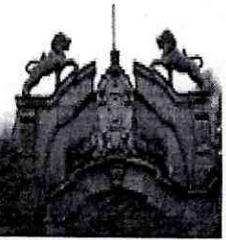


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**LAW SCHOOL**

**JUDICIAL ETHICS AND FAIR TRIAL: A  
CRITICAL ANALYSIS OF THE CASE OF THE  
COURTS OF SPECIAL ZONE OF OROMIA  
SURROUNDING FINFINE**

**BY: DUGUMA NEDA AREDA**

**MARCH, 2016**

**ADDIS ABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES  
SCHOOL OF LAW**

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FINFINE**

**BY**

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**A Master's Thesis Submitted To School of Graduate Studies of  
Addis Ababa University In Partial Fulfillment Of The  
Requirements of Masters of Law (LLM)**

**March, 2016**

## DECLARATION

Duguma Neda Areda, hereby declare that this thesis is my own original work and has never been presented in any other institution. I also declare that where sources are used, they are duly acknowledged.

With Regards!

**LLM Candidate:** Duguma Neda Areda

Signature \_\_\_\_\_

Date \_\_\_\_\_

I, Abera Dagafa, have read this thesis and approved it for examination.

**Supervisor:** DR. Abera Dagafa( Ass. Professor)

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Date \_\_\_\_\_

### Examiner

	Name	Signature	Date
1/	_____	_____	_____
2/	_____	_____	_____

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## **ACRONYMS**

**ECtHR- European Court of Human Rights**

**GC- General Comment of the Human Rights Committee**

**FDRE- Federal Democratic Republic of Ethiopia**

**HRC -United Nations Human Rights Committee**

**ICCPR- international Covenant On Civil and Political Rights**

**UDHR- Universal Declaration of Human Rights**

**UN- United Nations**

**UNBPIJ- United Nations basic Principles on the Independence of Judiciary**

**JAC- Judicial Administration Council.**

## **Abstract**

*This study is aimed at analyzing the fairness of the trials in the courts of special zone of Oromia Surrounding Finfine against international and national standards in relation to judicial ethics. It identifies the relationships between judicial ethics and fair trial rights in general and how ethical problems of judges of the courts of Special Zone of Oromia are reflected in the trial process and their consequences on the right to fair trial in particular. The issue of fair trial right is examined from the point of view of some core elements of fair trial rights which have particular significance with judicial ethics. These are judicial independence, impartiality, equality of arms and the right to be tried without undue delay.*

*It is concluded that ethical problems in the Courts of Special Zone of Oromia have significantly affected the right to fair trial in several ways. Accordingly, practice of ignoring the law, conducting biased hearing, lack of independence, exceeding of the standards for the right to be tried without undue delay, and contravening of the principle of equality of arms are the critical problems which need to be resolved. In addition, the code of judicial conduct is insufficient to ensure judicial accountability particularly in relation to problem of competence.*

## Chapter One

### 1. Introduction

#### 1.1. Back ground of the study

The concept of fair trial is a basic component of the wider notion of the separation of powers. It attributes to the judiciary -- one of the three powers of the state-its distinct character from the other two, by determining which qualities- independence and impartiality- and which procedures make it an element of protection and security for those who are under the omnipotent jurisdiction of the state.<sup>1</sup>

The right to fair trial applies to both criminal and civil cases and the corresponding procedures. The importance of this right in the protection of human rights is underscored by the fact that the implementation of all the other rights depends upon the proper administration of justice. The rights to fair trial are closely related with the basic and universally accepted human rights and they are incorporated in major international human rights instruments (UDHR, ICCPR) and other regional instruments. These international legal instruments impose obligations on the state parties to respect, protect and fulfill the enjoyment of fair trial rights. Though almost all states ratified and adopted the rights to fair trial in their constitutions and other laws, these rights have been continuously violated in many ways and it is a permanent concern of governments, international organizations and international community. In Ethiopia, the concept of fair trial is envisaged in the FDRE Constitution and other procedural laws. The constitution generally imposes a duty on the executive, legislature, and judiciary to respect and enforce the fundamental human rights.<sup>2</sup> This duty is further incorporated in the constitution of Oromia National Regional State in same words.<sup>3</sup>The FDRE Constitution specifically entrusts the judiciary with the responsibility of upholding impartiality and protecting the rights and freedoms of citizens. This includes a duty to ensure that every citizen who is accused of a crime receives a fair trial. Further

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<sup>1</sup> Christos Rozakis, "The Right to Fair Trial in Civil Cases," *Judicial studies Institute Journal*, P.1

<sup>2</sup> Proclamation No.1/1995, proclamation of the constitution of Federal Democratic republic of Ethiopia, Federal *Negrit Gazeta*, 1<sup>st</sup> year no.1, Addis Ababa 21<sup>st</sup> August 1995.(hereinafter FDRE constitution).Art.13 (1)

<sup>3</sup> The Revised Oromia Regional State Constitution, Proclamation No.46/2001, Megeleta Oromia, 2001, Finfinnee.

it is granted that “everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.”<sup>4</sup>

Despite the adoption of the concept of right to fair trial in different provisions of the constitution and other subsidiary laws, the justice system of Ethiopia has practically been suffering from several problems and as a result fair trial rights have not been properly enforced. In the judicial organ, lack of judicial independence, inefficiency, corruption and, generally judicial misconduct are among the major problems in Ethiopia in general and in Oromia in particular.<sup>5</sup>

In Oromia, different reform programs have been implemented in order to solve major problems in the judicial system and hence some improvements have been achieved.<sup>6</sup> However, violations of right to fair trial in the administration of justice are still an area of concern. In the administration of justice, the role of judges is very significant. One of the essential responsibilities of a judge at all court level is adherence to the standard judicial code of conduct or judicial ethics. A fair trial depends on several factors among which judicial ethics is the primary one. Judicial ethics is part of the larger legal category of legal ethics. Judicial ethics consists of the standards and norms that bear on judges and covers such matters as how to maintain independence, impartiality, and avoid impropriety.<sup>7</sup> This shows that it is the ethical duty of judges to conduct the trial that his or her open-mindedness, impartiality and fairness are visible to all those concerned in the outcome of the trial, especially the accused.

