementation*, Eschborn, 2003

Worku L, “The State of Legal Aid and Public Defense Scheme in Ethiopia”, paper presented *at the national Seminar on Legal Aid and Public Defense*, APAP, 1996, unpublished

Zenaye T, “Free Legal Aid Service in Ethiopia: Practice and Challenges”, paper submitted to *the Ethiopian Human Rights Commission*, 2011, unpublished

## **International and Regional Human Rights Norms and Standards**

Universal Declaration of Human Rights, adopted by the General Assembly of the UN in its resolution 217A (III) of December 10, 1948.

International Convention on Civil and Political Rights adopted by the General Assembly of the UN in its resolution 2200 A (XXI) of 16 December, 1966.

International Convention on Economic, Social and Cultural Rights, adopted by the General Assembly of UN in its resolution 2200A (XXI) of 16 December 1966.

Convention on the Elimination of All Forms of Discrimination against Women, adopted by the UN General Assembly on 18 December 1979 (resolution 34/180) and entered into force on 3 September 1981

OAU, “African Charter on Human and Peoples’ Rights,” adopted, June 27, 1981, entered in to force, 21 October 1986, OAU. DOC , CAB/LEG/67/3 rev.5, 21I.L.M.58, 1981.

OAU (2003), Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa

Dakar Declaration: Resolution on the right to a Fair Trial and Legal Assistance in Africa, adopted at the 26<sup>th</sup> Ordinary Session, African Commission on Human and Peoples’ Rights, November 1-15, 1999, General DOC/OS (XXVI) INF

Principles and Guidelines on the right to a Fair Trial and Legal Assistance in Africa, Doc/OS (XXX)247 (2001).

The Kyiv Declaration on the Right to Legal Aid, Conference on the Protection and Promotion of Human Rights through Provision of Legal Services Best Practices from Africa, Asia and Eastern Europe Kyiv, Ukraine, 27-30 March 2007

Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, 2004 (available at: <http://www.law.northwestern.edu/legalclinic/lilongweLegalAidDeclaration.pdf>)

Human Rights Committee, General comment No. 18: Non-discrimination, Thirty-seventh session, 1989

United Nations General Assembly Resolution, 2449(XXIII) of December, 19, 1968.

### **Domestic Legislations**

FDRE, “Proclamation No.1/1995: A Proclamation to Pronounce the Coming into Effect of the Constitution of the Federal Democratic Republic of Ethiopia,” *Federal Negarit Gazette*, 1<sup>st</sup> Year, No.1, Addis Ababa, 21<sup>st</sup> of August, 1995

Criminal Procedure Code of FDRE, Proclamation No. 414//2004, Addis Ababa Ethiopia, 2004

Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 691/2010

Federal Court's Advocates Licensing and Registration Proclamation No.199/2000

Federal Court's Advocates Code of Conduct Regulation No. 59/99

Charities and Societies Proclamation No. 621/2009

Federal Courts Proclamation No 25/1996

Higher Education Proclamation, proclamation No.351/2003

Ethiopian human rights commission establishment Proclamation No. 210/2000

FDRE, *Growth and Transformation Plan, 2010/11-14/15*, Addis Ababa: Ministry of Finance and Economic Development, 2010.

## **Internet Links**

<http://www.pili.org/en/content/view/155/26/> Accessed on February 7, 2012

<http://www.access-to-justice.org> Accessed on February 11, 2012

<http://www.undp.org/governance/justice.htm> Accessed on February 16, 2012

<http://www.access-to-justice.org> Accessed on February 16, 2012

<http://www.justiceinitiative.org> Accessed on February 8, 2012

<http://www.nlada.org> Accessed on January 29, 2012

<http://www.unifem.org> Accessed on February 11, 2012

<http://www.un.org/womenwatch> Accessed on February 16, 2012

<http://progress.unwomen.org> Accessed on February 8, 2012

# Appendix

Addis Ababa University  
School of Graduate Studies  
Center for Human Rights

## Interview Checklist (For women Beneficiaries)

### Preamble,

First of all, I would like to thank for your willingness to respond my interview. I am conducting a research, for the requirement of M.A in Human Rights, entitled “Access to Legal Aid for Women in Ethiopia: The Case of Ethiopian Women Lawyers Association and Hawassa University Legal aid center.” I am going to ask you questions relating to the research topic. All the information provided will be treated as confidential and will only be used for the intended purpose.

### Back Ground Information

A. Age \_\_\_\_\_

B. Level of Education \_\_\_\_\_

C. Means of income \_\_\_\_\_

D. Number of Children's \_\_\_\_\_

1. What was your problem for which you sought legal assistance?
2. Have you ever applied for legal aid before? If no, why not?
3. Where did you go to get help?
4. What type of legal assistance do you receive?
5. Did you get legal representation? If yes in which court?
6. How long did it take your case to be solved?
7. How many times did you access the service?
8. How were you able to access information about legal aid?
9. How do you consider the accessibility of the legal aid centers to the majority of women?
10. Have you encountered any problem while receiving the service?
11. What was the cause of the problem?

