



**INDIGENT'S ACCESS TO EFFECTIVE REPRESENTATION
IN CRIMINAL MATTERS
CASE STUDY IN ADAMA**

A Thesis Submitted to Addis Ababa University, School of Graduate
Studies in Partial Fulfilment of the Requirement of the Degree of
Masters in Human Rights

By: Milkii Mekuria

Advisor: Abduletif Kedir

School of Law and Governance Studies, Center for Human Rights,
Addis Ababa University

June, 2014.

Approved by Board of Examiners

Advisor: Abduletif Kediri

Signature/Date

Examiners:

1. Dr. Yetayehu Alemayehu

Signature/Date

2. Gabramlak

Signature/Date

ACKNOWLEDGMENT

Most of all, I thank GOD.

I am also indebted to the Federal Justice Organ Professionals' Training Center for funding my expenses to attend the MA program.

I am also grateful to Oromia Justice Organ Professionals' Training and Legal Research Institute (my office) for letting me join the program.

Special thanks go to my advisor, Abduletif Kedir, for his support, kindness and guidance through this thesis work.

My gratitude also goes to all respondents and other individuals who contributed to the study.

I would also like to extend my appreciation to all my classmates for their companionship in my stay in the University.

LIST OF TABLES

Table 1: The category and the number of research participants.....	33
Table 2: The qualification and experiences required of the defence lawyers.....	43
Table 3: Workloads of the defence lawyers' office	46
Table 4: Statistical data on the performance of the public defenders	48

ACRONYMS

- ❖ CERD - Convention on the Elimination of All Forms of Racial Discrimination
- ❖ CRC - Convention on the Rights of the Child
- ❖ CRPD - Convention on the Rights of Persons with Disabilities
- ❖ FDRE - Federal Democratic Republic of Ethiopia
- ❖ PP – Public Prosecutors
- ❖ UDHR – Universal Declaration on Human Rights
- ❖ UN – United Nations

ABSTRACT

The ICCPR has branded *legal assistance* among the minimum guarantees to which everyone is entitled, in full equality, in the determination of any criminal charge. The convention declares that legal assistance should be provided to an accused where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it. This state duty is also stipulated in several binding and non-binding human rights instruments adopted at regional and international levels. As well, at domestic level the right is recognized under the federal and regional constitutions and subsidiary laws. With respect to the practice, however, this study found that the indigent defence in Adama is in crisis. As it is not built on standards and principles, the indigent defence service failed short of compliance to minimum expectations. There is problem of getting access to the defence service at various stages. Those indigent defendants who get the access are also often represented by lawyers who are inexpert, unenthusiastic and eventful of extra-jobs. Consequently, the rights and the liberties of the poor defendants undergo countless prejudice at all stages of criminal proceedings.

CONTENTS

CHAPTER ONE	1
INTRODUCTION	1
1.1. Background of the Study	1
1.2. Statement of the Problem.....	2
1.3. Research Objectives	4
1.4. Research Questions	5
1.5. Scope of the study	5
1.6. Methodology	6
1.7. Significance of the study.....	7
CHAPTER TWO	8
THE RIGHT TO LEGAL REPRESENTATION OF INDIGENT DEFENDANTS: INTERNATIONAL AND DOMESTIC NORMS.....	8
2.1. The Notion of the Right to State-funded Legal Representation	8
2.1.1. Who is an Indigent defendant?	9
2.1.2. Who can be appointed as Defender for an Indigent?.....	10
2.1.3. When Does the Interest of Justice Require the Accused’s Representation?	12
2.1.4. Stages of Case in which Right to Counsel Applies	13
2.2. Human Rights Principles and Norms Underlying the Right to Legal Representation	14
2.2.1. The right to a fair trial.....	14
2.2.2. The Principles of Fair Hearing and Equal Treatment by the Courts.....	15
2.2.3. The Principle of Equal Access to the Courts and to Justice	15
2.2.4. The Principle of Due Process of Law	16
2.2.5. The Principle of the Presumption of Innocence.....	16
2.3. International and Regional Treaties dealing with Legal Assistance in Criminal Matters .	16
2.3.1. The UDHR and International treaties	17
2.3.2. United Nations Declarations and Statements of Principles	19
2.3.3. Regional Treaties	21
2.4. Essentials of Effective Representation.....	22
2.4.1. Administration of Defence Services	22
2.4.2. Lawyer-Client Relationship	24
2.4.3. Counsel’s duties to provide quality and effective representation	25
2.5. The Right to Legal Representation under Domestic Laws	26
a. The Right to Legal Representation and the Federal Laws	26
b. The Right to Legal Representation under Oromia Laws	28
CHAPTER THREE	31
AN EMPIRICAL ANALYSIS OF INDIGENT ACCUSED’S ACCESS TO EFFECTIVE	

LEGAL REPRESENTATION IN ADAMA	31
<i>Introduction</i>	31
3.1. Issues Inherent to the Administration of Indigent Defence Services	32
3.1.1. Accessibility of the Indigent Defence Service	33
3.1.2. Client Eligibility System.....	35
3.1.3. Availability of the Indigent Defence Service at Various stages	38
3.1.4. Accountability and Independence of the Indigent Defence Services	40
3.2. Lawyer-Client Relationship	46
3.3. Effectiveness of the Representations of Indigent Defense Lawyers	47
CHAPTER FOUR.....	52
CONCLUSIONS AND RECOMMENDATIONS	52

CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

Without a doubt, the right to legal representation is the most comprehensive right of all the rights that an accused person has; as it visibly affects an accused's ability to assert other rights he may have¹. The right gives an accused the opportunity to contact a lawyer to get informed of his/her legal rights and respond to the accusations in the most beneficial manner to him/her. In view of that, the right to legal representation, in our time, is renowned as necessity in criminal justice system. Denying indigent accused the same access to a defence as that enjoyed by an affluent person simply because he or she cannot afford it, therefore, restricts the enjoyment of the accused's right to a fair trial.²

Consequently, various international and regional legal documents have come up with provisions which help to guarantee the right to legal representation. The instruments affirmed that competent authorities are obliged to appoint legal representation for the accused in case where he/she cannot afford to hire one. Most of these tools have guaranteed the right in all procedural stages, including pre-trial, trial and appeal. These treaties also compel courts to provide the accused and his/her counsel with a reasonable period of time and essential conditions to prepare their defence. These major aspects are deemed as general standards guaranteeing the right to legal representation in international law³. In accordance with the general standards, some jurisdictions have entitled indigent persons with the appointment of counsel while others, additionally, provide indigents with funds for other necessary expenses of representation such as experts and investigators.⁴

¹ United States v. Cronin, 466 U.S. 648, 654 (1984). Available at: <https://www.schr.org/counsel>. Accessed on 10/01/2014.

² Jennifer L. Huber, Legal Representation for Indigent Criminal Defendants in South Africa: Possibilities under The 1994 Constitution, Duke Journal of Comparative & International Law, Vol. 5: 428

³ Luong T Quynh, Guarantee of the Accused Person's Right to Defense Counsel – A Comparative Study of Vietnamese, German and American Criminal Procedure Laws Field of Study, 2011: 40-41.

⁴<http://www.sog.unc.edu/sites/www.sog.unc.edu/files/Rubin%20Right%20to%20Counsel%20for%20DC%20Judges%20Summer%202013.pdf>.

When we look at domestic laws, article 20 (5) of the Constitution of Federal Democratic Republic of Ethiopia states that ‘an indigent individual who is accused of a crime is entitled to a state funded legal representation when the interest of justice requires so. From the look of article 9/4/ of the constitution also, one can make out that our courts should conform to the general standards guaranteeing the right to legal representation as provided in the international human rights instruments which Ethiopia has ratified. The Constitutions of the Regional States and other subsidiary federal and regional laws similarly require courts to provide accused persons who qualify with legal representation free of charge by establishing the office of public defender. A proclamation to Provide for the Re-establishment of Oromia National Regional State Courts, has further stipulated that ‘courts shall assign a counsel to an individual who is accused of a crime punishable with rigorous imprisonment not less than five years’.⁵ Some condemn this stipulation as unconstitutional because it regards as miscarriage of justice would result only in case of crimes punishable with rigorous imprisonment. While others consider it as good start of incorporation of the right in subsidiary legislations.

Regardless of these international, regional and domestic norms, studies claim that the right to legal representation is the most celebrated right theoretically while it is observed so little in practice⁶. In Ethiopia, we do not have a justice system, and more particularly a legal aid system, of which we can be proud. Therefore, this study was conducted with intent to carry out a close look into the implementation of the right to legal counsel and the problems facing unrepresented accused persons in our courts and particularly of Adama town.

1.2. Statement of the Problem

These days, the legal system in every country is complex and contains so many procedural traps. In such complicated legal systems a lay person accused of a crime can no more navigate it alone without assistance of legal representation. Without relying upon lawyers, it would be impossible for a lay person accused of a crime to experience the technical proficiency required of him to protect his rights which include; test the prosecution’s case against him through cross-examination of witnesses and other means; systematically investigate the facts; produce evidence

⁵ The Oromia National Regional State Proclamation to Provide for the Re-establishment of Oromia National Regional State Courts, proclamation 141/2008, Article 17 (2).

⁶ Bright Gideon’s reality: after four decades, where are we, Criminal Justice, 2003: 5 (Quoted in Richard G. Singer, Criminal procedure, 2nd ed, 2008: 241).

that can produce reasonable doubt upon guilt; and, for those found guilty, present evidence to be considered in mitigation with regard to punishment⁷.

So, the right to be heard would be of little reward if it did not realize the right to be heard by legal representation. Even the intelligent and educated layman charged with crimes may be convicted upon incompetent or irrelevant evidence if left without the aid of legal representation. Therefore, every accused that lacks both the skill and knowledge adequately to prepare his defence requires the guiding hand of legal representation at every step in the proceedings against him. The evil here is, in short, an innocent defendant may face the danger of conviction merely because he does not know how to establish his innocence.⁸ Beyond the violation of the defendants' right to get justice, lack of access to legal representation may also result in denial of the right to equality. There can be no equal access to justice where the kind of trial a person gets depends on the amount of money he or she has. So, unless effective right to legal representation is guaranteed, the kind of justice people get depends very much upon how much money they have.

The worse thing is that it is the indigent defendant's liberty that is jeopardized due to the inequality of arms and the imbalances that arise from lack of access to legal counsel⁹. Understanding this problem, international law has provided that indigents should obtain free legal representations by government at all critical stages of the criminal justice process.

A variety of studies of the system indicate that the lack of resources, high workloads, inadequate training, and tremendous pressure to process cases generate a constant stress on public defenders which leads to an increasing sense of scepticism about the job. This causes an enormous human rights violation that occur to the indigent defendants who are convicted and sent to jail without the benefit of representation and loss their liberty which may be impossible to undo, once denied¹⁰. There are also studies which indicate that "*Ethiopia reports negligible legal aid service*

⁷ Mark Twain, The law is a system that protects everybody who can afford to hire a good lawyer. Availbale at: <https://www.schr.org/counsel>. Accessed on 01/01/2014.

⁸ G.S. Prentzas, Gideon v. Wainwright - the right to Free Legal Counsel, 2007: 36.

⁹ Ibid.

¹⁰ Charles J. Ogletree, Jr., An Essay on the New Public Defender for The 21st Century Law and Contemporary Problems, Vol. 58: No. 1: 85.

in many criminal cases and understaffing in the office of the defence counsel”¹¹. As there is no standard of service which a legal representation must furnish, there are criticisms that the counsels appointed to indigents accomplish their defence obligation hastily. As well, there are allegations that the accused and his/her counsel are not provided with a reasonable period of time to prepare their defence.

Altogether, the problems related to the implementation of right to legal representation do increase the poor people’s sense of social exclusion and powerlessness. So, it is indispensable to carry out a study which exhaustively deals and centres on identifying the forms and extents of these problems. The plan to conduct this study was set with this state of mind.

1.3. Research Objectives

The general objective of this study is to identify the problems which burdened an effective implementation of the right to legal representation and discover the human rights violations which the indigent defendants face due to inadequate or absence of representation. The study also has the following specific objectives:

- ❖ Evaluating the effectiveness of (state) implementing institutions and the appointed counsels in carrying out their obligations to execute the right.
- ❖ Assessing whether the right to legal representation is guaranteed at various procedural stages of pre-trial, trial and appeal.
- ❖ Identifying whether the practice in our country meets up the laws guaranteeing the right to legal representation.
- ❖ Identifying the significant and recurrent problems that materialize to the right of of indigent defendants due to the absence or ineffectiveness of representation.
- ❖ Assessing the mechanisms which help to improve the accessibility and capacity of state funded legal aid system.

¹¹ Access to Legal Aid in Criminal Justice Systems in Africa Survey Report: 9. Available at: https://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf

- ❖ Finding out the measures that should be employed to ensure the effectiveness of the indigent defence system.

1.4. Research Questions

The research attempts to answer the following research questions:

1. What is the content of the right to legal representation? To which stages of criminal proceedings does the right extend?
2. What is the procedure and criteria used to determine indigence in courts for the purpose of enjoying access to the right to publicly funded representation in criminal matters? How do our courts set down the meaning of the expression ‘when miscarriage of justice would result’?
3. How effective are the publicly funded legal counsels in delivering competent representation?
4. What significant and recurrent problems do the inadequately represented or non-represented indigents face at different levels of proceedings?
5. What measures do/should courts of law employ to redress the prejudice that happen to the indigent defendants due to their being unrepresented or ineffectively represented?

1.5. Scope of the study

There are a number of special situations related to the provision of assigned legal assistance, including juvenile cases, mentally ill persons’ cases, military courts, and etc. This study, however, draws attention to the right to legal representation in the ordinary criminal proceedings. Even if there is a wide range of forms of representation carried out by paralegals, NGOs, private lawyers who render pro-bono services and etc, the focus of this study is the indigent legal representation service provided by the office of the public defenders.

1.6. Methodology

This study has mainly employed qualitative methodology. This method is engaged to scrutinize the experiences of those indigent defendants and justice organ professionals involved in the criminal justice system. The major tool employed for collecting qualitative data from indigents and pertinent governmental bodies include in-depth interview which was guided by unstructured questions. The data that is collected using this method shows how well the service has been received by clients. The data from interview is also consumed to understand why and how the provision of state funded defence service does or does not suffer from worthlessness in ensuring the rights of indigents. This tool also help to identify the procedure and criteria used in the court to determine indigence and the way the miscarriage of justice interpreted, the significant and recurrent errors committed by non-represented indigents at different levels of proceedings. Case file and court room observations show how courts work towards avoiding the imbalances that arise from an unrepresented accused appearing before courts.

The study has also employed quantitative methodology to demonstrate the perception of the informants on the effectiveness of the indigent defence service in delivering competent representation. The quantitative study is addressed through the dissemination of questionnaire to defendants and justice organ professionals which include judges, public prosecutors, prison officers and police. The defendants who filled the questionnaires were randomly selected while other participants from justice organs, to fill the questionnaires, were purposively selected from those who have better experience in area related to the subject matter of this study.

Furthermore, the study has used both primary and secondary sources. Books, journals, and other relevant publications were consulted. The study has also assessed the contents of some international human rights instruments, non-binding UN declarations and statements of principles, regional treaties and domestic legislations pertaining to the right to legal representation. Analysis of these tools will help to find out the content of the right to legal representation and the stages of criminal proceedings to which the right should extend. This method will also help to show the various normative jurisprudences and experiences on the procedures and criteria that are used to determine indigence and interpret miscarriage of justice standard. In addition, information was also taken from important documents of the court such as

the actions plans and annual or quarterly reports. Statistical data in the court is used, when it is found important, to exhibit the influences of the public defenders' representations at various stages.

1.7. Significance of the study

This study provides a closer picture of the access that indigent defendants have to the state funded legal representation in the particular case of Adama town. Unmistakably, the situation in Adama is not representative of the entire country. However, researching the system in Adama can reveal the practical problems that are likely prevalent across the country. This will enable practitioners and policymakers to have accurate and contemporary data to inform the development of legal aid strategies.

Moreover, as the analyses in this work also involved a theoretical discussion, the work will also contribute towards understanding the philosophy and principles of the indigent defence system. As there is also no considerable research on the area, this work will contribute knowledge to the existing discourse on the issue. The work will, therefore, help to narrow the knowledge gap that exists in the area. It will help the legal professionals to have acquaintance to this particular career. It will also help to attract the concentration of human rights activists to this mistreated subject matter. It also serves as a clue for further research.