The importance of judicial ethics for the proper enforcement of fair trial rights has been incorporated in the preamble of the judicial code of conduct of Oromia. The question is whether there have been violations of fair trial rights i.e a departure from the rules and principles of proceedings (both Civil and Criminal) because of judicial misconduct. This study examines the connection between fair trial rights and judicial ethics and how judicial ethics affects the enforcement of fair trial rights in courts of special zone of Oromia Surrounding Finfine.

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<sup>4</sup> Supra note 2, art.37 (1)

<sup>5</sup> See The FDRE Comprehensive Justice System Reform program Baseline Study,2005. According to this study, the Ethiopian Justice System has three Core problems:- First, it is neither accessible nor responsive to the needs of the poor. Secondly, it has serious problems to tackle corruption, abuse of power, and political interference in the administration of justice. And thirdly, inadequate funding of the justice institutions aggravates most deficiencies of the administration of justice. The perception of the independence of the judiciary is very low.

<sup>6</sup> Teferi Bekele, “The Effectiveness of Judicial Reforms in Oromia from the Efficiency Perspective,” *Oromia law journal* Vol.1, No.1 P,75

<sup>7</sup> A. Wayne MacKay, *Judicial Ethics: Exploring Misconduct and Accountability For Judges*, 1995, P.1.

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

Even though different international human rights instruments ratified by Ethiopia and domestic legislations provide significant place for the realization of right to fair trial, there are several causes that affect the right to fair trial which ultimately resulted in the absence of just decisions and deterioration of public trust in the justice sector in general and judiciary in particular. One of the causes for violations of the fair trial right is the absence of required judicial ethics. There are general public complaints regarding the violations of fair trial rights because of ethical problems in the Courts of Special Zone of Oromia Surrounding Finfine. There is also dissatisfaction from the legal professionals and litigants on the trial process of the courts and they usually attribute these problems to the misconduct of the judges of the bench. Thus, as there is no any research so far conducted that examine how judicial ethics affects the enforcement of fair trial rights in the courts of Special Zones , it is found necessary to conduct this research.

## **1.3. Research questions**

1. Did judicial ethics affect the realization of the right to fair trial in the courts of Special Zone of Oromia Surrounding Finfinne?
2. Were trials conducted by the Courts of the Special Zone of Oromia Surrounding Finfine fair in light of relevant national and international laws? How the ethical problems of judges are reflected in the fair trial process carried out by these courts and what are their implications on the general functions of these courts?
3. Are the Courts of the Special Zone of Oromia independent from external and internal influences?
4. Are judges of the Courts of Special Zone strong and independent enough to resist undue influences from the executive or legislature or from any other external influences?
5. Did the Courts of the Special Zone Conduct trials in an impartial manner? How issues of partiality have been raised in judicial proceedings?
6. What are the causes for undue delay of cases in the courts of Special zone of Oromia? Did the ethical problem of judges practically contribute to undue delay of cases?
7. Were judges practically accountable where the fairness of trial is affected because of their ethical problems?

8. Is the existing judicial code of conduct or Disciplinary Rule for judges and judicial officers in Oromia sufficient enough to ensure judicial accountability where fair trial rights are violated because of judicial misconduct?

#### **1.4. Literature Review**

The right to a fair trial is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms, the most prominent of which are the right to life and liberty of the person. It is guaranteed under Article 14 of the ICCPR which provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”<sup>8</sup>

Fair trial rights relate to the administration of justice in both civil and criminal contexts. Here, it is important to understand that the proper administration of justice has two aspects, the institutional (e.g. independence and impartiality of the tribunal) and the procedural (e.g. fairness of the hearing). The principle of fair trial upholds a series of individual rights ensuring the proper administration of justice from the moment of suspicion to the execution of the sentence.

Judicial independence and impartiality are components of the more complex right to a fair trial and they are also the elements of judicial conduct and thus it is important to see some few literatures in this regard.

“Judicial Independence refers to both the individual and institutional independence required for decision - making. Judicial independence is, therefore, both a state of mind and set of institutional and operational arrangements. The former is concerned with the judges independence in fact; the latter with defining the relationships between the judiciary and others, particularly the other branches of the governments, so as to ensure both the reality and the appearance of independence. The relationship between these two aspects of judicial independence is that an individual judge may possess that state of mind, but if the court over which he or she presides is not independent of the other branches of the government in what is

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<sup>8</sup> What is a Fair Trial? A Basic Guide to Legal Standards and Practice, Lawyers Committee for Human Rights, 2000, p.1. Available online at:[http://www.lchr.org/pubs/descriptions/fair\\_trial.pdf](http://www.lchr.org/pubs/descriptions/fair_trial.pdf)

essential to its functions, the judges cannot be said to be independent. Public acceptance of, and support for, court decisions depends upon public confidence in the integrity and independence of the judge. This, in turn, depends upon the judge upholding a high standard of conduct in court. The judge should, therefore, demonstrate and promote a high standard of judicial conduct as one element of assuring the independence of the judiciary. This high standard of judicial conduct requires the observance of the minimum guarantees of a fair trial. Outside court too, a judge should avoid deliberate use of words or conduct that would reasonably give rise to a perception of an absence of impartiality. Everything from his or her associations or business interests to remarks which the judge may consider to be "harmless banter" may diminish the judge's perceived Impartiality."<sup>9</sup>

Most existing works examined the fair trial rights from the point of the general justice system. Others specifically examined the fair trial rights from the judicial corruption angle. *Busalile Jack Mwimali* in his thesis noted that Corruption has for a long time been thought to be widely entrenched in Kenya's public sectors and the judiciary was notably one of the hardest affected institutions creating an environment under which the abuse of court processes was quite predominant.<sup>10</sup> This assessment does not indicate the issues related with judicial misconduct and it simply examined the impact of corruption on judicial process. He generally tried to identify factors that affects the full realization of the fair trial rights but didn't specifically address issue of judicial ethics. Few studies were made that examines why courts in Ethiopia fails to conduct judicial proceeding according to established legal procedures. Therefore, it is important to conduct research in this area and the research tries to identify the connection between fair trial and judicial ethics and it examines how judicial ethics affects the realization of the fair trial rights in the courts of Special Zone of Oromia.