12. How do you see the service provided at the center?
13. Does the service cost you anything?
14. What benefit did you get from the service?
15. Did you get solution for your problem?

### **Interview Checklist (For service providers)**

A. EWLA

B. Hawassa university clinical legal aid

1. What type of legal service do you provide?
2. Who are entitled to get the service?
3. How are women beneficiaries selected to get the service?
4. Is there any means test?
5. Are clients expected to contribute anything in return for the service?
6. Does the organization keep record of legal aid beneficiaries?
7. What measures are taken if women are not capable of making self representation?
8. What is the ground for providing clients with legal representation?
9. Is there any special attention given for women beneficiaries with special needs?
10. Who are entitled to provide the service? Does the organization use non lawyers?
11. How are paralegals selected to provide the service?
12. What measures are taken to provide the service on timely basis?
13. What efforts are made to increase the quality of the service?
14. What are the areas in which the service is provided?
15. Does the organization make close contacts with beneficiaries? Is there any follow up mechanism with women beneficiaries?
16. What are the main challenges in providing the service?
17. What mechanism are use to overcome these challenges?

## **Interview check list for Key Informants**

A. Ministry of justice

B. Ethiopian Lawyers Association

C. Public Defenders Office

How is legal aid service provided currently?

What shall be done to increase women access to legal aid?

What is your view about the importance of legal aid in promoting rights of women?

Who shall be in charge of the service provision?

Is there any responsible organ in monitoring and evaluating legal aid service in the country?

What shall be done to make legal aid services accessible for women?

What are the challenges in making legal service accessible for women and the majority in Ethiopia?

## **FGD Guide**

- What do you think make women unable to get legal services
- Where do women mostly go to get legal assistance
- Why do women with legal problems did not apply for legal aid
- What are the problems women encounter for not getting legal aid
- Types of issues women mostly need for legal assistance

## List of Persons Interviewed

Name	Position	Date of Interview
W/ro Zenaye Tadesse	Director of the Ethiopian Women lawyers Association	February 5, 2012
Ato Ad3masu Alemayehu	Hawassa University Clinical Legal Aid director	March 3, 2012
W/ro Hibret Abahoy	women, children and youth coordination office head of the Ministry of Justice	February 21, 2012
Ato Jembere Geneme	Former director at the, Advocates licensing and Administration directorate of the Ministry of Justice	February 23, 2012
Ato Andualem Aweke	Center Coordinator at Hawassa University Clinical Legal Aid	March 7, 2012
Ato Milion Bogale	Southern Ethiopia young Lawyers Association vice president, Hawassa	March 7, 2012
Mahlet Tesfaye	Christian Lawyers Association, Legal aid officer	April 11, 2012
Ato Yemane G/Mariam	Legal aid coordinator of the Ethiopian Bar Association, located at Lideta High Court	March 18, 2012
Berhan Mekuria	Legal aid officer at EWLA	February 7 , 2012
Ato Seid Mohammed	Judge at the Federal High Court, Addis Ababa	February 13 , 2012
w/ro Alemnesh Teklu	legal advisor of the Ethiopian Bar (Lawyers) Association, legal aid center located at the premise of Lideta High Court	March 18, 2012
Ato Abrham Takele	Federal public defender's office director, Addis Ababa	February 10 , 2012
Ato Yusuf Mohamed	Federal high court Judge, Addis Ababa	February 13 , 2012
Abebe Gebreab,	paralegal at Hawassa University clinical legal aid located in SNNPR supreme court	March 9, 2012
Ato Shimeles Ali	legal officer at EWLA	February 7 , 2012
Ato Yidnekachew Ayele	Addis Ababa University Institute of Human Rights, Legal Literacy, Rights Advice and Information Project, Hawassa branch coordinator	March 11, 2012
w/ro Genet Shume	Program coordinator at EWLA	February 7 , 2012
Tigist Mulugeta	Paralegal at the outreach clinical legal aid Center of Hawassa University at Yirgalem town.	March 13, 2012
Ato Yonas Mulugeta	Leal Aid coordinator , the Ethiopian Human Rights Commission	January, 25, 2012
Dr Menberetsehay Tadesse	Justice and Legal system Research Institute, Director, Addis Ababa	February 17 , 2012
Ato Getnet Mitiku	Socio Legal Researcher	January, 27, 2012

## **Declaration**

I, Yodit Zenebe declare that this work is original. It has never been presented to any other university or institution. In the instances where the works of other writers have been used, references have been duly given. In this respect, I declare this work to be authentically mine.

I present this study in partial fulfillments for the award of the Masters of Arts in Human Rights.

Signature \_\_\_\_\_

Date \_\_\_\_\_