CHAPTER TWO

THE RIGHT TO LEGAL REPRESENTATION OF INDIGENT DEFENDANTS: INTERNATIONAL AND DOMESTIC NORMS

Introduction

Some scholars consider the right to legal representation as the cornerstone for all other human rights of accused persons.¹² The right to legal representation is of such fundamental importance that all other rights which are relevant to the due conduct of a fair trial may be worthless if this right is not respected. Legal representation is an essential starting point for the effective assertion of human rights. The right plays a vital role to ensure the right to access to justice which is considered as an essential feature of any democratic society. This has necessitated states to assume the responsibility for financing these legal aid systems¹³.

The right is of great essence as it, for example, is deemed necessary to insure the fundamental human rights of life and liberty¹⁴.” This is because, legal representation in criminal matters ensures that the liberty of an individual is not jeopardised by the state due to the individual’s inability to pay for legal services¹⁵. This is why various international and regional legal documents have incorporated provisions which help to guarantee the right to legal representation. Be that as it may, the right has been demonstrated to be the one that is often violated.¹⁶

2.1. The Notion of the Right to State-funded Legal Representation

The right to appointed counsel is perceived as the right which every defendant who is unable to obtain counsel is entitled to have counsel appointed to represent him at every stage of the proceeding from initial appearance through appeal, unless the defendant waives this right. In view of this meaning, the right to legal representation can be described as the legal responsibility

¹² Richard J. Wilson, Principles, Sources, and Remedies for Violation of the Right to Legal Assistance in International Human Rights Law (incorporated in Christie S. Warren (editor in chief), International Legal Aid & Defender System Development Manual, 2010: 17.

¹³ Eileen Skinnider, The Responsibility of States to Provide Legal Aid, Paper prepared for the Legal Aid Conference Beijing, China, 1999: 5.

¹⁴ *Supra note 4*: 3.

¹⁵ *Ibid*: 4.

¹⁶ *Ibid*: 17.

for the government to provide indigent defendants at all phases of criminal action with legal representation¹⁷.

The right to legal representation should also include the state's duty of paying private practitioners to defend the poor if it could not create a legal aid office and employ lawyers itself.¹⁸ This understanding of the right recognizes that the reimbursement of legal expenses of the defendant satisfies the state's duty of providing legal representation. This view is, however, not explicitly specified in various international, regional and domestic instruments.

In recent times, the right to counsel is understood to mean that the accused poor should have access to competent counsel who has sufficient resources available to enable them provide effective representation¹⁹. This view is more protective in that it guarantees the defendants not a mere representation but to get hold of a successful representation.

To understand the conceptual underpinning of the right to legal representation, we have to be acquainted with the different constituents of the right such as: who can be appointed as defender for an indigent, who an indigent is, when miscarriage of justice does occur, which stages of criminal proceeding require representation and etc. The section which follows is devoted to elucidate these issues.

2.1.1. Who is an Indigent defendant?

None of the international or regional treaties ratified by Ethiopia has defined indigence. However, there are stances, by different writers, to give definition to indigence. *Roy* describes an indigent in the following words ‘*an indigent defendant can be considered as the one who lack the necessary funds, on a practical basis, to retain competent counsel*’. He further enunciates that while assessing indigence, it is important to consider the defendant's complete financial situation by balancing assets against liabilities and income against basic living expense²⁰. *Gerrard* similarly assert that an indigent person is a person who does not have sufficient assets,

¹⁷ Luong T Quynh, *Cited above at note 3*: 19.

¹⁸ Lucas A. Poowe, quoted in Kate Levine, *If You Cannot Afford a Lawyer: Assessing the Constitutionality of Massachusetts's Reimbursement Statute*, p1.

Available at; http://www.law.harvard.edu/students/orgs/crcl/vol42_1/levine.pdf

¹⁹ Wilson, *Cited above at note 12*: 85.

²⁰ Quoted in Lloyd Duhaime, *Indigent Legal Definition*, <http://www.duhaime.org/LloydDuhaime.aspx>. Accessed; May 1, 2014.

credit, or other means to provide payment of a lawyer and all other necessary expenses of representation without depriving or prejudicing his financial ability to provide economic necessities for himself or his family²¹. This indicates that a defendant should be considered as indigent if he or she is unable to pay lawyer fees without prejudicing, in a meaningful way, his or her financial ability to provide the necessities of life, such as food, clothing, shelter, and medical care for himself or herself or his or her legal dependents.

The indigence assessment may be conducted by different bodies. It may be conducted by a judge, administration or other staff of court. It may also be conducted by a third party. The latter approach can help to avoid conflict of interest and fairness problems as it is conducted by neutral third parties without potential conflict to the legal proceedings or the financial considerations of the state. The burden of showing indigence may be required from the party seeking indigent defence service or the defendants may be required only to complete the indigence form and to sign a sworn statement that the information they provided is correct or the applicant may be required to bring a current bank statement and a copy of the prior year's income tax return²².

2.1.2. Who can be appointed as Defender for an Indigent?

The term *legal representation* is intended to designate representation only by a lawyer, while the term *legal assistance* can be given a broader meaning to embrace representation by a lawyer or other person, without cost or at substantially reduced cost, to an individual in need of such representation²³.

There are three primary models for providing representation to indigent defendants: assigned counsel, contract, and public defender programs. The assigned counsel model involves the assignment of indigent criminal cases to private lawyers on either a *systematic (coordinated)* or an *ad hoc* basis. The *ad hoc* assigned counsel program is made by the court without benefit of a formal list or rotation method and without specific qualification criteria for lawyers. The *ad hoc* program assigned counsel lawyers are designated merely because they happen to be present in court at the time the assignment is made. The lawyers assigned on *ad hoc* basis are either paid on

²¹Ibid.

²²Ibid.

²³Wilson, *Cited above at note 12*, 2010: 17.

an hourly basis or provided with a flat fee per case²⁴. In the coordinated model, lawyers are usually assigned on a rotational basis according to their respective areas of expertise and the complexity of the cases. In this model, the selection of lawyers for specific cases should be arranged by administrators of the indigent defence service not by the judiciary. Consequently, the system is good at ensuring consistent and adequate representation.²⁵

The contract model, on the other hand, involves a contract with a lawyer, a group of lawyers, lawyers' association, or a private nonprofit organization that will provide representation in some or all of the indigent cases in the jurisdiction. Often, the contract is designated for a specific purpose within the indigent defence system such as all cases where the public defender has a conflict of interest, or a certain category of cases for example, felonies and juvenile dependencies through either fixed-price or fixed-fee-per-case contracts²⁶.

The public defender model involves a public or private non-profit organization with full or part-time staff lawyers and support personnel. A public defender system is a method of providing indigent defence services under which a lawyer or group of lawyers, through a contractual arrangement or as a public employee, provides legal representation for indigent criminal defendants on a regular basis.²⁷ The public defender model is characterized by the employment of staff lawyers to provide representation²⁸. Most of the jurisdictions which follow this model operate indigent defence programs utilizing a state public defender with full authority to provide the service statewide. State Commissions may also be established to carry out state oversight with substantial local control. In these systems, a state commission or board is established to provide overall direction and may develop standards and guidelines for the operation of local programs²⁹.

The mixed system, which employs more than one of the above mentioned models at a time, is usually recommended as it encourages a greater number of lawyers in private practice to

²⁴ Robert L. Spangenberg' and Marea L. Beema, Indigent Defense Systems in the United State, Law and Contemporary Problems (1995), Vol. 58: No. 1, : 33.

²⁵ Spangenberg' and Beema, *Ibid*.

²⁶Spangenberg' and Beema, *Ibid*: 34

²⁷Junius L. Al lison, Symposium on The Attorney-Client Relationship: Rights and Duties Relationship Between the Office of Public Defender and the Assigned Counsel System, Valparaiso University law review, Volume 10, , Number 3, 1976, P: 405, 420.

²⁸ Spangenberg and Beema, Cited above at note 24: 36.

²⁹ Spangenberg and Beema, *Ibid*: 37.

participate in defence of indigents, and enables more of them to gain experience in criminal trials.³⁰

2.1.3. When Does the Interest of Justice Require the Accused's Representation?

The international human rights law has generally provided that the assignment of legal assistance in criminal matters is available only where the interests of justice require the assignment. But neither of the instruments has explicitly illustrated the phrase 'where the interests of justice require the assignment'.

The Human Rights Committee, which is the treaty monitoring body established by the ICCPR, considers the severity of the charge and the complexity of the case in making the determination. According to the Committee, the state was not required to provide state-funded legal assistance in a case where the accused was charged with a minor criminal offence which would have likely resulted in a fine³¹.

The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa indicate that '*the interests of justice should be determined by considering the seriousness of the offence and the severity of the sentence*'.³² Additionally, the Lilongwe declaration has provided that the interests of justice always require legal assistance for an accused in capital cases.³³ This means, these later regional documents restrict the right to appointed counsel to serious cases which carry heavy punishments. The justification for the exclusion of minor offences is that such cases entail simple issues which can adequately be presented and defended by the average accused. However, as it is unfeasible to judge the potential complexity of the case at the beginning it is imperative to include the complexity of the case as an eligibility requirement for the right to appointed counsel³⁴.

The problem, again, is that there is no authoritative norm which identify the criteria to label a case as complex. However, various bodies have tried to adopt standards for a case to be eligible

³⁰ Al lison, Cited above at note 27 : 405, 420.

³¹ Ibid: 9.

³² Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa; available at: <http://www.achpr.org/instruments/fair-trial/> . Accessed on 25/02/214.

³³ Ibid: 7.

³⁴ W.W.Black, Right to counsel at trial, the Canadian Bar Review, 1975, Vol.19, No 1: 67.

as complex. These documents consider, among other things, the length and nature of police investigation, personal characteristics of client, unusual or otherwise challenging nature of the legal or factual issues, multiple charges or accused, legal issues that are inextricably linked, management of a large number of witnesses or a substantial amount of documentary evidence or exhibits; and other comparable special factors³⁵.

2.1.4. Stages of Case in which Right to Counsel Applies

Various instruments, rules and bodies concerned with right to representation greatly vary in determining the stages, in the criminal proceeding, to which the right should extend. The Human rights committee has found that accused persons might have a right to legal advice even prior to trial requiring the state to appoint legal representation during the pre-trial contact with the criminal justice system³⁶.

The UN Basic Principles on the Role of Lawyers spell out that the right to legal representation should extend to all stages of criminal proceedings, including interrogations, presumably even before formal arrest³⁷. According to some writers, the right to representation is restricted to the critical stages of criminal prosecution process which includes *‘those pre-trial procedures that would impair defence on the merits if the accused is required to proceed without legal representation’* or *‘any stage of the prosecution where legal representation’s absence might derogate from the accused’s right to a fair trial.’*³⁸

A different meaning given to the critical stage runs as follows: “any stage of the prosecution, formal or informal, in court or out, where the presence of legal representation is necessary to preserve the defendant’s basic right to fair trial is affected meaningfully to cross-examine the witnesses against him and to have effective assistance of legal representation at the trial itself”³⁹. The concern of the critical stage assessment is to facilitate that the accused should benefit from

³⁵ <http://www.17th.flcourts.org/index.php/judges>

³⁶ Skinnider, Cited above at note 13, p:9.

³⁷ The UN Basic Principles on the Role of Lawyers. Available at: <http://fr.unrol.org/files/UNBasicPrinciplesontheRoleofLawyers.pdf>

³⁸ Richard G. Singer, Criminal procedure, 2nd ed, 2008: 243.

³⁹ The right to counsel at the pre-trial, university of Pennsylvania law review, vol.113, 1964: 448.

legal representation if substantial prejudice to the defendant's rights inheres in the particular confrontation and legal representation can help to avoid that prejudice.⁴⁰

2.2. Human Rights Principles and Norms Underlying the Right to Legal Representation

All international and regional human rights instruments and jurisprudence confirm that, in the absence of access to legal representation by the poor and disadvantaged through publicly funded legal aid, there are no human rights, only privileges. Rights are illusory in the absence of the state providing adequately for the legal representation of indigent litigants in disputes involving the determination of rights. Simply put, in order to guarantee protected rights, governments must maintain adequate funding for legal aid. Failure to provide adequate legal aid violates the international law obligations of states to ensure equality before the law and give effect to the right of access to justice⁴¹.

2.2.1. The right to a fair trial

The right to a fair trial is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary restriction or deprivation of other basic rights and freedoms. This right is a guarantee for the right to life and liberty of the person⁴². The right to a fair trial is not only recognised in the prominent international treaties, such as ICCPR, but it is also part of customary international law. Therefore, those countries that have not acceded to or ratified these treaties are still bound to respect this right and arrange their judicial systems accordingly⁴³. The right to be represented by a lawyer, even when the person has no financial means to secure one, constitutes an integral part of the right to a fair trial as recognised by international law. Therefore, individuals who are charged with a crime must at all times be represented by a lawyer, who will guarantee that his right to receive a fair trial by an independent and impartial tribunal is respected throughout the proceedings.⁴⁴

⁴⁰ James B. Haddad and Gary L. Starkman, *criminal procedure*, 4th ed, 1992: 670.

⁴¹ Gail Davidson, Catherine Morris, and Heather Neun, *International Law Obligations to Provide Legal Aid*: 2-3.

⁴² What is a Fair Trial? A Basic Guide to Legal Standards and Practice, Lawyers Committee for Human Rights, 2000: 1. http://www.humanrightsfirst.org/wp-content/uploads/pdf/fair_trial.pdf

⁴³ *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors*, a Practitioners' Guide, 2004: 7.

⁴⁴ *Ibid*: 61.

2.2.2. The Principles of Fair Hearing and Equal Treatment by the Courts

These principles comprises of two ideas. The first is the principle of equality of arms. According to this rule each party must be afforded a reasonable opportunity to present his case, including his evidence, under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent. Equality of arms, which must be observed throughout the trial, means that both parties are treated in a manner ensuring their procedurally equal position during the course of a trial.⁴⁵ The right to a fair hearing further asserts adequate opportunity to challenge or respond to opposing arguments or evidence⁴⁶.

The second important idea embraced in the principle of equal treatment is that persons charged with similar offenses will be prosecuted in a similar fashion. As long as the cases are objectively similar, a court will treat them equally, regardless of who the defendant is or whether the case is “politically” motivated or not⁴⁷. This principle dictates that the financial ability of an individual should have no relationship to the assertion of constitutional rights⁴⁸. So, the right to an entitlement to consult and be represented by a legal representative at all stages of the proceedings make part of fair hearing.⁴⁹ The notions of equality before the courts may raise issues of court fees, complexity of procedure, a right to legal aid, awarding of costs and discrimination⁵⁰.

2.2.3. The Principle of Equal Access to the Courts and to Justice

It is implicitly included in all major human rights treaties that *‘all persons shall be equal before the courts and tribunals.’* A broader principle of access to justice includes the rights to access to a court, standing to sue, and access to legal services⁵¹. All persons shall be equal before the courts and tribunals which signify that all persons must be granted, without discrimination, the right of equal access to a court⁵².

⁴⁵ A Basic Guide to Legal Standards and Practice, *Cited above at note 42*, p.12.

⁴⁶ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, *Cited above at note 32*.

⁴⁷ Christie S. Warren (editor in chief), International Legal Aid & Defender System Development Manual, 2010: 18.

⁴⁸ Pollyries G.Polyviovius, The equal protection of the law, 1980: 505.

⁴⁹ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, *Cited above at note 32*.

⁵⁰ The Right to a Fair Hearing and Access to Justice: Australia’s Obligations Submission to the Senate Legal and Constitutional Affairs Committee: Inquiry into Australia’s Judicial System, the Role of Judges and Access to Justice, 2009: 12. Available at: www.hrlrc.org.au/files/hrlrc-submission-access-to-justice-inquiry.pdf

⁵¹ Warren, *Cited above at note 47*, p.18.

⁵² A Basic Guide to Legal Standards and Practice, *Cited above at note 42*, p.11.