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<sup>9</sup> B. Nolan, *The Role of Judicial Ethics in the Discipline and Removal of Federal Judges*, 1993 p.874

<sup>10</sup> Busalile Jack Mwimali, *Conceptualization and Operationalization of the Right to a Fair Trial in Criminal Justice In Kenya*, PHD Thesis, 2012 p.111

## **1.5. Objectives of the study**

### **1.5.1. General Objectives**

The general aim of this thesis is to assess the impact of judicial ethics in the courts of special zone of Oromia Surrounding Finfine in the realization of the right to fair trial. In so doing, the study provides the way in which ethical challenges in these courts are to be improved which in turn realizes the effective implementation of fair trial rights.

### **1.5.2. Specific Objectives**

- ✓ To identify how ethical problems of judges are manifested in the trial process
- ✓ To examine the sufficiency of Disciplinary Rule for Judges and Judicial Officers in Oromia to regulate judicial conduct in relation to fair trial rights.
- ✓ To examine the independence and impartiality of judges or the courts of the Special Zone of Oromia in relation to the fairness of trials
- ✓ To examine some of the ethical issues that are facing the courts which resulted in violations of fair trial rights and their implications to the general functions of the courts
- ✓ Suggest possible recommendations for the problems which could be revealed as research findings

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

A clear understanding of practical connections between the judicial ethics and the fair trial rights may empower those who have legitimate claims to demand their rights, and may assist judges and other court officials to respect and fulfill their responsibility. It is believed that this study will contribute to the effort of eradicating ethical challenges that courts recently confronted with and thus it inspires Judicial administration Council, Court administrators, the state council, judges, Bar Association and legal professionals to take further measures. Moreover, it will also be a base for potential researchers to conduct further studies on the issue.

## **1.7. Methodology of the study**

In conducting this research, qualitative method has been used. Accordingly, primary and secondary data have been employed.

## **1.7.1. Primary data**

### **1.7.1.1. Interviews**

The method employed to obtain primary data is face to face interview with different people on purposive manner who have good understanding and close relation in their day to day activities with the matter under research. This includes judges, public prosecutors, president of the courts, members of Judicial Administrative Council, lawyers, and public defenders. In addition, few litigants were interviewed.

There are Six *District* (First Instance) Courts and One High Court in Special Zone of Oromia Surrounding Finfine. Two District Courts (Sebeta Awas and Welmara ) and a High court were selected randomly for this study.

### **1.7.1.2. Cases**

Court cases were extensively used and analyzed. Disciplinary matters decided by Judicial Administration Council were also used.

### **1.7.1.3. Documents**

The 1995 Constitution of FDRE, ICCPR, UDHR, The Bangalore Principles of judicial Conduct, the UN Declaration for the Independence of Judiciary , Principles and Guidelines on the Right to A Fair Trial and Legal Assistance in Africa, the Civil Procedure Code of Ethiopia, the Criminal procedure Code of Ethiopia, Federal Courts Proclamation No. 25/1996, A proclamation for re-establishment of Oromia Courts proc. No.141/2008, Federal judicial Administration Commission Establishment Proc.No.24/96, A proclamation for re-establishment of Oromia Judicial Administration Council Proc. No. 142/2008, Federal judicial Code of conduct 2001, Code of Conduct and Disciplinary Rule No. 2/2009 for judges and judicial officers of Oromia are the primary documents that have been used.

## **1.7.2. Secondary Data**

As far as secondary source is concerned, various kinds of published and unpublished materials on the topic were considered. Thus, to the maximum effort relevant books, journals, other relevant materials from libraries and from internet are employed in undertaking this work

### **1.8. Scope and Limitation of the Study**

Fair trial rights consist of numerous norms, each of which may be independently explored. For instance, it may be possible to explore the aspects of independence and impartiality of courts alone. It may be necessary to explore a whole range of the value enshrined in the right to a fair trial to fully appreciate its intricacies. However, this thesis is concerned with exploring the fair trial rights from the point of view of judicial ethics. i.e. how the rights to fair trial are affected by judicial conduct. I shall, therefore, concentrate on a number of key elements of the right to fair trial which have had a particular importance with the judicial ethics.

On the other hand, the right to a fair trial has two components: a general one, with the application in all relevant proceedings (civil, criminal or administrative), and involving the rights of defense in criminal proceedings. It is possible, in other words, to differentiate between the right to fair trial in the broader and in the narrower. This paper generally concentrates on both the civil and criminal proceedings. It is known that fair trial guarantees must be observed from the moment the investigation against the accused commences until the criminal proceedings, including any appeal, have been completed. However, this study does not include the pre-trial and post criminal trial proceedings.

In terms of time frame, the study covers the period since 2009 to 2015 unless as a matter of necessity some remote events are mentioned in passing. Due to time and budget constraints the research is short of comprehensive investigation of the implementation of the rights to fair trial and will only rely on analysis of some cases and interviews.

### **1.9. Structure of the Study**

The study is organized into four chapters. The first chapter introduces the reader with the study. It highlights the reason that necessitated the research and the objectives that are intended to be achieved. It presents the statement of the problem, research questions, general as well as specific objectives of the research, literature review, significance and the research methodology briefly. Chapter two deals with the conceptual framework of the right to fair trial and judicial ethics. It underscores the meaning and importance of fair trial rights and judicial ethics as embodied in different international legal instruments and domestic legislations. It sets up the groundwork or foundation for the subsequent chapters.

Having identified some universal principles of the right to fair trial & judicial ethics in chapter two, chapter three moves on to explore how judicial conduct practically affects the right to fair trials in Courts of Special Zone of Oromia Surrounding Finfine and to identify the research questions that the thesis seeks to answer. Further, this part identifies some selected core elements of fair trial rights which are highly interrelated with judicial ethics. These core elements include judicial independence, impartiality, equality of arms, and right to be tried without undue delay that will be used in this thesis to investigate how the right to fair trial actually implemented and how they are being affected by judicial misconduct. A brief summary of the structure of the courts will be given. In final Chapter (chapter four), the study closes with conclusions and possible recommendations.

## Chapter Two: Judicial Ethics and Fair Trial Rights: General Overview

### 2.1. Fair Trial Rights: Meaning, importance and historical development

The roots of the basic principles of the right to a fair trial can be traced all the way back to the *Lex Duodecim Tabularum*—the Law of the Twelve Tables—which was the first written code of laws in the Roman Republic around 455 B.C. Contained within these laws was the right to have all parties present at a hearing, the principle of equality amongst citizens, and the prohibition against bribery for judicial officials. These principles can all be found in modern jurisprudence and are essential to the conduct of a fair trial. In modern times, they refer to the right to be heard and to defend oneself, the right to be subject to the rule of law, and the right to have one's case adjudicated by an independent and impartial tribunal.<sup>11</sup>

Another important historical event in the development of the right to a fair trial is the Magna Carta. In forcing King John to sign the *Magna Carta Libertatum* in 1215, the English nobles ratified the principle that even a King's will could be circumscribed by law. In doing so, the Magna Carta paved the way for later developments during the Age of Enlightenment that would seek to subject governments to the will of the people.<sup>12</sup>

Generally, historical account of the right reveals that fair trial is one of the early recognized rights in the world and thus it can be said that it is a concept gaining recognition and importance day by day and acknowledged under various international, regional and national human rights documents.

The right to a fair trial is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms, the most prominent of which are the right to life and liberty of the person.<sup>13</sup>

In its entirety as a body of human norms, the right to a fair trial has existed in the international arena as an integral part of the general scheme for the protection of human rights that has been recognised since the adoption of UDHR in 1948 and its codification in the ICCPR in 1966.<sup>14</sup>

Fair Trial is defined as " *a trial by an impartial and disinterested tribunal in accordance with regular procedures; especially a criminal trial in which the defendant's Constitutional and legal*

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<sup>11</sup> Patrick Robinson, The Right to a Fair Trial in International Law, with Specific Reference to the Work of the ICTY p.2

<sup>12</sup> Ibid.

<sup>13</sup> Supra note 8 p. 1

<sup>14</sup> Supra note 10 p.2

*rights are respected.*"<sup>15</sup> The definition shows that the impartiality of tribunal is an essential requirement of the fair trial.

The Right to a Fair Trial means that people can be sure that processes will be fair and certain. It prevents governments from abusing their powers. A fair trial is the best means of separating the guilty from the innocent and protecting against injustice. Without this right, the rule of law and public faith in the justice system collapse. The Right to a Fair Trial is one of the cornerstones of a just society.<sup>16</sup>

Furthermore, a fair trial is essential, not only to protect the human rights of the accused and those of victims, but also to ensure the proper administration of justice, and to engender public trust and respect for the Judiciary as an independent and impartial guardian of the rights of citizens.<sup>17</sup>

As far as the scope of the right to a fair trial is concerned it is applicable to both the determination of an individual's rights and duties in a suit at law and with respect to the determination of any criminal charge against him or her. The term "suit at law" refers to various types of court proceedings—including administrative proceedings, for example because the concept of a suit at law has been interpreted as hinging on the nature of the right involved rather than the status of one of the parties.<sup>18</sup> This research examines the civil and criminal aspects of fair trial rights.

### **2.1. 1. International legal Instruments regarding Fair trial**

The right to fair trial has been defined in numerous regional and international human rights instruments. It is one of the most extensive human rights and all international human rights instruments enshrined it in more than one article. Despite variation in wording and placement of various fair trial rights, International human rights instruments define the right to a fair trial in broadly same terms.

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<sup>15</sup> Bryan A. Garner, *Black's Law Dictionary*, Ninth Edition

<sup>16</sup> Available at <https://www.fairtrials.org/about-us/the-right-to-a-fair-trial/> last visited on October 3, 2015.

<sup>17</sup> Fair Trial Rights in Cambodia , First Bi-annual report ,July 2010, p.1

<sup>18</sup> Supra note 8.

The UDHR was adopted by the UN General Assembly and proclaims a common standard of respect for rights and freedoms to be achieved for all people and all nations. Article 10 states: *“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”* The provisions of the ICCPR expand on the fair trial rights in the UDHR. Article 14(1) states: *“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”* The rest provisions of Article 14 of ICCPR elaborate on fair trial rights. Further guidance on interpreting Article 14 can be found in the nonbinding UNBPIJ; the UN Basic Principles on the Role of Lawyers; the Bangalore Principles of Judicial Conduct, 2002; and UN Human Rights Committee General Comment No. 32. The authoritative statements and declarations made by the UN Special Rapporteur on the Independence of Judges and Lawyers are also relevant; while international jurisprudence in the courts of the three regional human rights instruments (in Europe, Africa and the Americas) has also emphasized the overriding importance of fair trial rights.

The international legal instruments provide basic legal standards that should be used in evaluating the fairness of a trial. The ICCPR is the most important legal instrument in this regard. The domestic and day-to-day significance of Fair trial rights has recently been considered by Bell J of the Victorian Supreme Court. In the *Tomasevic* case, which arose out of a criminal trial of a self-represented litigant before a magistrate, Bell J considered the legal significance of the ICCPR and, following a detailed review of the relevant authorities, held that every judge in every trial, both criminal and civil, has an overriding duty to ensure that the trial is fair. Justice Bell considered this to be ‘inherent in the rule of law and the judicial process and also stated that ‘the proper performance of the duty to ensure a fair trial would also ensure that the rights specified in the ICCPR are promoted and respected.’<sup>19</sup>

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<sup>19</sup> Maryam Minail, et al “The right to fair Hearing & Access to justice,” Australia’s Obligations Human rights law Resource Centre Ltd March 2009,p.4

Roger A., is of the opinion that a fair trial could include features such as efficiency, finality, public confidence and the fair administration of Justice.<sup>20</sup>

### **2.1.2. The legal frame work of Fair Trial rights in Ethiopia**

The FDRE Constitution provides that accused persons have the right to a public trial by an ordinary court of law within a reasonable period of time after having been charged.<sup>21</sup>

In addition, the same Constitution provides that accused persons have the right to be informed of sufficient particulars of the charge brought against them and to be given the charge in writing.<sup>22</sup>

Regarding affording equal opportunity to parties, it is specifically provided that accused persons have the right to be given full access to any evidence presented against them, to examine witness testifying against them, to adduce or to have evidence produced in their own defense, and to obtain the attendance and examination of witnesses on their behalf before the court.<sup>23</sup>

Similarly, they have the right to be represented by legal counsel of their choice and if they do not have sufficient means to pay for it, they will be provided with legal representation and expenses are covered by the state.<sup>24</sup>

The above constitutional provisions contain the essential elements of right to fair trial which includes equality of arms, public hearing, right to access to evidence, the right of the accused to be tried within a reasonable time, and the right to legal counsel.