2.2.4. The Principle of Due Process of Law

According to this principle, a legal process could be considered fundamentally fair only if it affords an opportunity for the parties to participate in a meaningful and effective manner. This right to meaningful participation includes the right to a fair and public hearing by a competent, impartial, and independent tribunal. These procedural rights can be protected only with competent legal guidance⁵³. Due process of law refers to laws according to settled course of judicial proceedings or in accordance with natural, inherent and fundamental principle of justice enforced in the usual modes established in the administration of government with respect to similar matters.⁵⁴ The principle of due process necessitates adherence to various binding principles of justice inherent in the very idea of free society.⁵⁵ So, the denunciation of the opportunity to be heard by legal representation in criminal matters goes against the due process.

2.2.5. The Principle of the Presumption of Innocence

This principle is incorporated in all the important international human rights treaties. The presumption works in practical ways to allocate burdens of proof on the prosecution to produce evidence of guilt and to guarantee protection of the defendant's liberty rights before trial. The presumption of innocence must also be maintained not only during a criminal trial *vis á vis* the defendant, but also in relation to a suspect or accused throughout the pre-trial phase⁵⁶. But, it is not easy to credit the presumption of innocence without a prompt provision of a competent lawyer⁵⁷.

2.3. International and Regional Treaties dealing with Legal Assistance in Criminal Matters

Human rights instruments are not only guidelines for states, but they also create obligations that require governments to reform their policies and practices to realize human rights for all

⁵³ Warren, *Cited above at note 47*, p.19.

⁵⁴ American Jurisprudence, Conflict of laws to Constitutional Law (1964), Vol.16,: 485.

⁵⁵ Samuel Rubbin, criminal justice and the poor, *Journal of criminal law*, vol.22, 1932: 490.

⁵⁶ A Basic Guide to Legal Standards and Practice, Lawyers Committee for Human Rights, *Cited above at note 42*, p.15

⁵⁷ Warren, *Cited above at note 47*, p. 20.

citizens⁵⁸. All of the treaties dealing with assistance to legal representation in criminal matters do so in the context of provisions that state the right to legal assistance as among the minimum guarantees available in the determination of a criminal charge. As the minimum guarantees are not exhaustive, a fair trial may not come about even where all minimum guarantees have been met. Accordingly, a state may provide more protection than the treaties, but it cannot provide less.⁵⁹

This section will try to show some among the major international and regional instruments dealing with the right to legal representation.

2.3.1. The UDHR and International treaties

i. The Universal Declaration of Human Rights

Although there is no explicit right to be represented contained in the UDHR, equal access to legal representation is fundamental to the enforcement of fundamental freedoms to equality before the law, effective remedies for human rights violations and fair trials in the determination of rights. The UDHR aims human rights to be protected by the rule of law. It regards the principle of the rule of law as the alternative to recourse to violence.⁶⁰

Moreover, the UDHR which is generally agreed to be *the foundation of international human rights law*⁶¹, states that everyone charged with crime has the right to be provided with all guarantees necessary for his defence. This commitment has been translated into law in forms of treaties, customary international law, general principles, regional agreements and domestic laws, through which human rights are expressed and guaranteed.⁶² Subsequently, we will see the major instruments which deal with the right to legal representation.

ii. International Convention on Civil and Political Right /ICCPR/

⁵⁸ Rioux M and Carbert A, Human rights and disability: The international context (2003), Vol 10, NO 2, *Journal on Developmental Disabilities*: 1-13.

⁵⁹ Wilson, *Cited above at note 12*, p.30.

⁶⁰ Davidson, *Cited above at note 41*, p.4.

⁶¹The UDHR is said to have inspired more than 80 international human rights treaties and declarations, a great number of regional human rights conventions, domestic human right bills, and constitutional provisions, which together constitute a comprehensive legally binding system for the promotion and protection of human rights. http://www.un.org/en/documents/udhr/hr_law.shtml

⁶² Universal Declaration of Human Rights (UDHR), article 11(1).

The International Covenant on Civil and Political Rights (ICCPR), which is ratified by 166 countries have entered into force on 23 March 1976. Article 14 (3) of the ICCPR has set out among the minimum guarantees to which everyone is entitled, in full equality, in the determination of any criminal charge. This provision runs as follows “*legal assistance should be provided to an accused who does not have legal assistance where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it*”. This right may have two acceptable limitations when it is provided by the state. The first is where “the interests of justice so require”. Another limitation to this right is that it may be assigned rather than a choice of legal representation being given.⁶³ According to the general reading of the ICCPR, the right to counsel applies to all stages of criminal proceedings, including the preliminary investigation and pre-trial detention.⁶⁴

iii. Convention on the Rights of the Child (CRC)

The CRC does not create an automatic right to publicly funded legal representation. However, it does create a responsibility on the part of the state to provide a child with legal assistance in the preparation and presentation of his or her case when assistance is not otherwise available. In short, the CRC does not specifically address the issue of state-funded legal assistance for children⁶⁵. However, the Convention on the Rights of the Child has explicitly expressed, under article 37(d), that every child deprived of liberty has a right to prompt access to legal assistance. According to the Convention this deprivation of liberty, to which the right applies, includes arrest, detention and imprisonment of children. The convention further provides the right to have legal or other appropriate assistance in the preparation and presentation of his or her defence⁶⁶.

Other international instruments such as the *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*⁶⁷, also impose a duty on states to provide legal aid when it is necessary to do so to ensure the enjoyment all of protected rights. *The Convention on the Rights of Persons with Disabilities (CRPD)*, which entered into force on 3 May 2008, has also provided that States shall ensure effective access to justice for persons with disabilities on

⁶³ Skinnider, *Cited above at note 13*, p.7.

⁶⁴ A Basic Guide to Legal Standards and Practice, *Cited above at note 42*, p.18.

⁶⁵ Skinnider, *Cited above at note 13*, p.10.

⁶⁶ Skinnider, *Ibid*: 9.

⁶⁷ Davidson, *Cited above at note 41*: 6.

an equal basis with others. As discussed above, this right to access to justice could be interpreted as it gives rise to a right to legal assistance for people with disabilities⁶⁸.

2.3.2. United Nations Declarations and Statements of Principles

The UN Declarations and Statements of Principles are not binding on United Nations member States. But, they play vital roles in providing important sources to interpret and understand the international legal obligations that States' have. These devices also provide important normative guidance for States to develop domestic public policy so that they can comply with the international standards and principles.⁶⁹ The following are the main UN Declarations and Statements of Principles which deserve discussion in relation to our subject matter.

i. The United Nations Basic Principles on the Role of Lawyers

This tool has stipulated that governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons⁷⁰. It declares that adequate protection of all human rights and fundamental freedoms requires that all persons have effective access to legal services provided by an independent legal profession. The device also articulates that governments have the duty to protect human rights and to ensure equal access to lawyers and provide sufficient funding for legal services to the poor by facilitating efficient procedures and responsive mechanisms. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence⁷¹. The Principles state that professional associations of lawyers should cooperate in the organization and provision of services, facilities and other resources⁷².

ii. The United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

⁶⁸ The Convention on the Rights of Persons with Disabilities, part 1 of Article 13. Available on: <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

⁶⁹ Davidson, *Cited above at note 41*, p.7.

⁷⁰ Skinnider, *Cited above at note 13*, p.10.

⁷¹ Davidson, *Cited above at note 41*, p.8.

⁷² Skinnider, *Cited above at note 13*, p. 10.

These principles were adopted by the General Assembly of the United Nations by resolution on 9 December 1988. It declares that “a detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefore⁷³.” It has also included the right to legal representation provided by the state. Principle 17 states that if a detained person does not have a legal counsel of his own choice, he shall be entitled to have legal representation assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by him or her if he/she does not have sufficient funds to pay⁷⁴.

iii. The UN Draft Declaration on the Independence of Justice

The UN Draft Declaration on the Independence of Justice, under article 95, enumerates that “governments shall be responsible for providing sufficient funding for appropriate legal services programs for those who cannot afford the expenses on their legitimate litigation”.

The document has also provided that governments shall be responsible for laying down the criteria and prescribing the procedure for making such legal services available in such cases. According to the declaration, public defenders shall enjoy full guarantees of their professional independence. In serving the cause of justice, the public defenders primary duty is towards his client, whom he must advise and represent in conformity with his professional conscience and judgement⁷⁵.

Other similar UN devices which provide for the right include: the Draft Principles on the Independence of the Legal Profession (the Noto Principles)⁷⁶ and the United Nations Standard Minimum Rules for the Treatment of Prisoners⁷⁷.

⁷³ United Nations Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle 11. Available at: http://www.tjssl.edu/slomansonb/10.3_DetentionImprisonment.pdf

⁷⁴ Skinnider, *Cited above at note 13*, p.10.

⁷⁵ The UN Draft Declaration on the Independence of Justice, article 96. Available at: <http://www.cristidanilet.ro/docs/Shingvi%20Declaration.pdf>

⁷⁶ Wilson, *Cited above at note 12*, p.26.

⁷⁷ Skinnider, *Cited above at note 13*, p.10.

2.3.3. Regional Treaties

i. The African Charter

The African Charter states that “*Every individual shall have the right to defence, including the right to be defended by legal representation of his choice*”⁷⁸ This guarantee in the African Charter has a narrower extent when compared to the international instruments⁷⁹ as it did not complement the general standards guaranteeing the right to legal representation in international and other regional laws such as: the right to a defence via legal representation chosen by him/her or appointed by the court in case where she/he cannot afford to hire one; the right to legal representation is guaranteed in all procedural stages, the right to communicate with his/her legal representation; and the right to be provided with a reasonable period of time and essential conditions to prepare their defence⁸⁰.

ii. The Lilongwe Declaration

The Lilongwe Declaration, another African device on the right to a fair trial, declares that the accused has a right to have legal assistance assigned to him or her in any case where the interest of justice so require, and without payment by the accused if he or she does not have sufficient means to pay for it.⁸¹ It provides for access to legal aid at all stages of the criminal justice process including investigation, arrest, pre-trial detention, bail hearings, trials, appeals and other proceedings brought to ensure that human rights are protected.⁸² Unlike the African Charter, the Lilongwe Declaration constitutes the latest statement on criminal legal aid in Africa. It highlights the need to sensitize all criminal justice stakeholders to the crucial role that legal aid plays in the development and maintenance of a just and fair criminal justice system.⁸³

⁷⁸ African (Banjul) Charter on Human and Peoples' Rights (OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)) Article 7(3)(C). Available at: http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf

⁷⁹ Quynh, *Cited above at note 3*, p.33.

⁸⁰ Quynh, *Cited above at note 3*, p. 40-41

⁸¹ Principles and guidelines on the right to a fair trial and legal assistance in Africa, *Cited above at note 32*, p.7.

⁸² Handbook on improving access to legal aid in Africa, Criminal Justice Handbook Series, New York, 2011: 49. Available at:

http://www.unodc.org/pdf/criminal_justice/Handbook_on_improving_access_to_legal_aid_in_Africa.pdf.

⁸³ Access to Legal Aid in Criminal Justice Systems in Africa Survey Report , *Cited above at note 11*, p.7.

2.4. Essentials of Effective Representation

The right to be represented assumes that the representation must be effective. So, the right demands more than placing a warm body with a legal lineage next to an indigent defendant.⁸⁴ In other words, public defenders are duty bound to deliver efficient, high quality, ethical, conflict-free representation to accused persons.⁸⁵ To provide such a high standard of representation and to promote excellence and professionalism in the representation of indigents, states should employ sympathetic standards which govern, among other things, lawyer-client relationships, administration of defence services and qualifications and duties of Counsel.

2.4.1. Administration of Defence Services

The administration of defence services can be grouped in to different themes; including the independence of the service, client eligibility screening, appointment of legal counsel and workloads. The public defence function, including the selection, funding, and payment of legal representation, should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained legal representation. Various instruments including the UN Basic Principles on the Role of Lawyers have also recognized that legal assistance needs to be carried out independently⁸⁶.

To help the realization of the independence of public defenders, the selection of counsel for specific cases should be arranged for by the administrators of the public defender office. Public Defenders and other staff members should be remunerated at a rate proportionate with their experience and skill sufficient to attract career personnel. Besides, the remuneration of public defenders should be comparable to that provided for their counterparts in prosecutorial offices⁸⁷. According to Wallace and Carroll, the parity should also include benefits, trainings, technology, facilities, support staff, investigators, and access to forensic services and experts as an expansion

⁸⁴ Singer, *Cited above at note 38*, p.251.

⁸⁵ Scott Wallace and David Carroll, *The Implementation and Impact of Indigent Defense Standards National Legal Aid and Defender Association*, a research report submitted to the U.S. Department of Justice, 2003: 11.

⁸⁶ *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors*, A Practitioners' Guide, 2004: 62.

⁸⁷ *ICJ Practitioners' Guide N° 1 – Independence of Judges, Lawyers and Prosecutors 3*, 2004: 62.

or discrimination of either body will have an impact on the balance between the two bodies and consequently on the other components of the justice system⁸⁸.

According to Singer, state interference also may get rid of the independence of public defenders and results in the ineffectiveness of legal representations⁸⁹. States are required to intervene only to pledge effective assistance where the failure to provide effective assistance is manifest and sufficiently brought to their attention, or where legal representation was incapable of effectively representing a defendant. The authorities which administer the government appointed lawyers must, up on demand, either replace the assigned legal counsel or cause him to fulfil his obligations⁹⁰.

The second among the important points in the administration of defence service is client eligibility screening. Wallace and Carroll points out that standardized procedures for client eligibility screening should be employed to serve the interest of uniformity and equality of treatment of defendants with limited resources. Legal counsel should be assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for legal representation⁹¹. To assess indigence various countries employ numerous factors including objective rules such as a percentage of the federal poverty guidelines and more subjective standards such as 'substantial hardship'.⁹² Some African countries have also set the financial limitation to qualification for legal aid such as Ghana (50\$ per month) and Nigeria (43\$ per month)⁹³.

Thirdly, appointment of legal counsel is another concern in the administration of defence services. Effective representation should be available to an eligible person upon request of the person, or someone acting on the person's behalf, to a court, a public defender office, or contract counsel as soon as the person is under investigation, arrested, charged with a criminal offense, becomes a party to any litigation in which the person is entitled to public legal representation, or when the interests of justice require representation. Briefly, counsel shall be made available to

⁸⁸ Scott Wallace and David Carroll, *Cited above at note 85*: 13.

⁸⁹ Richard G. Singer, *Cited above at note 38*: 252.

⁹⁰ Wilson, *Cited above at note 12*: 34).

⁹¹ Wallace and Carroll, *Cited above at note 85*: 16.

⁹² Indigent Defense, Counsel & Other Procedural Issues, *Juvenile Justice Guide Book for Legislators*: 4. Access to Legal Aid in Criminal Justice Systems in Africa Survey Report: 19-20.

⁹³ *Ibid.*

indigent defendants at the earliest opportunity⁹⁴. Wallace and Carroll have also similarly pointed out that appointment of legal counsel should be prompt and should occur before trial on custodial interrogations, and preliminary hearings⁹⁵.

Lastly issue to be considered on the administration of defence services is workloads of the legal counsel. Workloads must not be oppressive, and should match counsel's experience, training, and expertise⁹⁶. According to Wilson, the duties expected of the defender include such basic requirements as accepting only those cases that the legal counsel has sufficient time and skills to handle effectively⁹⁷. Similarly, Wallace and Carroll state that legal counsel's workload, including appointed and other work should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations⁹⁸. Drinan has also underscored representation by a lawyer whose workload is so excessive usually renders a representation ineffective⁹⁹. Wallace and Carroll recommend that there should be workload standards which should in no event be exceeded, taking in to consideration case complexity, support services and etc. They have also underscored that the defender office assigned with the duty of legal representation should be supervised and periodically evaluated for competence and efficiency¹⁰⁰.

2.4.2. Lawyer-Client Relationship

The continuity of representation and the right to communication are the major points in the lawyer-client relationship which deserve consideration. Effective representation requires continuous and uninterrupted representation by the same lawyer, once a case is assigned to a lawyer¹⁰¹. According to *Wallace and Carroll* also an effective public defence system requires that the same lawyer continuously represents the client from initial assignment through the trial and sentencing. This is often referred to as vertical representation. In vertical representation, the lawyer assigned for the direct appeal should represent the client throughout the direct appeal. To

⁹⁴ Wallace and Carroll, *Cited above at note 85*: 16.

⁹⁵ Wallace and Carroll: *Ibid*.

⁹⁶ Standards for Counsel Representing Individuals Pursuant to the Montana Public, Defender Act, DECEMBER 2012: 20.

⁹⁷ Wilson, *Cited above at note 12*: 34.