On the other hand, the FDRE Constitution entrusts the judiciary with the responsibility of upholding impartiality and protecting the rights and freedoms of citizens.<sup>25</sup> This includes a duty to ensure that every citizen who is accused of a crime receives a fair trial. Ethiopia is also bound by international laws that she has ratified.<sup>26</sup>

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<sup>20</sup> Kunal Basu, The Concept, Constituents and Practice of a Fair Trial, 2014. p.1

<sup>21</sup> The FDRE Constitution, Art. 20

<sup>22</sup> The FDRE Constitution, Art.20 (2)

<sup>23</sup> The FDRE Constitution, Art.20 (4)

<sup>24</sup> FDRE Constitution, Art.20 (5)

<sup>25</sup> See Art. FDRE Consitution Art. 13 (1)

<sup>26</sup> See FDRE Constitution Art. 13 (2)

Given the fact that the FDRE Constitution is a general framework, subsidiary laws are expected to give full effect to constitutionally guaranteed rights. In this regards, the criminal procedure code and the civil procedure are relevant laws. Procedural laws are important for ensuring adherence to the basic elements of the right to fair trial. The Criminal Procedure Code of Ethiopia contained notable procedural protections for accused persons. For example, it provides that the accused shall appear personally to be informed of the charge and to defend himself when he is assisted by an advocate the advocate shall appear with him. Similarly, other provisions of criminal procedure code entitle the parties to fair trial rights.<sup>27</sup>

Rules of civil procedure aim to ensure that disputes are handled by an impartial legal tribunal in a fair and orderly manner and as expeditiously and economically as possible. They are, in brief, meant to secure the just, speedy and inexpensive disposition of cases. More specifically; they aim at treating the parties to a law suit equally in enforcing their rights and the corresponding duties and laying down the ground for a smooth and orderly flow of litigation so as to make the decision within a reasonably fair and quick time.<sup>28</sup> The Civil procedure of Ethiopia contains several provisions that deal with fair trial. These include:- adequate notice of the nature and purpose of the proceedings, adequate opportunity (time and space) to prepare their case; the right to present arguments and evidence; and meet opposing arguments and evidence, either in writing, orally or by both means.<sup>29</sup>

It is the responsibility of judges to see that the proper procedure is followed and that the litigation will end with a decision in accordance with the law. In addition to Criminal and Civil procedure code, other subsidiary laws also promote the right to fair trial as for example, proclamation NO. 141/2008 of Oromia contains provisions that impose duty upon presiding judge to withdraw himself or herself from the proceeding where his/her impartiality is in question.<sup>30</sup>

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<sup>27</sup>The Criminal Procedure Code of the Empire of Ethiopia, Proclamation No.185/1961, Negarit Gazeta, 21<sup>st</sup> year, No.7, Addis Ababa, 2nd November, 1961 art. 140

<sup>28</sup> Robert Allen Sedler, Ethiopian Civil Procedure, Oxford University Press Addis Ababa, 1968 p.2.

<sup>29</sup> See Art. 111, 137, 258-263 of the Civil Procedure Code of Ethiopia

<sup>30</sup> Re-establishment of the Oromia Regional State Courts, Proclamation No.141/2008, Finfinnee. Art. 14 (2), 16,17,18.

Despite incorporating the concepts and elements of fair trial rights in the national law by itself is an important step, how far these rights have been implemented by the courts and what are the primary challenges in implementing these rights are the issues that need to be explored.

## **2.2. Judicial Ethics: General Overview**

### **2.2.1. Meaning and importance**

*Ethics is defined as: "[o]f or relating to moral action, conduct, motive or character; ethical emotion; also treating of moral feelings, duties or conducts; containing precepts, duties or moral. Professionally right befitting; conforming to professional standard of conduct.*<sup>31</sup> Judicial ethics is part of the larger legal category of legal ethics. Judicial ethics consists of the standards and norms that bear on judges and covers such matters as how to maintain independence, impartiality, and avoid impropriety.<sup>32</sup>

Judges are important public officials whose authority reaches every corner of society. Judges resolve disputes between people, and interpret and apply the law by which we live. Through that process, they define our rights and responsibilities, determine the distribution of vast amounts of public and private resources, and direct the actions of officials in other branches of government. Thus, the extraordinary power invested in the judicial office demands a high standard of behavior.<sup>33</sup>

Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a judge must be a man of high integrity, honesty and required to have moral vigor, ethical fairness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process.<sup>34</sup>

The standards of judicial conduct try to ensure that judges cannot be seen as hypocritical, partial, or incompetent. While these standards may seem obvious, most judicial bodies see fit to enshrine them in a judicial conduct code, together with appropriate penalties for violations. A judicial

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<sup>31</sup> Henry Campbell, Black's Law Dictionary, 6<sup>th</sup> edition(1990)

<sup>32</sup> Supra note 7.

<sup>33</sup> Ibid p.2

<sup>34</sup> Legal & professional Ethics, third edition 2003 P.409

conduct code serves two primary functions: it allows the public and judges to know what standards are expected, and lets both parties know the extent and impact of consequences for failure to adhere.

One of the most basic standards of judicial conduct is adherence to all laws. A judge that breaks the laws cannot be trusted to fairly impart judgment on other lawbreakers; allowing a law-breaking judge to pass judgment can be seen as hypocritical. According to judicial code of Conduct of Oromia,<sup>35</sup> judges who break laws may be subject to suspension or even removal from their position, depending on the circumstances. Not all lawbreaking, however, result in mandatory discipline.

Judicial conduct is very important for the proper enforcement administration of justice and to increase public confidence in courts. Justice Roger J. Miner argued that a properly functioning, impartial, and ethical judiciary is the sine qua non of a just and democratic society.<sup>36</sup>

### **2.2.2. International standards of Judicial Conduct/ethics**

#### **A. UN Basic Principles on the Independence of Judiciary**

The overall aim of the UNBPIJ is to fill the gap between the vision underlying in international human rights instruments and the actual situation through promoting the independence of judiciary. It underlines that appropriate consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.<sup>37</sup> Further, it declares that the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.<sup>38</sup> In relation to fair trial the UNBPIJ specifically declares that the principle of the independence of the judiciary entitles and requires

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<sup>35</sup> Disciplinary Rule for Judges and Judicial Officer of the State of Oromia art.43.

<sup>36</sup> Roger J. Miner, "Judicial Ethics In The Twenty-First Century: Tracing The Trends," Hofstra Law Review, 2004, p.1.

<sup>37</sup> The UN Basic Principles on the Independence is adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders- Dec.1985. Art.1

<sup>38</sup> Ibid.art.2

the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.<sup>39</sup> It also incorporates international standards relating to discipline, suspension and removal of judges.

## **B. The Bangalore Principles of Judicial Conduct-**

The Bangalore Principles of Judicial Conduct were formulated by a group of Chief Justices (the Judicial Integrity Group) in response to a growing body of evidence that in many countries the public was losing confidence in judicial systems, mainly due to a perception that judicial officials were corrupt. Following extensive consultations with senior judges in over seventy countries, the Bangalore Principles were revised and adopted at a Round Table Meeting of Chief Justices at The Hague in 2002.<sup>40</sup>

The document outlines principles that should be taken into account by judges in all judicial activities. It identifies six core values, namely: independence, impartiality, integrity, equality, propriety, and competence and diligence. Each of these values is elaborated into a principle and its application. The Principles are a code of professional responsibility that, though legally non-enforceable, establishes a foundation for the proper exercise of judicial responsibility.<sup>41</sup>

### **2. 2.3 Judicial Ethics in Ethiopia**

#### **A. The FDRE Constitution**

Article 78(1) of FDRE Constitution establishes independent judiciary both at federal and state level. Article 79(2) declares that judges are free from interference of any kind. The Ethiopian judiciary is immune from interference of the executive, legislature or any other body. Ethiopian judges enjoy security of tenure. As per Article 79(4) judges cannot be removed from their office arbitrarily or at the discretion of the executive or legislature. According to Article 12 of the constitution, “any public official” or an “elected representative” is accountable for failure in official duties. Judges are not exception to these principles. The Constitution empowers Judicial

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<sup>39</sup> Ibid art. 6

<sup>40</sup> The Bangalore Principles of Judicial Conduct, 2002

<sup>41</sup> Ibid, see Value 1 to Value 6

Administration Council to determine matters of judicial code of conduct<sup>42</sup>. It specifically incorporated the exceptional circumstances under which judges are removed from judicial office.<sup>43</sup>

### **B. Federal Judges Code of judicial Conduct**

As per the preamble to Ethiopian Federal Judges Code of Judicial Conduct, independent judiciary is a pre-requisite for democratic and impartial administration of justice.<sup>44</sup> It imposes the duty to maintain judicial independence on the judiciary. The codes provides rules related to ex parte communication, gifts and certain problematic relationship that affect judicial independence which include family relations and extra-judicial activities.<sup>45</sup> According to Article 24 of the Federal judges Code of Judicial Conduct, judges must recuse themselves of their own motion as soon as they are aware of grounds on which the law prohibits them from sitting over the case. These grounds are provided under Article 27(1) of Federal Courts Proclamation No. 25/1996.

Competence and diligence are incorporated in the code as the ethical duties of judges.<sup>46</sup> Judges have duties to enhance and maintain their knowledge, skills and personal qualities necessary for the proper performance of judicial duties.

### **C. Code of judicial Conduct for Judges and Judicial Officers in Oromia**

The JAC of Supreme Court of Oromia has adopted the code of conduct for judges and judicial officers. The Principles contained in the code set forth standards for the ethical conduct of judges and presuppose that judges are accountable for their conduct. The Code of Conduct is almost translated from the English version of the Bangalore Principle of judicial conduct and thus it contains the six Values of judicial Conduct. These are: judicial independence, integrity, equality, impartiality, propriety, and competence.<sup>47</sup> The JAC further adopted Disciplinary Rule

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<sup>42</sup> The FDRE Constitution art. 81 (6)

<sup>43</sup> The FDRE Constitution, art. 79 (4)

<sup>44</sup> see the preamble of the Federal Judges code of judicial Conduct, 2001

<sup>45</sup> see art 23, 25 of the of the Federal Judges Code of Conduct, 2001

<sup>46</sup> Ibid art.6

<sup>47</sup> Judicial Code of Conduct of the state of Oromia, 2009

for judges and judicial Officers.<sup>48</sup> The Disciplinary Rule contains matters that are related with fair trial and it includes withdrawal or removal of judge, undue delay, abuse of power, and unequal treatment<sup>49</sup>. The disciplinary measures to be imposed on a judge that violates code of judicial conduct are provided in disciplinary proceeding. They are arranged in ascending order from simple to serious penalty.

### **2. 3. Judicial Ethics and Fair Trial: Exploring the Relationship**

Judicial ethics and Fair trial rights are highly interrelated concepts. Fair trial rights are the fundamental human rights norms that everyone is entitled to enjoy. Judicial ethics is the standard that each judge is expected to follow so as to effectively enforce the fair trial rights that are provided in international human right instruments, constitutions and other national legislations. Brauer and Tyng Lo stated that the US legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern citizens. This is the first sentence in the preamble of the American Bar Association's *Model Code of Judicial Conduct*. The Canons that follow the preamble strive to enforce this principle by advising judges as to what they can and cannot do.<sup>50</sup> Similarly, the preamble of the Bangalore principle of judicial conduct begins with emphasizing the importance of fair trial rights. Value one of the Bangalore principle of judicial conduct provides that: Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects. This is also provided in the judicial code of conduct of Oromia as it is wholly adopted from the Bangalore principle of judicial conduct. Judicial Independence is a primary component of fair trial rights as is enshrined in the ICCPR. The judicial code of conduct provides that a judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence<sup>51</sup>.