⁹⁸ Wallace and Carroll, *Cited above at note 85* : 17-18.

⁹⁹ Cara H. Drinan, A Legislative Approach to Indigent Defense Reform, American Constitution Society for law and society Issue brief: 5-6.

¹⁰⁰ Wallace and Carroll, *Cited above at note 85* : 17-18.

¹⁰¹ Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act, December 2012: 8.

the opposite, horizontal representation is ineffective as it inhibits the establishment of a lawyer-client relationship, fosters in lawyers lack of accountability and responsibility for the outcome of a case, increases the likelihood of omissions of necessary work as the case passes between lawyers¹⁰².

Secondly, the right to communication is one of the most important issues in the lawyer-client relationship. The counsel has the responsibility to keep the client informed as to the progress of the case¹⁰³. Besides, the lawyer should also inform the client about the means he/she has selected to accomplish the client's objectives¹⁰⁴. Wallace and Carroll further provide that in order to enable the lawyer and his/her client to have valuable dialogue and for the full exchange of legal, procedural and factual information between them, they should be provided sufficient time and a confidential space¹⁰⁵.

Wilson further argues that the right to communication also include that there can be no interception or censorship of communication between legal representation and client, and that communications between detained persons and their lawyers are inadmissible as evidence against them unless there is evidence of the commission of an on-going or contemplated crime. He also states that the legal counsel, to render valuable assistance, must be able to communicate with the accused in conditions giving full respect for the confidentiality of their communications¹⁰⁶.

2.4.3. Counsel's duties to provide quality and effective representation

The lawyer should take all the decisions that involve tactics and trial strategy, including, but not limited to, witness selection, arguments and cross-examination¹⁰⁷. *Quynh* identifies the following among the major obligations of the legal counsel: the duty to apply every measure prescribed by law, to clarify all details so as to prove the innocence of the defendant¹⁰⁸. According to *Wilson*

¹⁰² Wallace and Carroll, *Cited above at note 85*, p.14.

¹⁰³ Wilson, *Cited above at note 12*: 34.

¹⁰⁴ Commonwealth of Virginia Standards of Practice for Indigent Defense Counsel in Non-Capital Criminal Cases at the Trial Level, revised March 15, 2012: 5.

¹⁰⁵ Wallace and Carroll, *Cited above at note 85*: 17.

¹⁰⁶ Wilson, *Cited above at note 12*: 36.

¹⁰⁷ Commonwealth of Virginia Standards of Practice for Indigent Defense Counsel in Non-Capital Criminal Cases at the Trial Level, revised March 15, 2012: 5.

¹⁰⁸ *Quynh*, *Cited above at note 3*, p.59.

the defender's duties extend to investigating the facts and researching the law; making the case for pre-trial release; seeking discovery of prosecution evidence; filing motions to vindicate and preserve valid legal issues; understanding and preparing for the sentencing process; and pursuing appeal, or other post-conviction rights. In accordance with him, effective legal representation, on appeal, would also include consulting with the client and informing him/her of the lawyer's intention to withdraw the appeal or argue that it had no merit¹⁰⁹. Allison similarly pinpointed that counsel must conduct appropriate investigations, both factual and legal, to determine what matters of defence can be developed. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities¹¹⁰.

Lawyers should act with reasonable diligence when representing their client, this includes lawyers' action to peruse a matter on behalf of the client and commitment and zeal to accomplish the clients objectives. This includes lawyers' commitment to search for any means to defend and promote the interest of their client by raising proper affirmative defences, amended laws and regulations.¹¹¹ Counsel shall also strive for excellence in the representation of the indigent client¹¹². Legal counsel should refuse appointment if he thinks that he is unable to provide ethical and high quality representation¹¹³.

2.5. The Right to Legal Representation under Domestic Laws

a. The Right to Legal Representation and the Federal Laws

In Ethiopia, for the first time, the right to legal representation was constitutionally recognized in the 1955 revised constitution. Article 52 of the provides “*In all criminal prosecutions the accused, duly submitting to the court, [...] shall have the right to have the assistance of a legal counsel for his defence, who, if the accused is unable to obtain the same by his own funds, shall be assigned and provided to the accused by the court*”.

¹⁰⁹ Wilson, *Cited above at note 12*, p.34.

¹¹⁰ Allison, *Cited above at note 27*: 419.

¹¹¹ Rotunda and Dzienkowski, p. 117.

¹¹² Standards for Counsel Representing Individuals Pursuant to the Montana Public, Defender Act, *Cited above at note 90*, p.16.

¹¹³ Wallace and Carroll, *Cited above at note 85*: 14.

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

The 1995 FDRE constitution have considered the right to legal representation as ‘the right of all criminally accused persons to be represented by legal representation of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense’¹¹⁴. The 1995 FDRE Constitution has also guaranteed the right to equality and equal protection under the law, and it has explicitly prohibited discrimination on any ground.¹¹⁵

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

According to article 20 (5) of the FDRE Constitution, states are obliged to provide a qualifying indigent accused with legal counsel who should be a professional lawyer. This interpretation is apparent in the Amharic version of the constitutional clause which runs as follows ‘*በመረጡት የህግ ጠበቃ የመወከል ወይም ... ከመንግስት ጠበቃ የሚገኙት ሙብት አላቸዉ*’’. According to this clause, therefore, a representation or assistance from interim lawyer undergoing government training or by paralegals or other person who is a non-lawyer may not suit the governments’ duty to provide legal representation for indigent defendants.

In Ethiopia, presently there exist no criterions which enable to identify those who do not have sufficient means to pay for legal counsel. The 1995 Ethiopian Constitution is also silent as regards the standard of the interest of justice.

In the 1995 constitution of Ethiopia, the right to legal representation is incorporated in two provisions, article 20 and 21, which deal with the rights of accused persons and of persons held in custody and convicted respectively. It is only in the former provision that the indigent defendants’ right to government appointed legal representation is provided. Therefore, so far as it

¹¹⁴The FDRE Constitution, art 20(5).

¹¹⁵Hussein Ahmed Tura, Indigent’s Right to State Funded Legal Aid in Ethiopia, International Human Rights Law Review 2, 2013, p.131.

is not provided under the two provisions, which declare the rights of arrested and convicted persons; one may argue that the right to government appointed representation, under the 1995 Ethiopian constitution, does not extend to police investigations and post-trial periods. Even though, the Ethiopian Criminal Procedure Code has granted that any person detained on arrest or on remand shall be permitted forth with to call and interview his advocate¹¹⁶, it does not allow the indigent to enjoy the publicly funded legal representation.

According to *Tura*, Ethiopia, as a member of the United Nations, is bound by the Conventions and treaties it has ratified and should recognize the normative and persuasive importance of Declarations, Principles and Resolutions adopted by the General Assembly. As a member of the AU also, Ethiopia is bound by the African Charter¹¹⁷.

As provided in Federal Courts Proclamation Proc. No. 25/1996 art.16 (2) (j), organizing the public defence office is considered as one of the powers and duties of the President of the Federal Supreme Court. The same provision also gives the President of the Federal Supreme Court to employ personnel necessary, which may include the public defenders, for Federal Courts. Article 5 (h) of the Amended Federal Judicial Administration Council Establishment Proclamation, Proc. No. 684/2010, also provide that a lawyer appointed by the Council from those practicing in the Federal Courts (may be a defence lawyer) to be a member of the Federal Judicial Administration Council. The provision provides the council with the power to appoint various court officials including the defence counsel and to decide on their salaries, allowances, other benefits and the conditions upon which they may be removed from their positions.

b. The Right to Legal Representation under Oromia Laws

The revised constitution of Oromia Regional State like other state constitutions, incorporate a word for word copy of the FDRE constitution as far as the right to legal representation is concerned. The revised constitution of the region only hints the right and does not provide for how the right is executed. There is no law in Oromia which is issued to govern exclusively issues of the defense service. However, few provisions relevant and applicable to the defense service

¹¹⁶ The Criminal Procedure Code, Article 61.

¹¹⁷ *Tura, Cited above at note 115*, p.132.

and public defenders were included in various proclamations, regulations and directives issued to govern the role of courts and judges. The following discussions will present subsidiary laws in the region relevant to the defense service and public defenders in the region.

The Oromia National Regional State Proclamation to Provide for the Re-establishment of Oromia National Regional State Courts (proc. 141/2008) stipulates that *'the court shall assign a legal representation to an individual who is accused of a crime punishable with rigorous imprisonment not less than five years'*¹¹⁸. Even though it can be considered as a good start to incorporate the right in subsidiary legislations, the minimum 5 year period of incarceration set in the proclamation to establish the 'miscarriage of justice' standard may be deemed as excessive. To satisfy the interests of justice standard, it would not be sound that a person should face serious charges such as capital punishment and long imprisonment.

Defence lawyers in the region are appointed by the State Judicial Administration Council (Commission) – a body which composes of the president and vice presidents of the supreme court, two chaffe members, two judges and one appointee of the commission. The appointees of the commission include expert, legal officer, case manager, process owner, Qadi, defence counsel and others appointed and assigned by the regional commission¹¹⁹. Accordingly, the council may or may not constitute a defence counsel in its composition¹²⁰. The council appoints, regulates and dismisses the appointees including defence lawyers.¹²¹ It is also empowered to issue rules and regulations on the professional conduct, recruitment, selection, appointment, dismissal, training and education, salary and other benefits, etc of the appointees of the commission.¹²² At zonal level also an adjudicatory team is established by the proclamation to determine issues relating to simple disciplinary offenses, to forward recommendations with respect to the promotion, and decide on transfer of the judges and appointees of the commission working in the districts. The adjudicatory team should also evaluate the annual plan, budget and annual reports of the courts in the Zone.¹²³

¹¹⁸ Proclamation 141/2008, *Cited above at note 5*, Article 17 (2).

¹¹⁹ A proclamation for the re-establishment of Oromia Judicial Administration Council, Proclamation 142/2008, art 2(9).

¹²⁰ Proclamation 142/2008, *Ibid.*, art 6.

¹²¹ Proclamation 142/2008, *Ibid.*, art 4.

¹²² Proclamation 142/2008, *Ibid.*, art 6

¹²³ Proclamation 142/2008, *Ibid.*, art 22.

Based on proc. 142/2008 art 8(7), the commission has issued regulation 1/2009 to regulate the recruitment, selection and appointment of the appointees of the commission and has established the necessary structures to enforce the regulation. The judicial administration commission has also issued regulation 2/2009 which govern the code of conduct of the judges and appointees of the commission. This regulation has few provisions which bring responsibility up on the appointees of the commission including defence counsels. Article 11 of the regulation stipulates that failing to effectively serve the clients is considered as ethical problem and will carry responsibilities. The regulation holds the defence lawyers liable for nonappearance on work time and non-performing of duties given to him/her without good cause¹²⁴. Failing to keep the confidentiality of client's information is also considered by the regulation as an ethical problem for the appointees of the commission including defence counsel¹²⁵.

Regulation 2/2001 issued by the commission has also tried to identify the criteria to recruit the appointees of the commission, such as: background of legal education, fair knowledge and skill of law, high ethical standard, not member of political parties and etc.¹²⁶ The regulation has also identified work performance as a criteria for the promotion of the appointees of the commission.¹²⁷ According to article 55 and 56 of Regulation 2/2001, a defence counsel may be dismissed from work if he/she is proved to lack the necessary knowledge, skill or professional ethics. Directive 1/2001 issued to govern the recruitment, selection and appointment of the appointees of the commission has also provided, under article 10 and 12, that the screening process should evaluate the legal analysis skill of the candidates. Directive 2/2001 issued to regulate the promotion of appointees of the commission also stipulates that performance appraisal and experience are the major criteria to give promotion to the appointees of the commission¹²⁸.

¹²⁴ The code of conduct of Oromia judges and appointees of the commission, Regulation 2/2009, Articles 35 and 39 respectively.

¹²⁵ Proclamation 142/2008, Cited above at note 119, art 36.

¹²⁶ Regulation 2/2001, Cited above at note 124, article 11.

¹²⁷ Regulation issued to administer Oromia judges and appointees of the commission, Regulation 1/2001, article 21

¹²⁸ Directive issued to govern the promotion of Oromia Judges and appointees of commission, directive 2/2001, art 13.

CHAPTER THREE

AN EMPIRICAL ANALYSIS OF INDIGENT ACCUSED'S ACCESS TO EFFECTIVE LEGAL REPRESENTATION IN ADAMA

Introduction

The prevalence of poverty implies powerlessness, for citizens, to access their basic rights on their own. Poverty blocks individuals from using the legal systems effectively and appropriately. Ethiopia is one of those countries whose large percentage of population lives below the poverty line. Even though declining, in Ethiopia, poverty remains high at 29.6% over the past years.¹²⁹ The same fact pertains to the federating states including the Regional State of Oromia. According to the 2007 census, out of the total number of people of Oromia, the number of people aged 10 years and above constitutes 17,873,625; of which 4,785,948 (36.56%) are *economically inactive*¹³⁰. According to this census Adama Special Zone has a total population of 220,212. Among the people of the Zone who aged 10 years and above 41.8% are economically inactive.

This fact presupposes the presence of strong indigent defence system, so that these large numbers of underprivileged people who reside in the Zone are not blocked from using the legal systems effectively and appropriately. However, the public defence service in the Zone is organized only at Zonal level as part of the Zone's High Court and has engaged only 2 public defenders.

This chapter presents a thorough empirical analysis of data collected in relation to the indigent defence services administered by this office. The study is principally a qualitative analysis of data generated mainly from in-depth interview, case files and court room observations. Data from questionnaires were also analysed quantitatively.

¹²⁹ Federal Democratic Republic of Ethiopia, Ethiopia's Progress towards Eradicating Poverty: An Interim Report on Poverty Analysis Study (2010/11), Development Planning and Research Directorate Ministry of Finance and Economic Development, 2012: 13. This figure is also described by Guang Zhe Chen, World Bank Country Director for Ethiopia. Addis Ababa, December 13, 2012, available at: <http://www.meleszenawi.com/world-bank-video/>

¹³⁰ Economically inactive population include persons, who are not considered employed or unemployed such as: full-time pupils/students, house keepers, pensioners (by age, health, privileged condition and other jobless persons (http://www.armstat.am/file/article/rep_ashx_09e_7.pdf).

The following table shows the research participants, their number and the methods employed to reach each participant. The data was collected from February 24 to April 23, 2014, from the Zone and few of it's from offices at Regional level.

Table 1: The category and the number of the participants of the study.

	Research participants	Number	Method
1.	Investigating police	(5)	Questionnaires
2.	Regional Supreme Court and Justice Berau Human Resource Heads	(2)	Interviews
3.	Judges	(3)	Questionnaires
		(3)	Interviews
4.	Legal officers in courts	(2)	Questionnaires
5.	Public prosecutors	(3)	Questionnaires
6.	Public defenders	(2)	Interviews
7.	Lawyers (private)	(2)	Interviews
8.	Accuseds (both from represented and unrepresented)	(10)	Interviews
		(10)	Questionnaires
9.	Court room (trial) observations in which indigent defendants are involved	(10)	Observation
10.	Criminal case files examined	(80)	Case (Document) analysis

The following subsections, therefore, will present an in-depth analysis of the way indigent defence services are provided to the needy by the Zone's public defender's office.

3.1. Issues Inherent to the Administration of Indigent Defence Services

The issues inherent to the administration of defence service in the Zonal office will be discussed below from the perspectives of accessibility of the indigent defence service, client eligibility system, availability of the service at critical stages, accountability and independence of the service and the time provided to prepare for defence.

3.1.1. Accessibility of the Indigent Defence Service

There is no mechanism, in the court, to follow up and ensure the accessibility of indigent defence service. The various bodies established at zonal and regional level entrusted with such responsibility (such as the adjudicatory team) give no concern to the function of defense service. The indigent defence system in the court can be considered as very much inaccessible. According to the court's 3rd quarter report of this fiscal year, only less than 7% of the defendants were represented by the indigent defense lawyers¹³¹. This is very insignificant when related to the large number of the economically inactive people (41.8%) residing in the Zone. Different factors have rendered the indigent defence system to be inaccessible. These include: problems related to the low confidence or awareness that indigent defendants have on the service, the little recognition given to the service in the courts' organization and the problem of awareness of the judges on the importance of the right.