To be judged by independent, competent and impartial tribunal is a right given to everyone where as serving independently, competently and impartially is a duty imposed on each

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<sup>48</sup> Disciplinary Rule for judges and judicial Officers of Oromia Rule No. 02/2009.

<sup>49</sup> Ibid, see Art. 38,44,50

<sup>50</sup> Alex Brauer and Tyng Lo, "Judicial Misconduct," *Georgetown Journal of Legal Ethics Summer, 2001* p.1

<sup>51</sup> Supra note 35 Value 1.6

individual judge and on courts as institutions. From the forgoing discussion we may conclude that there is a direct relationship between fair trial rights and judicial ethics and the enforcement of the former significantly depends on existence of the latter.

Judicial ethics identify those circumstances that affect the fairness of the trial process. For example, ex-parte communication which is provided in the judicial code of conduct significantly affects the fair trial rights. It also sets basic principle or values that promote fair trial rights. For example, the judicial conduct requires competence and due diligence from a judge and a judge who is incompetent and not diligent cannot effectively carryout the trial which is fair and impartial. A trial is a truth-seeking process designed to resolve human and societal problems in a rational and efficient manner and only judges who have required ethical behavior can enforce this right effectively.

Judicial ethics provides general rules of conduct to be observed by judicial officers so as to maintain integrity, independence and impartiality of the court. The judicial code of provides comprehensive sanction provisions.

The Concept of fair trial is very broad and it has many components. Therefore, it important to examine some of the core elements of fair trial which have particular relevance with judicial ethics. Accordingly, judicial independence, impartiality, equality of arms and the right to trial without undue delay will be explored.

Independence and impartiality are closely related concepts and are mutually reinforcing. But, they are separate concepts. It is argued that the two concepts are multidimensional; having structural and procedural angles. Their structural angle relate to the general characteristics that the judiciary should possess as an autonomous organ of the State, while their procedural angle is aimed at directing how adjudication should be done by supplying the parameters through which the trial itself is to be measured. Although closely related insofar as they seek to ensure that court processes are handled without bias and in a manner that attracts confidence of the end users of the process, independence and impartiality of the Judiciary as juridical concepts are quite different. Independence , implies a special quantitative as well as qualitative constitutional status or relationship between the judicial arm and other arms of government.

Independence is concerned with the institutional autonomy or structural independence of the Judiciary *vis-à-vis* the Executive and the Legislature. Impartiality, on the other hand, implies firstly, a required state of mind or attitude of a judicial officer, in the exercise of power to act with autonomous judicial discretion; and secondly, the existence of safeguards that ensure that extraneous influences do not adversely affect adjudicatory processes.<sup>52</sup>

Judicial independence is the idea of keeping the judiciary away from the other branches of the government. The main objective behind granting judicial independence is to avoid the improper influence on the court from the other branches of government, or from private or partisan interests. Judicial independence is not for the protection of judges, although it is often thought of in that context today. The principle of judicial independence is designed to protect the system of justice and the rule of law, and thus maintain public trust and confidence in the courts. With judicial independence the winners are everyone.<sup>53</sup>

The United Nations Basic Principles on the Independence of the Judiciary provides that; the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary. It further provides that the principle of the independence of the judiciary entitles and requires the judiciary to ensure the proceedings are conducted fairly and that the rights of the parties are respected.<sup>54</sup> This principles are also enshrined in the FDRE Constitution of Ethiopia. Courts of any level shall be free from any interference or influence of any governmental body, government official or from any other source. Judges shall exercise their functions in full independence and shall be directed solely by the law.<sup>55</sup>

This shows that independence of the judiciary shall be a constitutional principle guaranteeing the rule of law in the administration of justice and a fundamental safeguard for a fair trial. Therefore, judges shall have a duty to support the independence of the judiciary and to abide by the principle of independence. It is also important to know that the independence be vested in persons who will behave in an ethical manner in their judicial and personal lives.

Anthony M. Kennedy, emphasis that judicial independence and judicial ethics are intertwined. For, there can be no judicial independence if the judiciary, both in fact and in public perception,

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<sup>52</sup>Supra note 10, p.2

<sup>53</sup> <http://www.uslegalcom.com/> accessed 20 August 2015

<sup>54</sup> Supra note 32.

<sup>55</sup> The FDRE Constitution, art.79(3)

fails to conform to rigorous ethical standards. Judicial independence can be destroyed by attacks from without, but just as surely it can be undermined from within. There is no quicker way to undermine the courts than for judges to violate precepts that bind judicial officers in all societies that aspire to the rule of law.<sup>56</sup>

While independence primarily rests on mechanisms aimed at ensuring a court's position externally, impartiality refers to its conduct of, and bearing on, the final outcome of a specific case. Bias (or a lack thereof) is the overriding criterion for ascertaining a court's impartiality.

It can, thus, be *prima facie* called into question when a judge has taken part in the proceedings in some prior capacity, or when s/he is related to the parties, or when s/he has a personal stake in the proceedings. It is also open to suspicion when the judge has an evidently preformed opinion that could weigh in on the decision-making or when there are other reasons giving rise to concern about his/her impartiality.<sup>57</sup>

The term 'impartiality' describes a state of mind in which the subject is balanced in a perfect equilibrium between parties- it is synonymous with 'non- partisan' or neutral. It is generally defined- quite logically- negative terms as 'the absence of prejudice or bias'.<sup>58</sup> In law, impartiality is the ability to weigh the facts of a case objectively and render a fair judgment without bias or prejudice. Many legal systems consider impartiality to be a critical tenet of the legal system, particularly in the courts, where judges and juries can decide life and death matters. Several mechanisms are available to enforce impartiality and ensure that everyone who encounters the legal system receives fair and appropriate treatment.

Peter Moser in his article on Judicial Ethics indicates:

Justice in the courtroom cannot be attained solely by providing standards in a code of judicial conduct. Achieving justice depends significantly upon not only the discretion and abilities of each judge, but upon what that judge does to assure that *every* proceeding is fairly heard and decided and to assure that litigants and the public have confidence in the impartiality and independence of the judiciary. The 1990 *Code*. [*Model Code of Judicial Conduct*] provides

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<sup>56</sup> Anthony M. Kennedy, "Judicial Ethics and the Rule of law," Saint Louis University Law Journal, 1996 p.1

<sup>57</sup> *Supra* note 8, p. 5

<sup>58</sup> Stefan Trechsel, Human Right in Criminal Proceedings, 2005 p.61

improved standards under which judges are better able to ensure fairness and justice in litigated matters.<sup>59</sup>

The principle of equality of arms has been developed in the jurisprudence of the ECtHR. This principle, which is generally perceived as the most fundamental element of a fair trial, requires a fair balance between the parties. 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.