The society's lack of awareness on the presence of the indigent defence system has principally rendered the service inaccessible especially during the pre-trial period. There is no defendant who, for example, requested the court to dispense him free counsel before accusation¹³². There are also defendants who hire a private lawyer as they lack the awareness as to the presence of state-appointed free counsel, as the court makes no effort to publicize the service¹³³. For example, a defendant alleges that he would not have hired a defence lawyer had he known that state funded defence lawyer is available for the poor. The defendant has also asserted that he could not afford the lawyer fee without excessive hardship¹³⁴.

The judges of the court do not explicitly inform the defendants, the opportunity they have if they do not afford to hire a private lawyer. In some cases, the judges even do not ask the defendants if they wish to have a lawyer.¹³⁵ Consequently, there are defendants who are charged and convicted by crimes punishable with not less than five years of punishment

¹³¹ The 2013/14, 3rd Quarter (9 months period) Report, Adama Special Zone High Court.

¹³² Asha Amine, Adama Special Zone High Court, President, interviewed 21/04/2014. Negera Kenatie, public defender of Adama Special Zone Court, interviewed 16/04/2014. Interview with 5 prisoners at East Shewa Prison Administration (who want to be anonymous), interviewed 16/04/2014.

¹³³ Asha Amine, Cited above at note 132.

¹³⁴ Tafese Genana, Inmate at East Shewa Zone Prisoner Administration, Interviewed 21/04/2014 (whose case was heard at Adama Special Zone Court).

¹³⁵ PP Vs Redwan Jemal, Adama Special Zone High Court, F.N. 16515.

without given opportunity to get state funded lawyer.¹³⁶ Some judges also do not provide defence lawyers with adequate time to prepare for defence¹³⁷.

The delivery of indigent defence service did not gain proper consideration in the court. As the Court is drained with its routine judicial activity and has given its premier emphasis on this task, it was not committed to ensure the accessibility of the indigence defence service to all eligible defendants.¹³⁸ This indicates that even though public defence services in the region are organized under the courts, the courts; however, seem to feel little responsibility to providing public defence services.

Some judges in the court also do not consider the right as a justiciable claim. In one appeal case presented to Adama Special Zone High Court, the self-represented defendant's ground for the appeal was the claim that he was convicted wrongly as he was not represented by lawyer at the Woreda court. The high court dismissed the appeal in the reasoning that "*as public defence service is not established yet as a structure of Woreda courts; the fact that an eligible defendant is not represented at Woreda court cannot be a ground for appeal*"¹³⁹. There is also another similar case in which the high court dismissed the appeal on the basis that the lack of access to free legal counsel at lower court is not, by itself, a sufficient ground for interference by the court".¹⁴⁰ The reasoning of the court looks superficial as the failure by government to establish the required structure to protect individuals' right cannot legitimise the violation nor does it preclude individuals from claiming the right protected by laws. The problem arises from the absence of explicit procedural law which can guarantee for the possibility of retrial in such cases. As a result, eligible indigent defendants are left to no option even where the indigent defence office could not provide the service at all or where the defence service provided is proved to be critically ineffective. However, as the courts are entrusted with the objective of safeguarding the rights, freedoms and interests of individuals

¹³⁶ Adama Special Zone High Court, Criminal Case file, F.N 75203.

¹³⁷ Anonymous prisoners at East Shewa Prison Administration, Cited above at note 132.

Statistical data which shows the 60 continuous days performance of the court reveal that 70% of the indigent defense lawyers are provided with no time to prepare for defense, while the rest (30% of the defense lawyers) were provided with 1-5 days to prepare for defense.

¹³⁸ Adama Special Zone High Court Annual Action Plan, 2012/13, 2013/14. Asha Amine, Cited above at note 132.

¹³⁹ Alemu Desta vs PP, Adama Special Zone High Court, F.N. 16519.

¹⁴⁰ PP Vs Daniel Hailu, Adama Special Zone High Court, F.N. 16512.

guaranteed by the federal and regional constitutions¹⁴¹, it should devise a approaches to elucidate such problems.

There are also defendants who do not want to have aid from defence lawyers as they do not have confidence over their services. A defendant who is sentenced to 31 years imprisonment by the court was represented by privately hired lawyer. He expresses the reason why he chose to hire a lawyer as follows, *‘I could not rely on defence lawyers as I was charged with a serious crime of aggravated robbery. As I also observed in my co-defendant’s case, state funded defence lawyers do not speak in favour of the defendant more than twice in a hearing and do not cross examine prosecution witnesses; and thus they are generally fruitless. Therefore, at present, let alone for serious crimes, it would be unsafe for crimes punishable by imprisonment to rely on defence lawyers¹⁴².’*

There are also defendants who have a suspicion that the defence lawyers back the prosecution as they are also government wage earner like the latter. A defendant who hired a private lawyer, despite he has access to free counsel, say that it is worrying to disclose every fact to the defence lawyers as far as their independence is unreliable¹⁴³. So the little public confidence the defence service has won can be considered as a factor for its being inaccessible.

3.1.2. Client Eligibility System

i. The assessment of indigence

There are no set standards to conduct client eligibility screening system in the region. So, there is no criterion that the court employs to determine whether a defendant is indigent or not. The practice in the court, for crimes punishable not less than 5 years, is that the judges, before plea entering, request the defendants whether he/she affords to hire counsel or not. If the defendant claims to have government appointed counsel, judges of the court will appoint and notify the counsel immediately to come and represent the defendant at that instant¹⁴⁴. If

¹⁴¹Proclamation 141/2008, Cited above at note 5, Art 3.

¹⁴² Alemayehu Ayenew, an inmate at East Shewa Zone Prisoner Administration, Interviewed 21/04/2014 (whose case was heard at Adama Special Zone Court).

¹⁴³ Andualem Gelagay, inmate to East Shewa Prisoners Administration, Interview, 24/04/2014.

¹⁴⁴ Abuna Aloo, public defender at Adama Special Zone Court, 16/04/2014. Asha Amine, Cited above at note 132.

Interview with 4 anonymous inmates at East Shewa Prison Administration (who got the access to defense counsel representation), 16/04/2014.122.

the defendant does not claim free legal representation even where he/she deserves it, the court usually overlooks his/her right¹⁴⁵.

As there is no standardized procedure for client eligibility screening system, appointing defenders and taking other critical decisions about the indigent defence service is left to the discretion of individual judges. Currently, the judges in the court do not order the defendant to prove his indigence. Formerly, the practice in the court was that the judges used to demand the defendants to produce written evidence, which show their indigence, from kebele administrations. As there were no rules or guidelines, the kebele administration did not have any procedure to follow and to establish and certify one's indigence. As the kebele administrations are ordered by court to testify about the indigence of a defendant in the absence of any criteria given to them, they used to assess the defendants' indigence merely based on their own decision.¹⁴⁶

The court could not proceed demanding the defendants to bring a written paper to show their indigence as it resulted in an inconsistent indigent system as some defendants prefer to or are forced to sail across the trial process without representation. Because, defendants who are under detention and do not have somebody to follow and fix the indigence confirmation note used to be obliged to pass the trial process without representation.¹⁴⁷ However, some argue that the absence of indigence test could not be a way out of this problem. Because, providing the service to those who afford to hire a lawyer, results in taking away the indigent's opportunity for better state funded defence system.¹⁴⁸

There are also cases in which the court assigns a defence lawyer to those defendants who first hired private lawyers and terminated their bond after few representations¹⁴⁹. The problem is that the court does not try to identify, at least, why the agreement is broken up between the defendant and the hired lawyer¹⁵⁰. If the contract does end due to other reason than the economic status of the defendant, it is not sensible and legitimate for the court to assign defence lawyers for a defendant.

¹⁴⁵ Tafesse Genene, Cited above at note 134.

Observations of the court room, from March 2 to April 10.

¹⁴⁶ Negera Kenatie, and Asha Amine, Cited above at note 132.

¹⁴⁷ Negera Kenatie, Ibid.

Abuna Aloo, Cited above at note 144.

¹⁴⁸ Abuna Aloo, Ibid;

Negera Kenatie, and Asha Amine, Cited above at note 132.

¹⁴⁹ Abuna Aloo and Negera Kenatie Ibid.

¹⁵⁰ Negera Kenatie, Abuna Aloo and Asha Amine.

ii. The application of ‘miscarriage of justice’ standard

The Proclamation enacted to Provide for the Re-establishment of Oromia National Regional State Courts (Proc.141/2002) has indicated a condition for an indigent defendant to be provided with government appointed counsel. That is, a defendant to be a beneficiary of the right has to be charged with a crime punishable with a minimum of 5 years imprisonment. This means, the whole concept of miscarriage of justice as perceived in the proclamation is attached only to the severity of punishment. This, however, disregards countless indigent defendants who do have no ability to represent themselves even in straightforward cases. In the practice of the court also, an indigent defendant need to be charged under a crime punishable with not less than 5 years of imprisonment to obtain free defence counsel. However, the court has allowed an insignificant number of defendants to be represented by defence lawyers believing that the cases are relatively complex to be handled by the defendants. Among the cases in which the court allowed defendants to be represented by defence lawyers attributable to the complexity of the case includes crimes involving fraudulent misrepresentation (article 692) and negligent homicide (article 543(2))¹⁵¹.

To the contrary, both case file observation¹⁵² and interview data¹⁵³ show that there are several cases in which defendants charged under similar provisions fail to get the access to lawyer representation even though they apply for it. This indicates that the court does not have any set criteria to determine the complexity of a particular case and is based solely on the discretion of the judges. There is also no single case in which the court considers other factors such as the management of large number documentary evidences, expert witnesses, or exhibits management at trial; cases likely to involve raising legal issues that are intricately linked and other comparable special factors¹⁵⁴.

Moreover, the court does not appoint defence lawyers for a defendant who is accused under a charge which may contain several different counts even if all charges may be tried together and may aggregately carry a sentence of more than 5 years. In one case, a defendant is

¹⁵¹ Negera Kenatie and Asha Amine, Abuna Aloo, *Cited above at notes 132 and 144*.

¹⁵² PP Vs Shemalis Mekbib (F.N.16516), PP Vs Abbush Mamishu (F.N.16523), PP Vs Kedir Hussein (F.N.16445), PP Vs Isa Mohammed (F.N.16441) were charged under article 692 of the Criminal Code and have low level education.

¹⁵³ Gosa Alemu, an inmate to East Shewa Zone Prison Administration, interviewed 24/04/2014 (The inmate was accused under article 692).

¹⁵⁴ Asha Amine and Abuna Aloo, *Cited above at note 132 and 144*.
Observations of the court room, *Cited above at note 145*.

charged for violating 5 provisions of the criminal code. However, the court has not provided the defendant with state funded lawyer. The defendant was finally sentenced to 11 years of imprisonment even after hired a lawyer¹⁵⁵.

3.1.3. Availability of the Indigent Defence Service at Various stages

The indigent defence service offered by the court is not available at some stages of criminal proceedings. There is no practice of appointing counsel, in the court, until after accusation, even for defendants who are in custody.¹⁵⁶ The police and the prosecutors do not have the practice of informing the suspects, during investigation, that they have the right to consult lawyers before responding to their questions. Consequently, some defendants even have the perception that the right to representation begins at trial and that they also could not get access to representation by indigent defence lawyer before the day they were given charge¹⁵⁷.

The non-appointment of state funded counsel to the indigent during the critical initial period, when a lawyer's investigation is likely to be most productive because evidence is still fresh and witnesses are most easy to locate, will largely contribute to the deprivation of the defendants' right to a fair trial. This is mainly because; the defence lawyer often can provide important forms of representation prior to accusation which become more difficult or irrelevant after that¹⁵⁸. As counsel is not made available to indigent defendants at the earliest opportunity, numerous detained defendants have suffered from groundless denial of the right to be released on bail and compelled to suffer in pre-trial detention for longer period of time. For example, there are defendants who are charged for a crime punishable by simple imprisonment but denied their right to bail with no good cause¹⁵⁹.

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

¹⁵⁵ PP Vs Birhanu Kasa, F.N 16581. The defendant is charged for violating 5 provisions ((696(1) (A), 477(1), 582, 481(A), 385(1) (B)) of the New Criminal Code and convicted only under the first 3 provisions.

¹⁵⁶ Asha Amine and Negara Kenatie, Abuna Aloo, Cited above at note 132 and 144 respectively.

¹⁵⁷ Interview with 5 prisoners at East Shewa Prison Administration (who want to be anonymous) shows that none of them got the assistance of lawyer before accusation, even though they were qualified as indigent and represented by defense lawyer beginning from the first hearing.

¹⁵⁸ Negara Kenatie and Abuna Aloo, Cited above at note 132 and 144.

Interview with 3 anonymous inmates at East Shewa Prison Administration, 16/04/2014.122.

¹⁵⁹ PP Vs Hailat G/Michael, Adama Special Zone Court, F.N. 16585. The defendant in this case was charged under the crime of adultery- article 652(1) of the FDRE Criminal Code.

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

at liberty¹⁶⁰. In another similar case a defendant represented by lawyer, who is charged under similar crime is allowed the right to bail, despite the prosecutor opposes the right to bail for the same ground stated in the above case¹⁶¹. This has occurred as the self-represented defendant fails to make all necessary allegations and to present evidences necessary to secure the right or it may be caused as the defendants' fail to oppose the allegations the prosecutor made in opposition to the right¹⁶².

There are also defendants who did not claim to be released on bail and stayed for longer pre-trial detention as they lack the awareness about their right¹⁶³. Moreover, there are indigent defendants who suffer from various violations against their rights and freedoms including tortures and forced confession. In one practical case¹⁶⁴, the defendant who is accused with the crime of robbery and sentenced to 5 years imprisonment, asserts that it was the torture committed on him and the lack of access to free counsel that compelled him to confess the charge brought against him. He further says that he was handcuffed while being taken to court which he think that he would not face these had he been represented by defence lawyer.

The problems of the indigent's access to legal representation at critical stages also continue after the defendants' appearance before court. One problem is that defendants may be represented by counsel not promptly. There are cases in which the defendants appear before court without representation at plea entering and bail right hearing and represented from then on.¹⁶⁵ As the vulnerability of the indigent defendants relatively becomes high at these early trial stages of plea entering and bail hearing stages, several principal rights and liberties of indigent defendants are susceptible for infringement due to the ineffective lack or representation.¹⁶⁶

Indigent defendants, in the court, suffer on appeal as well, due to lack of representation. The defence lawyers in the court were not given the duty to take an appeal or to assist the

¹⁶⁰ PP Vs Mesfin Mekonnen, Adama Special Zone High Court, F.N. 16466 (The defendant was charged for homicide by negligence (art 543 (2) of the FDRE criminal code which carries punishment of 1-5 years and fine). Negera Kenatie and Abuna Aloo, Cited above at note 132 and 142.

¹⁶¹ PP Vs Yared Engida, Adama Special Zone High Court, F.N.16484.

¹⁶² Asha Amine and Negara Kenatie, Abuna Aloo, Cited above at note 132 and 144 respectively.

¹⁶³ PP Vs Mohammed Nasir, PP Vs Shemalis Mekbib, PP Vs Negash Alemayo; F.N 16510, 16516, 16612 respectively.

¹⁶⁴ Anonymous inmate in East Shewa Prison Administration, Cited above at note 132.

¹⁶⁵ PP Vs Redwan Jemal, Adama Special Zone Court, F.N. 16515.

PP Vs Mesfin Mekonnen, Adama Special Zone Court, F.N. 16466.

¹⁶⁶ Court Room Observations, Cited above at note 145.

Negera Kenatie and Asha Amine and Abuna Aloo, Cited above at note 132 and 144.

defendants after sentence. The defence lawyers also do not assume the duty to assist defendants who come to the high court by appeal even if they are sentenced to more than 5 years of imprisonment by Woreda Court¹⁶⁷. In other words, the court has no practice of appointing counsel for the indigent in appeal cases, regardless of the severity of its sentence, even though the law has not limited the right to first suits¹⁶⁸.

Consequently, many defendants fail to get access to the appellate courts. In one practical case¹⁶⁹, a prisoner who is sentenced to 10 year imprisonment with the crime of homicide allege that he could not present his case to an appeal court due to his indigence. The prisoner has sadly indicated that he has paid 400 birr to have his memorandum of appeal prepared, with the hope that the prejudice that happens to his right be resolved. However, he complains that he failed to follow his case as he could not get the money to hire the lawyer who will take it to the court of appeal representing his interest.

Moreover, most indigent defendants, who got the opportunity to appear before the appellate court without representation, fail to exercise their basic rights including the right to be released by applying for the stay of sentence execution pending the hearing of appeal. The problem occurs as the defendants do not have the awareness about the existence of the right or about how to claim the right¹⁷⁰. So this right is one of the rights which face troubles due to the defendants' lack of access to a counsel at appeal stage. As well, appellants were not advantageous in reversing conviction which can also be attributed to the non-existence of assistance of counsel at the appeal stage¹⁷¹.

3.1.4. Accountability and Independence of the Indigent Defence Services

The public defence lawyers should be held accountable and subject to supervision for the quality of representation they provide to indigent defendants. However, the appropriate bodies that are entrusted with this duty do not have the determination to guarantee that defence lawyers are consistently held accountable for the quality of representation they provide to indigent defendants. Even though laws require, the performance of the defence

¹⁶⁷ Asha Amine, Cited above at note 132.

¹⁶⁸ Asha Amine and Negara Kenatie, Abuna Aloo, Cited above at note 132 and 144 respectively.

¹⁶⁹ Tenaw Geresu, an inmate in East Shewa Prison Administration, Interviewed on 23/04/2014, (Sentenced to imprisonment by Adama Special Zone High Court, F.N. 152239.

¹⁷⁰ Asha Amine and Negara Kenatie, Abuna Aloo, Cited above at note 132 and 144 respectively.

Tenaw Geresu, and Tafese Genana, Cited above at note 169 and 134

Getu Ulfata, Private lawyer, interviewed 30/04/2014; Inter-view with 2 anonymous inmates at East Shewa Prison Administration, 16/04/2014.

¹⁷¹ Asha Amine and Negara Kenatie, Abuna Aloo, Cited above at note 132,144 respectively.

lawyers' is not being assessed. Practically, no defence lawyer in the court has been made responsible for his lack of attentiveness and quality representation in performing his duty¹⁷². In short, there is no motivation in the court to guarantee that the defense lawyers consistently provide adequate representation in every case.

The functional independence of defence service is another area in which administration of indigent service is suffering from problems. The data obtained from questionnaires show that only less than 35% (8 out of 23) of the informants have the perception that the indigent defence service has independence in delivering the service.

These problems are related to the qualifications, experience, remuneration and workloads, facilities, support services and etc. of the indigent defence office.

i. The defence office's funding and access to basic facilities or support services

The public defenders' office has no budget appropriation distributed explicitly to defence service. Thus, the defence office is not self-reliant and is contingent up on the budget and the will of the court for any of its need¹⁷³. The public defenders even did not have private office, until very recently, where they can discuss with their clients behind closed doors. A defence lawyer, even currently, shares a common room with other court staff members. The defence lawyers do not have access to basic office tools such as computer and internet access, secretarial and other support services¹⁷⁴.

Likewise, there is no funding for expert witnesses, forensic labs, etc. It is the indigent defendant who is expected to cover these costs. The defence office is not supported by experts skilled in investigation science. There is also no practice of observing the crime scenes by the defence lawyers¹⁷⁵. However, the corresponding zonal prosecution office has access to police investigators and basic office equipments such as computer and internet access, secretarial and other support services¹⁷⁶. The imbalance is more noticeable when we evaluate the material resources available to the prosecution office which is full-fledged with all basic office tools and support staff. The discrepancy in available facilities and support

¹⁷² Adama Special Zone 2012/2013 Annual Performance Reports and 2013/14 9 Months (3rd Quarter Report) Asha Amine, Cited above at note 122.

¹⁷³ Annual Performance Reports, *Ibid*.

¹⁷⁴ Observation of the Zonal Defense Lawyers' Office, 17/04/2014.

¹⁷⁵ Asha Amine, and Negera Kenatie, *Cited above at note 132*.

¹⁷⁶ Observation of both prosecution and defense lawyers' office, 17-18/04/2014.

services has rendered the defence office to provide incompetent service to indigent defendants. Consequently, the public defenders are unable to fully investigate the cases that come to them and prepare for trial¹⁷⁷. This ultimately is causing the loss of freedom of indigents.

ii. Qualifications, Experience and Remuneration of the Indigent defence Lawyers

There is no qualification standard for defence lawyers to be appointed for various cases. The public defence office in the court does not have lawyers who specialize with different areas or capital offences¹⁷⁸. The criteria required to recruit public defenders in the region does not enable hiring competitive defence lawyers when compared with their equivalent prosecutors. The following table shows the qualification and experiences required of the defence lawyers in association with that of comparable level prosecutors.

Table 2: The qualification and experiences required of the defence lawyers¹⁷⁹

	Supreme Court defence counsel	Justice Berau public prosecutor	High Court defence counsel	Zonal public prosecutor
Educational background required	LL.B or LL.M	LL.B	LL.B or Diploma in Law	LL.B
Required Work Experience	1 year for LL.B, 0 year for LL.M	6	3 months	4 years
Monthly salary	2425	4688	2425	3880

These data reveal the fact that there is wide-ranging disparity among the defence lawyers and prosecutors both in the educational background and work experience required of them to be appointed at these positions. Moreover, there is no different qualification standard for capital defence counsel, nor are the general qualification standards for appointment of counsel stringent enough to guarantee that only the highly qualified lawyers will be appointed, for example in death penalty and other serious cases.

¹⁷⁷ Negera Kenatie, Cited above at note 132.

¹⁷⁸ Asha Amine, Cited above at note 132.

¹⁷⁹ Kalkidan Abera and Mergitu Shentema (the right to get free state legal aid, 2005: 50) and Melaku Kumsa (Oromia Justice Bureau Human Resource Manager).

In view of the above data, a person trained in law may be appointed as a defence lawyer and may stand to represent indigent defendants, including those charged with capital cases, having no criminal law experience. A lawyer graduated in Diploma with as few as 3 months experience practicing criminal law may be appointed as counsel in a death penalty trial. These problems turn out to be more impressive when compared with the status of the rival prosecutors.

Furthermore, there are cases in which the court has employed other staff members who are not appointed as defence lawyers. When the defence lawyers are not available, the court employs *legal officers*¹⁸⁰ to substitute the defence lawyers¹⁸¹. The legal officers who replace the defence lawyers in time of their non-appearance are not skilled in the profession. This compels them to carry out only nominal representation.

There is also no requirement for defence lawyers to participate in continuing legal education programs in criminal law. Continued education and/or training programs are not available even though defence lawyers need.¹⁸² The public defenders took training on the skills of defense lawyers only in 2011 and they did not get similar trainings since then¹⁸³. The defenders have got rare chances to participate on short term trainings prepared for judges by different bodies. Remarkably, there was no any training prepared or planned by regional Supreme Court – even though it is a body accredited as a superintendent of the defence service in the region. The regional Supreme Court has not also provided the defence lawyers the chance for continuing education while it did for other staff members¹⁸⁴.

Even though, the defence lawyers represent defendants charged with various serious crimes such as terrorism, they are expected to carry out the representations with no training, while the prosecutors were trained repeatedly on the subject matter. The defence lawyers lack adequate skill and knowledge to handle indigent defendants' cases which come to them concerning these laws. The reason is that the public defenders could not get on-service trainings so that they update themselves, equally with prosecutors, on recently issued laws. As a result, the defence lawyers themselves have hesitancy that they can provide sound

¹⁸⁰*Legal officer* is a position in the regional court structure to substitute the function of registrar provided by the Civil Procedure Code.

¹⁸¹ Ashaa Amine, *Cited above at note 132*.

¹⁸² Abuna Aloo, *Cited above at note 144*.

¹⁸³ *Ibid*.

¹⁸⁴ Negera Kenatie, *Cited above at note 132*.

representation on these and similar matters¹⁸⁵. The defenders also have no special qualifications for representing mentally ill defendants and juveniles as they were given no training on such issues¹⁸⁶.

There is also noticeable inequality, among the defence lawyers and prosecutors, on the monthly salary paid to them. From the very beginning, lawyers who have good skills would not join the indigent defence office, because they can make better money if they work as a private lawyer¹⁸⁷. The imbalance in salary between the defenders and the prosecutors is the key disincentive to providing zealous representation¹⁸⁸. This causes awful representation. The half-hearted defence lawyers ruin defendants' life and are causes for most wrongful convictions.

Moreover, the defence counsels are often not paid for the work they perform out of court¹⁸⁹. As a result, the lawyers do not assume uncompensated out of court activities such as visiting the crime scene even where it is important to prepare for defence.

iii. Workloads of the defence lawyers

There are no set standards for workloads. As a result, there can be no mechanism to monitor that the workloads should not be excessively high. Because, outsized workload interferes with the rendering of quality representation. Workload is oppressive when it does not match counsel's experience, training, and expertise.

The data obtained from the High Court's 9 months report shows that the workloads the defence lawyers were handling in their regular (defence) function was too low while they were, however, busy with the extra works given to them might which even exceed their ordinary work.

¹⁸⁵ Abuna Aloo, *Cited above at note 144*.

¹⁸⁶ Asha Amine, *Cited above at note 132*.

¹⁸⁷ Tamiru, an officer in East Shewa Zone Prison Administration, interviewed on 23/04/2014.

¹⁸⁸ Negera Kenatie, *Cited above at note 132*.

¹⁸⁹ Asha Amine, *Cited above at note 132*.

Table 3: Workloads of the defence lawyers' office¹⁹⁰

The kind of workloads	The amount of workloads [From Jul. 1/2013 - March 30/2014]
Decided criminal cases presented to High Court	587
Decided criminal cases handled by indigent defence lawyers	41
Finalized arbitration cases in which defence lawyers are assigned as second job	50

Taking the total of 41 indigent representation cases which the two defence lawyers handled in *190 working days of the third quarter*¹⁹¹, a defender handles 0.1 cases per day. This means a defence lawyer handles one indigent's criminal case in 10 days. This shows that the performance is extremely below capacity. On the other hand, one can understand that the extra work given to the indigent defence lawyers exceeds their ordinary work. The defence lawyers have assumed their second job to expedite arbitration cases on which they spend two days in a week.¹⁹²

What is more, the defence lawyers are also burdened with other several extra works in the court. These include participation in various teams clustered by the court to carry out various functions including: ethics committee, employee recruiting committee, bidding committee and etc.¹⁹³. This extra work has hindered the defenders from having adequate preparation to maintain competence and handle more indigent cases. Due to the fact that the defence lawyers spend much of their time on extra works, they fail to learn the facts in their client's case or to research mitigating factors and come to be ineffective to fully advocate for their clients at sentencing. The defenders are handicapped to explore and research potentially helpful sentencing issues. Moreover, there are times where the defendants are pressured by their defenders to plead guilty irrespective of the merits of the case. The root cause for all

¹⁹⁰Adama Apeial Zone High Court 9 Months Performance Report 2013/14, (From Jul. 1/2013 - March 30/2014).

¹⁹¹ There are 270 continuous days from Jul. 1//2013 - March 30//2014, among which 72 are weekend days. So we have only 198 working days. When we subtract the national holidays, the net working days equals to 190.

¹⁹² Performance Report, Cited above at note 190, p.14. This was also identified by the Court Room Observations, Adama Special Zone High Court, March 2 to April 10.

¹⁹³ Abuna Aloo, Cited above at note 144.

these problems is that the defenders in the region are given no freedom to reject an extra work that hinders them from handling indigent defence cases¹⁹⁴.

However, as there is seen no attempt to ensure the responsibility of the defence lawyers, in practice, some defenders often remain idle and effortlessly discharge nominal representation. In other words, the indigent defence lawyers lack the desire to zealously defend clients. So, in such circumstances, the workloads and extra works given to the defence lawyers may not be considered as the causes for lack of quality representation.¹⁹⁵

3.2. Lawyer-Client Relationship

Continuity of Representation is one of the elements of lawyer-client relationships which influence the effectiveness of the service. The earlier chapter has discussed that representation by lawyer may take two forms. The first is where a case is handled continuously by the same lawyer. The latter refers to the case in which various lawyers handle a case interchangeably. The practice in the court is that the majority of cases are handled continuously by a defence lawyers¹⁹⁶.

The communication between the defender and an indigent is the other indicator of the effectiveness of lawyer-client relationships. It is a duty of public defenders to keep the indigent defendants informed as to the progress of the case and the means he/she employ to perform his functions. Defence lawyers also need to have sufficient time and a confidential space to have valuable communication with the defendants. The practice in the court, however, shows that many defendants get nothing more than a few minutes of their defence lawyers' time.¹⁹⁷

The defence lawyers don't have the practice of talking to their clients during arrest and while at detention centres. As a result, all defendants in the Zone remain in pre-trial detention without a single contact from a lawyer¹⁹⁸. The more serious problem is that there is no private

¹⁹⁴ Negera Kenatie, Cited above at note 132.

¹⁹⁵ Asha Amine, Cited above at note 132.

¹⁹⁶ Negera Kenatie and Abuna Aloo, Cited above at note 132 and 144.

Interview with 5 anonymous inmates at East Shewa Prison Administration, 16/04/2014.122.

Statistical data which shows the 60 continuous days performance of the court also disclose that the majority of representations (53%) were handled continuously by the same attorney

¹⁹⁷ Anonymous inmate in East Shewa Prison Administration, interviewed 24/04/2014.

Commander Melaku Feyisa, East Shewa Zone Prison Administration Head, interviewed on 23/04/2014.

¹⁹⁸ Commander Melaku Feyisa, *Ibid*.

meeting space for the defendants and the lawyers to have confidential communications in prisons, courtrooms and other places where defendants must confer with legal representation.¹⁹⁹

3.3. Effectiveness of the Representations of Indigent Defense Lawyers

The quality and effectiveness of representation is determined both by the administration of defence service and the individual performance of the defence lawyers. Before scrutinizing the qualitative data on the quality and effectiveness of the indigent defense representations, it is important to look in to data obtained from questionnaires and statistical displays of the performances of the public defender's office. According to the data from questionnaires 52% (12 out of 23) participants consider that the effectiveness of the indigent defence lawyers is very low while 8.6% of the informants rated the effectiveness of the defense lawyers as good and 17% as very good. This shows that the majority of the informants have a perception that the public defenders are very much ineffective.

The data also shows that the defense lawyers are more ineffective in their skill of investigation of the law when compared to other areas such as preparing for the sentencing process. The data from questionnaires also show that 20 (86%) informants think that the defense lawyers are ineffective in their skill of investigation of the law, while 19 (82.6%) informants think that the defense lawyers are ineffective in their skills of pleading, understanding facts of the case and keeping the client informed. 18 (78.2%) informants think that the defense lawyers are ineffective in preparing for the sentencing process.

The following table shows the performance of the defense lawyers at various stages.

Negera Kenatie, public defender of Adama Special Zone Court, interviewed, 16/04/2014.

¹⁹⁹ Observation of the Zonal Prison Administration and Adama Special Zone High Court, March 2 to April 10.

Table 4: Statistical data of the performance of the defense lawyers on the various decisions given related to the rights of defendants²⁰⁰

No.	Kinds actions taken or decisions rendered	Total number of cases	% (share) of the defense lawyers' representation
1	Defendants whose right to bail is allowed	17	17%
2	Defendants whose right to bail is denied	15	50%
3	Defendants has pleaded guilty	5	60%
4	Defendants who has pleaded not guilty	27	28%
5	Acquitted defendants	8	25%
6	Convicted defendants	27	55.5%

Corresponding to the data from the questionnaires, this statistical data also show that the public defender office is ineffective in its performances. The following paragraphs will present a qualitative analysis of these problems.

The defence lawyers in the Zone do not have the practice of conducting in depth interviews with the client or meet the witnesses before they appear in court with a defendant.²⁰¹ The public defenders also give no time for the task of visiting their clients in jail and they do not push for speedy bail hearings²⁰². The defence lawyers are not supported with investigators who locate and interview witnesses, investigate crime scenes, locate evidence, verify key facts and organize documents in preparation for court proceedings²⁰³. There is also problem with the commitment of defence lawyer's to search for any means to defend and promote the interest of their client²⁰⁴. As a result, there are defendants represented by the lawyers who even regret for not relinquishing the state-funded representation provided by the court.²⁰⁵

²⁰⁰ Statistical data which shows the 60 continuous days performance of the defense lawyers in the court.

²⁰¹ Tafese Genana, Asha Amine, Tenaw Geresu, Commander Melaku Feyisa, Getu Ulfata, Cited above at note 134, 132,169 and 197 respectively. Interview with 4 anonymous inmates at East Shewa Prison Administration, 16/04/2014.

²⁰² Getu Ulfata, Tafese Genana, Asha Amine, Tenaw Geresu, Commander Melaku Feyisa, Cited above at note 170,134, 132,169 and 197 respectively.

²⁰³ Getu Ulfata, Tafese Genana, Asha Amine, Tenaw Geresu, Commander Melaku Feyisa, Ibid.

²⁰⁴ Adama Special Zone Court Room Observations, Cited above at note 145.

²⁰⁵ Interview with an inmate at East Shewa Zone Prison Administration (who does not want to disclose his name), 24/04/2014.

One of the individual costs that the indigent defendants bear due to inadequate investigation and preparation during litigation is the unfounded denial of defendants' rights to bail²⁰⁶. There are cases in which defendants represented by defense lawyers but denied their right to bail with no sufficient factual ground, based on the mere fact that the prosecutor has opposed the right to bail alleging that the defendants are unlikely to come back if set at liberty²⁰⁷. As it can be observed from the cases, the defense lawyers who represented the defendants have not raised the necessary allegations to help the defendants secure their right to bail. It is witnessed from these cases that the lawyers has not responded to and tried to present evidences to disprove the prosecutors' recommendations on the likelihood of the accused's non-appearance if released on bail.

The plea-entering stage is the other phase in which the rights of defendants suffer due to poor investigations of law and fact by the defendants as large number of defendants make guilty pleas²⁰⁸. There are cases in which the public defenders induce the indigent defendants to plead guilty. Some defendants agree to make pleas as the defence lawyers encouraged them to plead guilty so that they will be benefited from reduced sentences²⁰⁹. There are also defendants who pleaded guilty as they think that they will not be effective even if they insist on to the proceeding with the aid of the indecisive defense lawyers.²¹⁰ The public defenders are, however, duty bound to protect the defendants from making injurious pleas.

The ineffectiveness of the defence lawyers' related to their understanding and preparing for the sentencing process have also contributed to convictions of some factually innocent defendants or harsher sentences /longer prison terms/ than their non-indigent counterparts²¹¹. There are cases in which the allegation problems of the defense lawyers have contributed to convictions of defendants. For example, in a case in which an indigent defendant was charged under a crime of *sexual outrages committed on infants* (article 627(1)), the defendant was convicted on an incompetent evidence. As there were three defense lawyers who

²⁰⁶ Asha Amine, Cited above at note 132. Interview with 3 anonymous inmates at East Shewa Prison Administration, 16/04/2014.122.

²⁰⁷ PP Vs Behailu Wondimu, PP Vs Tariku Niguse, PP Vs, Adama Special Zone High Court, F.N. 16564,16455 respectively.

²⁰⁸ Getu Ulfata, Tafese Genana, Asha Amine, Tenaw Geresu, Commander Melaku Feyisa, Cited above at note 170,134, 132,169 and 197 respectively. Interview with 5 anonymous inmates (both from both represented by lawyers and non-represented) at East Shewa Prison Administration, 16/04/2014.

²⁰⁹ Interview with 2 anonymous inmates (represented by defense lawyers) at East Shewa Prison Administration, 16/04/2014; Tenaw Geresu, and Tafese Genana, Cited above at note 169 and 134 respectively.

²¹⁰ Anonymous inmate in East Shewa Prison Administration (sentenced to six and half years of imprisonment at the High Court, in file number 75203), interviewed 24/04/2014.

²¹¹ Asha Amine, Cited above at note 132. Interview with Tenaw Geresu, Tafese Genana (Cited above at note 169 and 134 respectively) and other 5 anonymous inmates in East Shewa Prison Administration, 21-23/04/2014.

interchangeably handled the case, neither of them have understood and were determined, during the trial process, to make necessary allegations to show the incompetence of the prosecution evidence.²¹²

In the other case, a defendant was charged for committing a crime of aggravated robbery (art. 671 (2) of the criminal code). However, the charge was altered by the order of the court and framed under article 571 of the criminal code. As the defendant was represented by a new public defender after the prosecution evidence, the new public defender was making allegations in accordance with the contents of the original charge. It is possible to think that such erroneous allegations have impacted the conviction. So, this is attributed to the defense lawyers' problem of not following up their client's case diligently and taking all the necessary measures carefully.

In another case a defendant was sentenced to 4 years imprisonment for committing homicide by negligence for killing a person by a car crash²¹³. The defense lawyer who represented the accused was making allegations for reduced punishment claiming that it is not his client's fault but it was the fault of the victim which resulted in his death. As far as he believes that the defendant has no wrong, by negligence, in the death of the victim, the defense lawyers' claim for the reduction of punishment to his client was not proper, because, he should have claimed that the defendant be acquitted.

In one similar case a defendant represented by a private lawyer was charged for the same crime (homicide by negligence over a car crash)²¹⁴. However, the defendant was acquitted as the lawyer has insisted that his client could not be made liable for the fault committed by the victim and that he has also presented evidences to prove the same.

On the other hand, in cases where the evidences show that the accused committed an offence of lesser gravity, the defense lawyers sometimes fail to either indicate this or require courts to alter the offence the defendants were charged under to those of lesser gravity. In a real case, a defendant represented by public defender was charged under a crime of robbery (article 670 of the criminal code)²¹⁵. Even if the facts in the case were not supported according to the contents of the crime, the defendant's lawyer has not either indicated this to the court or

²¹² PP Vs Asnake Tadesse, F.N. 16447, charged for violating article 627(1) of the Criminal Code.

²¹³ PP Vs Mesfin Mekonnen, Adama Special Zone High Court, F.N. 16466.

²¹⁴ PPP Vs Membere Dessie, Adama Special Zone High Court, F.N. 16467.

²¹⁵ PP Vs Behailu Wondimu, Adama Special Zone High Court, F.N. 16564.

requested the court to alter the offence the defendant was charged under to that of lesser gravity. His allegations were as if the case was proved according to the charge. However, the court, understanding that the evidences show that the accused committed an offence of lesser gravity, has convicted the defendant accordingly. These cases may indicate that the defense lawyers lack either the proficiency or the responsiveness in making necessary allegations during the sentencing process or both.

This has led defendants charged with serious crimes or complex issues to prefer to be represented by hired lawyers even if they may face excessive hardship to pay for the counsel²¹⁶. Defendants hire private lawyers, even though they can access state funded lawyers for free, especially when they are charged for violating more than one provision. This occurs as most defendants have hesitations on the competence of the state funded public defenders. Consequently, many defendants surrender the indigent defence representation and hire lawyers largely when they become hopeless to prove their innocence²¹⁷. In one case, the defendants charged with aggravated robbery have surrendered the defence lawyer who represented them during the plea entering and hearing of prosecution evidence and hired a private lawyer at defence witness hearing.²¹⁸ Such loss of confidence and abandoning of the defence lawyer by the defendants for crimes which carry heavier punishments is mainly attributable to the ineffectiveness of the defense service.

²¹⁶ Getu Ulfata, Tafese Genana, Asha Amine, Tenaw Geresu, Commander Melaku Feyisa, Cited above at note 170,134, 132,169 and 197 respectively.

Interview with 5 anonymous inmates at East Shewa Prison Administration, 16/04/2014.

²¹⁷ Tenaw Geresu, Getu Ulfata, Tafese Genana, Asha Amine, Cited above at note 169,170,134 and 132 respectively.

²¹⁸ PP Vs Daniel Getachew, Adama Special Zone High Court, F.N. 16550.

CHAPTER FOUR

CONCLUSIONS AND RECOMMENDATIONS

Ethiopia is a poor country. Like any other parts of the country, Adama – the 2nd most populous town of Ethiopia and also Oromia next to Addis Ababa, has high poverty rate. Poverty, amongst its evils, restricts the underprivileged from using the legal system effectively and appropriately. Article 20 (5) of the FDRE Constitution was conceived as a solution for this problem. The constitution entitles indigent's accused of a crime with state funded legal representation when the interest of justice requires so. According to both the FDRE and Oromia constitution and other international and regional treaties ratified by Ethiopia, the right to legal representation is anticipated to include indigents' right to have effective representation by competent counsel who has sufficient resources. The content of the right to legal representation should include the state's duty of paying private practitioners to defend the poor where it could not deliver the service through lawyers which itself employ.

However, when we look to the practice of the indigent defense service in Adama Special Zone High Court, the representations are nominal ones and there is no detailed laws/system designed to enforce effective representation. Moreover, there is no mechanism to guarantee that defense lawyers are consistently held accountable for the quality of representation they provide.

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

Both the FDRE and Oromia constitutions provide indigence as one requirement to qualify for state funded representation. However, there is no client eligibility screening system in the court. As a result, any defendant charged for a crime punishable with above 5 years can get representation with no approval if he/she claims to be indigent.

Both the domestic laws and the international regional treaties have recognized the interest of justice requirement as a criterion for client eligibility. Proclamation to provide for the re-

establishment of Oromia national regional state courts also provides the right to defendants who are charged with crimes punishable with not less than five years of imprisonment. This proclamation has narrowed the whole concept of miscarriage of justice to the severity of punishment. Hence, it would be difficult to consider the conception of the right in this proclamation as reliable due to its incompatibility with the constitution and other international and regional treaties ratified by Ethiopia. Following the essence of the proclamation, the court employs the 5 year minimum punishment as the only requirement to determine the miscarriage of justice standard except for an insignificant number of cases in the court in which the complexity of the cases were considered in determining client eligibility.

As the indigent defence service at the high court is inadequate and ineffective, indigent defendants commit several significant and recurrent errors which result in threats to their rights at different stages of proceedings. The indigent defendants fail to claim that they deserve free legal counsel showing that the standard of interest of justice requires. Even those who are charged for serious crimes fail to claim representation especially, during the pre-trial and appeal stages. Consequently, there are defendants who suffer from various violations against their rights and freedoms including tortures, forced confession and other losses of liberty such as being handcuffed. The defendants also fail to claim to be released on bail or fail to mention all the factual and legal allegations and suffer from longer pre-trial detentions and unfounded denial of their right to bail.

Defendants who appeared before court without representations at the plea entering stage also make uncounselled pleas. The indigent defendants' appearing before court without representation or without adequate representation considerably emboldens wrongful convictions as the unrepresented defendants fail to indicate the necessary factual and legal allegation. At appeal stage also many defendants fail to get access to the appellate courts and the time to take appeal lapses, as they are not aware of that. The indigent defendants also fail to claim to be released through the stay of sentence execution. As the unrepresented defendants fail to indicate the necessary factual and legal allegation or as they make irrelevant allegations, the probability for the reversal of a criminal conviction is also rare.

The defence lawyers, in the court, can also be considered as ineffective in delivering competent representation. The defense lawyers, particularly, have failed to conduct in depth interviews with the client, meet the witnesses, or visit the crime scene, where necessary. The

defense lawyers in the court also show lower performance in securing the right to bail and in protecting the defendants from making injurious pleas. The defense lawyers also have problems in understanding and preparing for the sentencing process. As a result, indigent defendants face convictions under wrong provisions and had lesser opportunity to get lessened punishment. Due to this reasons, many defendants have surrendered the state funded representation and hired private lawyers. The major reasons for the ineffectiveness of the defense lawyers include: absence of on-service trainings and continued legal educations, large extra-jobs, poor criteria to screen the defense lawyers, low funding, low monthly salary, low access to support staff and facilities, poor controlling mechanisms, and etc.

Despite the prevalence of these entire problems on the delivery of indigent defense service, the court is not taking effective measures to redress the inequality of arms. Among other things, the court does not give appropriate information to the defendants about the right and how can they access. The court also fails to make efforts to ensure that the indigents are getting quality representation. It also failed to take measures to protect the indigents from prejudice that occur to their right even when it is apparently observed that eligible defendants lacked representation or received critically ineffective representation.

In a nut shell, indigent defence in Adama is in crisis. The indigent defence delivery system is seriously lower than what the international and the domestic laws provide. There is no single indigent defence system built around unifying standards or principles. Consequently, numerous innocent defendants have suffered injustices and violations to their rights before, during and after the trial.

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

Public defence offices should be established, at all levels of courts. The indigent defence delivery system could be made up of an internal public defender department with state employed lawyers and contracted defenders. Contracted defenders could be engaged in unusual or complex cases which require professionals with specialization, or whenever the circumstances require.

A permanent commission on indigent defence should be created at the regional level as an autonomous entity within the judicial branch of state government. The commission should be state-funded and be considered as state-wide indigent defence oversight entity charged with the following responsibilities: 1) providing all necessary supports to help the public defence offices in the region to improve their indigent defence systems; 2) establishing and enforcing state-wide minimum qualification standards for public defenders; 3) establishing and enforcing state wide minimum standards for determining indigence of defendants; 4) giving informed decisions about structuring, funding and improving indigent defence services in region and following its implementation; 5) to safe-guard independence and promote efficiency and quality of services; 6) to identify and encourage best practices for creation and operation of such a delivery system. 7) to monitor that there should not be created disparity of workload, salaries, benefits, trainings, facilities, support staff, and etc. between the defenders and their rival prosecutors.

Funding for appointed counsel and related services should be independently appropriated from state funds. There should be mechanisms in place to guarantee that the abilities of defence counselors match the complexity of the cases to which they are assigned. There should also be a system that requires specific training or continuing legal education to enhance the quality of capital defence counsels and investigators. The trainings should focus in areas that require special expertise, on new laws and contemporary issues. Specially trained lawyers staff should be provided to represent indigent capital defendants at trial in appropriate cases. The indigent defence lawyers should be prohibited from accepting cases which they lack the time or qualifications to handle.

The criteria to be established to recruit public defenders in the region and to assign a contract lawyer should allow hiring competitive and highly experienced trial lawyers who make the most of their resources and stand for ensuring that people receive a zealous defence. The defence lawyers should also have meaningful access to adequate defender-office staffing, including independent, qualified investigators, experts and other support services.

There should be workload standards which should not be exceeded. Workload measures need to be developed to guarantee the capacity of counsel to properly handle their cases that allow adequate preparation of cases and to permit the rendering of quality representation. The defence lawyers should be free from unrelated extra works.

Courts should also ensure indigent's representation at all critical stages of litigation. Client consultation should be prompt and ongoing throughout the judicial process and should also extend to appeal. The responsible body shall assign and notify counsel of his appointment within 24 hours of the defendants request, unless circumstances documented in writing show this to be impossible. In that case, counsel should be appointed in any case within 10 days of arrest or detention. There should also be a mechanism which enables courts to monitor that the defence lawyers and clients' meetings occur in the detention centers.

There should be a system which enables defendants to be informed, as of right, about their right to get representation by state funded counsel. There should also be a rule which dictates courts to give ample time to the defendants' lawyers to prepare for defence. Public defence offices should be required to develop systems to ensure that indigent defendants are not encouraged to enter uncounseled pleas of guilt. To ensure confidential communications b/n counsel and defendants, private meeting space should be available in jails, prisons, courthouses and other places where defendants must confer with legal representation.

There should also be mechanisms to control whether the defence lawyers conduct in depth interviews with the client, meet the witnesses, or visit the crime scene when necessary, before they appear in court with a defendant. There should also be installed structures which can actively be engaged to ensure the responsibility of the defence lawyers. Continuity of representation should be encouraged where feasible or appropriate. The practice in which clients are handed off from one lawyer to another at different stages of a case should be eliminated. There should be improved and more systematic supervision, evaluation and promotion of the defence lawyers for quality and efficiency according to clearly articulated performance benchmarks.

The concept of miscarriage of justice, both in the laws and practice, needs to be understood as encompassing the complexity of the case in addition to the severity of the charge or sentence. There should also be standard to categorize a case as complex.

Improved coordination among the courts, public defence, prosecution and other criminal justice agencies is important. Non-governmental organizations and pro bono legal services should be encouraged and strengthened to complement the legal aid undertakings of the government. The regional Justice Berau should design guidelines or directives to enforce the advocates' pro bono obligations. The directives to be issued may employ different systemic

approach in encouraging lawyers to realize the lawyers' pro bono responsibility. For example, this can be done through redemption of tax for the pro bono service given by a lawyer. Provision of the duty may also be used as a pre-condition to renew advocates' license.

Procedures should also be developed to guarantee the possibility of retrial in cases where the indigent office could not provide the service to eligible defendants or where the defence service provided is proved to be critically ineffective. In cases where the indigent defence system could not carry out representation for eligible defendants due to under-funding or other problems, I urge that the state should impose a default rule raising the standard of proof to *beyond all doubt* to convict the unrepresented defendants. Courts, in such cases, could impose the beyond all doubt standard to satisfy due process guarantees and to minimize the number of wrongful convictions that result from the imbalance of arms.

BIBLIOGRAPHY

I. Books and Unpublished Materials

1. Bright Gideon's reality: after four decades, where are we, *Criminal Justice*, 2003: 5.
2. Cara H. Drinan, *The National Right to Counsel Act: A Congressional Solution to the Nation's Indigent defence Crisis*, 47 *HARV. J. LEG.* (2010).
3. Charles J. Ogletree, Jr., *An Essay On The New Public Defender For The 21st Century*, *Law and Contemporary Problems*, Vol. 58: No. 1, 1995.
4. Christie S. Warren (editor in chief), *International Legal Aid & Defender System Development Manual*, 2010.
5. *Compendium of standards for indigent defence systems, a resource guide for practitioners, and policy makers*, Vol III, 2000.
6. Douglas L. Colber, *Connecting Theory and Reality: Teaching Gideon and Indigent Defendants' Right to Counsel at Bail*, 2006.
7. Eileen Skinnider, *the Responsibility of States to Provide Legal Aid*, Paper prepared for the Legal Aid Conference Beijing, China, 1999.
8. Erol Digiusto, *Effectiveness of public legal assistance services*, A discussion paper, *Justice Issues*, Paper 16, 2012.
9. *FDRE Growth and Transformation Plan 2010/11 – 2014/15, Volume 2 Policy Matrix*, 2010.
10. G.S. Prentzas, *Gideon v. Wainwright, the right to Free Legal Counsel*, 2007.
11. James B. Haddad and Gary L Starkman, *Criminal Procedure*, 4th ed., 1992
12. Julie Ramseur and John Rubin, *North Carolina Defender Manual, Volume two trial, Second Edition*, 2012.
13. Luong T Quynh, *Guarantee of the Accused Person's Right to Defence Counsel – A Comparative Study of Vietnamese, German and American Criminal Procedure Laws* Field of Study, 2011.

14. Luong Thi My Quynh, Guarantee of the Accused Person's Right O Defence Counsel, A Comparative Study Of Vietnamese, German And American Criminal Procedure Laws, Doctoral Dissertation Of Law, Ho Chi Minh City, 2011.
15. Marianne Wehrli, Pretrial Right to Counsel, A Proposal for Law Reform in Switzerland, Based on Canadian Experience Submitted in partial fulfillment of the requirements for the degree of Master of Laws, Dalhousie University Halifax, Nova Scotia, September 2000.
16. Norma NLeftstei, Securing Reasonable Caseloads, Ethics and Law in Public Defence, the American Bar Association, 2011.
17. Penal Reform in Africa, Index of Good Practices In Providing Legal Aid Services In The Criminal Justice System, Version 2, 2006.
18. Protection and Promotion of Human Rights through Provision of Legal Services Conference Report, , Best Practices from Africa, Asia and Eastern Europe, Kyiv, 27th-30th March, 2007.
19. Richard G. Singer, Criminal procedure, 2nd ed. 2008.
20. Richard J. Wilson, Principles, Sources, and Remedies for Violation of the Right to Legal Assistance in International Human Rights Law (incorporated in Christie S. Warren (editor in chief), International Legal Aid & Defender System Development Manual, 2010.
21. Scott Wallace and David Carroll, the Implementation and Impact of Indigent defence Standards National Legal Aid and Defender Association, a research report submitted to the U.S. Department of Justice, 2003.
22. Simon Verdun-Jones and Adamira Tijerino, A Review of Brydges, Duty Counsel Services in Canada, Legal Aid Research Series / Department of Justice Canada.
23. Transforming legal aid: delivering a more credible and efficient system, Consultation Paper CP14/2013.
24. Unaccompanied and Separated Children Deprived of Liberty: An international right to free legal assistance Draft, 2011.
25. Black's Law Dictionary (8th ed. 2004)
26. Vicki Schmolka, the Right to Publicly-Funded Legal Representation in Canada: Making the Case, Canadian Bar Association, 2002.

II. Journal Articles

1. American Jurisprudence, Vol.16, Conflict of laws to Constitutional Law, 1964
2. Charles J. Ogletree, Jr., An Essay on the New Public Defender for The 21st Century Law and Contemporary Problems, Vol. 58: No. 1
3. Hussein Ahmed Tura, Indigent's Right to State Funded Legal Aid in Ethiopia, International Human Rights Law Review 2, 2013
4. Jean C. Love, the Role of Defence Counsel in Soviet Criminal Proceedings, Wisconsin Law Review, Vol. 1968
5. Jennifer L. Huber, Legal Representation for Indigent Criminal Defendants in South Africa: Possibilities under The 1994 Constitution, Duke Journal of Comparative & International Law, Vol. 5
6. Junius L. Al lison, The lawyer-Client Relationship: Rights and Duties, Relationship Between the Office of Public, Defender and the Assigned Counsel System, Valparaiso University Law Review, Volume 10, Number 3.
7. Robert L. Spangenberg' And Marea L. Beema, Indigent Defence Systems in the United State, Law and Contemporary Problems (1995), Vol. 58: No. 1.
8. Ruth Ginsburg, professional legal assistance in Sweeden, international and comperative law quarterly, vol. 22, 1932
9. Samuel Rubbin, criminal justice and the poor, Journal of criminal law, vol.22, 1932
10. The right to counsel at the pre-trial mental examination of an accused, university of Pennsylvania law review, vol.113, 1964
11. W.W.Black, Right to counsel at trial, the Canadian bar review, 1975, Vol.19, No 1.

III. International Instruments

1. African (Banjul) Charter on Human and Peoples' Rights (OAU Doc. CAB/LEG/67/3, 1982. Available at: http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf
2. Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4.XI.1950. Available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf
3. Convention on the Elimination of All Forms of Racial Discrimination
4. Convention on the Rights of Persons with Disabilities
5. Convention on the Rights of the Child
6. International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, a Practitioners' Guide, 2004
7. Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa
8. The Basic Principles on the Role of Lawyers. Available at: <http://fr.unrol.org/files/UNBasicPrinciplesontheRoleofLawyers.pdf>
9. The Convention on the Rights of Persons with Disabilities. Available on: <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>
10. The UN Draft Declaration on the Independence of Justice. Available at: <http://www.cristidanilet.ro/docs/Shingvi%20Declaration.pdf>
11. United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Available at: http://www.tjsl.edu/slomansonb/10.3_DetentionImprisonment.pdf
12. Universal Declaration of Human Rights (UDHR)
13. A Basic Guide to Legal Standards and Practice, Lawyers Committee for Human Rights, 2000: 1. http://www.humanrightsfirst.org/wp-content/uploads/pdf/fair_trial.pdf

IV. Domestic Instruments

1. Constitution of the People's Democratic Republic of Ethiopia, Negarit Gazette, Proclamation No. 1/ 1987.
2. Constitution of the Ethiopian Empire, 1931
3. Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazette, Proclamation No. 1/ 1995.
4. Criminal Code of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazzeta, Proclamation No. 414/2004.
5. Criminal Procedure Code of Ethiopia, Negarit Gazette, Proclamation No. 185/1961
6. Regulation 1/2001 issued to govern the code of conduct of Oromia Courts judges and judicial commission appointees.
7. The Oromia National Regional State Proclamation to Provide for the Re-establishment of Oromia National Regional State Courts, proclamation 141/2008.

V. Internet Sources

1. Access to Legal Aid in Criminal Justice Systems in Africa Survey Report: 9. Available at: https://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf
2. Third National Population and Housing Census of Ethiopia, 2007. Available at: http://www.csa.gov.et/newcsaweb/images/documents/pdf_files/regional/Oromya1.pdf
3. Cara H. Drinan, A Legislative Approach to Indigent defence Reform, American Constitution Society for law and society Issue brief
4. Commonwealth of Virginia Standards of Practice for Indigent defence Counsel in Non-Capital Criminal Cases at the Trial Level, revised March 15, 2012
5. Federal Democratic Republic of Ethiopia, Ethiopia's Progress towards Eradicating Poverty: An Interim Report on Poverty Analysis Study (2010/11)
6. Handbook on improving access to legal aid in Africa, Criminal Justice Handbook Series, New York, 2011, Available at: http://www.unodc.org/pdf/criminal_justice/Handbook_on_improving_access_to_legal_aid_in_Africa.pdf.

7. Indigent Defence, Counsel & Other Procedural Issues, Juvenile Justice Guide Book for Legislators: 3. Available at: <http://www.ncsl.org/documents/cj/jjguidebook-indigent.pdf>
8. Mark Twain, The law is a system that protects everybody who can afford to hire a good lawyer. Availbale at: <https://www.schr.org/counsel>. Accessed on 01/01/2014.
9. North Carolina Defender Manual, 2004, Institute of Government, p4. Availbale at: <http://www.sog.unc.edu/sites/www.sog.unc.edu/files/Rubin%20Right%20to%20Counsel%20for%20DC%20Judges%20Summer%202013.pdf>.
10. Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa <http://www.achpr.org/instruments/fair-trial/>
11. Report of the Canadian Bar Association, Making the Case: The Right to Publicly-Funded Legal Representation in Canada, 2002: 4-6. Available at: http://www.cba.org/cba/pdf/2002-02-15_case.pdf
12. Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act, December 2012
13. United States v. Cronin, 466 U.S. 648, 654 (1984). Available at: <https://www.schr.org/counsel>.
14. Gail Davidson, Catherine Morris, and Heather Neun, International Law Obligations to Provide Legal Aid (www.lrwc.org; lrwc@portal.ca)
15. Juvenile Justice Guide Book for Legislators, Indigent Defence, Counsel & Other Procedural Issues (www.ncsl.org)

VI. Interview (Informants)

1. Melaku Kumsa, Oromia Justice Berau Human Resource Manager, May 2, 2014.
2. Beresa Aseffa, Oromia Supreme Court Human Resource Officer, May 1, 2014.
3. Asha Amine, Adama Special Zone High Court, President, 21/04/2014.
4. Abuna Aloo, public defender at Adama Special Zone Court, 16/04/2014. Asha, Adama Special Zone High Court, President, 21/04/2014.
5. Andualem Gelagay, inmate to East Shewa Prisoners Administration, 24/04/2014.
6. Bedada Aseffa, Adama Special Zone High Court, Human Resource Manager, 30/04/2014.
7. Commander Melaku Feyisa, East Shewa Zone Prison Administration Head, 23/04/2014.
8. Getu Ulfata, Private lawyer, interviewed 30/04/2014.
9. Gosa Alemu, an inmate to East Shewa Zone Prison Administration, interviewed 24/04/2014
10. Negera Kenatie, public defender of Adama Special Zone Court, interviewed, 16/04/2014.
11. Tamiru, an officer in East Shewa Zone Prison Administration, 23/04/2014.
12. Tenaw Geresu, an inmate in East Shewa Prison Administration, 23/04/2014
13. Tafese Genana, Inmate at East Shewa Zone Prisoner Administration, 21/04/2014.
14. Inmates of East Shewa Zone Prison Administration who undisclosed their name, 24-25/04/2014.

ANNEXES

Annex I

Interview Guide for court officials

1. What are the greatest challenges in providing (effective) legal representation to indigents in criminal matters? Lack of resources, human /shortage of lawyers/ and capital, delay, insufficient advice, lack of understanding?
2. Is there any budget allocated for the implementation of indigents' right to legal representation?
3. How is poverty (indigence) being assessed? Is there financial /level of income/ limitation for qualification for legal aid?
4. How is miscarriage of justice assessed/ established?
5. Which rights and liberty of the indigents accused are exposed to unfair treatments due to their non-representation?
6. Are the courts precluded from imposing sentence of imprisonment when the defendant is improperly denied legal representation?
7. Do courts intervene to assure effective assistance where the failure to provide effective assistance is manifest and sufficiently brought to their attention?
8. Are there activities to strengthen the capacities of public defenders through training and linking them with other actors in the criminal justice system? Is there caseload standard which keeps a defence lawyer not to be over-burdened?
9. Is there allocation of unique and high lawyer qualifications where the complexity of cases demands, such as death penalty litigations?
10. What do you think should be done to solve the problems in practice related to the ineffectiveness of public defenders and the violations caused to defendants' right?

Annex II

Interview Questions for judges, prosecutors, police, private lawyers and others.

1. What are the greatest challenges in providing publicly funded legal representation in the region? Lack of resources, human /shortage of lawyers/ and capital, delay, insufficient advice, lack of understanding?
2. Is there established practice of giving legal assistance at police stations to persons under arrest and detention who may be interrogated by the police?
3. Did the police advise defendants of their right to legal representation?
4. Do courts inform the accused of their right to legal representation? Do they ask the indigents whether they desire to ask someone to defend them?
5. How is indigence being assessed? Is there financial /level of income/ limitation for qualification for legal aid? What mechanisms or combination of mechanisms are used to make the indigence determination? Who determines the indigence of a defendant?
6. Are legal representations provided with a reasonable period of time to prepare their defence?
7. How is miscarriage of justice assessed/established?
8. What are the common errors committed by unrepresented accused persons:
 - a) At first appearance?
 - b) During the pre-trial release stage?
 - c) At plea stage?
 - d) At trial stage?
 - e) At sentencing stage?
9. What amount of the unrepresented accused make errors in court that jeopardize their legal position? What kind of errors? Do the mistakes jeopardize their rights? Which rights are mostly jeopardized?
10. Do courts intervene to assure effective assistance where the failure to provide effective assistance is manifest and sufficiently brought to their attention?
11. Is there allocation of high lawyer qualifications where the complexity of cases demands?

12. Are the courts precluded from imposing sentence of imprisonment when the defendant is improperly denied legal representation?
13. What measures do judges of court implement to redress the equality of arms and the imbalance that arises from an unrepresented accused appearing before them?
14. What do you think should be done to solve the problems in practice related to the ineffectiveness of public defenders and the violations caused to defendants' right?
15. Do you think that the imposition of higher standard of proof by courts a solution to the imbalance of arms between prosecutor and defendant?

Annex III

Interview guide (for defendants)

- 1) Is there established practice of giving legal assistance to indigents at police stations to persons under arrest and detention who may be interrogated by the police?
- 2) Did the police advise you of your right to legal representation?
- 3) Did courts inform you that you have right to legal representation? Did they ask you whether you desire to ask someone to defend you?
- 4) What common errors you committed b/c you are unrepresented?
 - a. During the pre-trial stage
 - b. At first appearance?
 - c. During the pre-trial release stage?
 - d. At plea stage?
 - e. At trial stage?
 - f. At sentencing stage?
 - g. During the post-trial stage
- 5) Are the courts precluded from imposing sentence of imprisonment when you are improperly denied legal representation?
- 6) Do courts intervene to assure effective assistance where the failure to provide effective assistance is manifest and sufficiently brought to their attention?
- 7) Was there state interference or conflict of interest with the counsel appointed to you?
- 8) What do you think should be done to solve the problems in practice related to the ineffectiveness of public defenders and the violations caused to defendants' right?

Annex IV

Questionnaires to be filled by judges, prosecutors, investigating police and others

First of all I would like to thank you for your willingness to fill the questionnaires. I am conducting the study for the Fulfilment of the Requirement of the Degree of Masters in Human Rights on the title ‘‘Indigent’s Access to Effective Representation in Criminal Matters.’ Please fill the questioners with due attention and care as it is intended to identify the problems in the system to suggest the ways of curing it. I can assure you that all the information provided will be treated as confidential and will be used for the intended purpose.

Age _____

Sex _____

No.		Yes					No				
1	Do you think the defense lawyers have functional independence?										
2	Is their fair client eligibility system?										
3	Do you think the defense lawyers have the necessary competence to deliver important representations?										
4	Do you think that the defense lawyers have fair case load?										
	Rate the effectiveness of the defender in the following standards	1	2	3	4	5					
1	sufficient time and skills to handle effectively										
2	interviewing the client and keeping the client informed as to the progress of the case										
3	investigating the facts and researching the law										
4	understanding and preparing for the sentencing process										
5	pursuing appeal or other post-conviction rights										

6	to communicate with the accused in conditions giving full respect for the confidentiality of their communications					
7	Overall effectiveness of the defense lawyers					