Equality of arms is sometimes linked with the general guarantee of non-discrimination. The principle of equality and prohibition of discrimination requires equal treatment for persons in essentially equal situations. It would be discriminatory, for example, if Jews were allowed to submit an appeal, but Muslims were denied this opportunity. This is the kind of equality that the international and American instruments have in mind. Equality of arms, however, relates to persons with essentially opposing interests.<sup>60</sup> Equality of arms is the duty incumbent upon courts to ensure procedural balance between the parties. Equality of arms cannot be ensured unless a trial judge has a required skill and ethical norms.

The right to an impartial hearing within a reasonable time is one of the cardinal principle of the right to fair trial. The delay in rendering a judgment may not always due to complexity of the case or problem attribute to the parties or authorities but also due to lack of necessary diligence and misconduct of a trial judge. So far we have seen that judicial ethics and fair trial have a close relationship and it is also important to note that there are other factors that influence the fairness of a trial. These factors include the laws of the country, infrastructure (court building), Corruption and mal administration in the justice sector in general etc. However, it is not the aim of this research to examine other factors that affect fair trial in the judicial organ.

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<sup>59</sup> Supra note 7,p.3

<sup>60</sup> Supra note 53,p. 95

## **Chapter Three: Judicial Ethics & Fair Trial: A Critical Analysis of the case of Courts of Special Zone of Oromia Surrounding Finfine.**

### **3.1. Introduction**

Having identified some universal principles of the right to fair trial & judicial ethics and the relationships of the two concepts, this part moves on to explore how judicial conduct practically affects the right to fair trials in courts of special Zone of Oromia Surrounding Finfine and to identify the research questions that the thesis seeks to answer. Further, this part identifies some elements of fair trial rights which are highly interrelated with judicial ethics. These elements include judicial independence, impartiality, equality of arms, and right to be tried without undue delay that will be used in this thesis to investigate how the rights to fair trial are actually implemented and how they are being affected by judicial misconduct. In addition, issues related with judicial accountability will be explored. A brief summary of the structure of the courts will also be given in this chapter.

### **3.2. Structure and Back Grounds of the courts of Special Zone of Oromia**

The 1995 Constitution of the FDRE provides for a federal state structure with nine member states making up the federation. It has thus brought into being two layers of administration i.e. the federal government on the one hand and self-governing states on the other hand. The three organs of the government i.e. legislative, executive and judiciary are established at both levels of the government having their own powers and responsibilities constitutionally defined. Judicial organ is one among the fundamental organs of the republic. Hence, the Constitution enshrines a broad range of principles of constitutional importance regarding on the organization and function of the judiciary. One of these principles is the establishment of the independence of the judiciary. By so doing, it puts on a firmer pedestal both on institutional and personal autonomy.

The Constitution of State of Oromia establishes courts at three levels. These are District Court, High Court and Supreme Court. The District Courts have the material jurisdiction to see civil cases which have a pecuniary amount of less than 50,000 Birr and cases involving personal issues, marriage, and labour. Constitutionally speaking, District Courts do not have criminal jurisdiction. They are, however, adjudicating criminal cases that were assigned to awraja and district courts by the First Schedule of the Criminal Procedure Code. In addition, as per

proclamation No.141/2008, the powers to see criminal matters have been given to district courts. Similarly, the jurisdictions of high courts and Supreme Court are provided for in the same proclamation.

When we come to the Courts of Special Zone of Oromia Surrounding Finfine, their structure is the same to other regular courts in Oromia. There are one high Court and Six District ("aanaa") courts. These are Akaki, walmara, Sabata Awas, Barak, Sululta and Mulo. The establishment of the courts of Special Zone of Oromia Surrounding Finfine is related with the formation of the new Zone by the state administration of Oromia. The Office of the Administration of Special Zone of Oromia Surrounding Finfine was established by Regulation No. 115/2008 which was enacted by the State Administration of Oromia in August 2008. The Regulation provides the purpose for establishing the Special Zone and it also provides for powers and responsibilities of the Office of Administration of Special Zone which is the executive Organ of the government. Later, establishing courts in this new zone became mandatory. Accordingly, the High Court which is located in Addis Ababa was established by Judicial Administration Council of Oromia in its 109th session on 23rd August, 2009 and it started to deliver judicial service on December 2010.<sup>61</sup> Prior to the establishment of the high court of the Special zone of Oromia Surrounding Finfine, the District Courts were administered under different Zonal high courts. (for example, The Walmara District Court was Under Western Shewa High Court, the Akaki Woreda Court was under Eastern Shewa High Court). The District Courts are located surrounding Finfine (Addis Abeba). The cases presented to these courts are increasing from year to year both in numbers and in complexity as big investments and social interactions are increasingly taking place.<sup>62</sup>

Administratively, the six District Courts are accountable to the High Court of the Special Zone. The Zonal Adjudicatory Team (part of the Judicial Administration Council) was empowered to determine issues relating to simple disciplinary offences committed by judges and other judicial officers.<sup>63</sup> The Zonal Inspection Team has the power to receive Complaints and grievances made on the service delivery and it has also the power to investigate the matter where it is convinced

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<sup>61</sup> Letter from Supreme Court of Oromia to Western Shoa High Court, Eastern Shoa High Court, North Shoa High Court, and to South-west shoa High Court No.3-208/5-14/02-day 29-03-02

<sup>62</sup> see High Court of the Special Zone of Oromia -annual reports (from the year of 2012- 2015),unpublished

<sup>63</sup> Art. 22 (1)- proc. No.142/2008

that there are evidences that show breach of discipline.<sup>64</sup> In Courts of the special zone, there are mainly Civil and Criminal Benches. Civil Bench is sub- divided as family Bench, Contract and Extra- Contractual Bench, Succession etc. Each main bench has its own case manager and it is administered by him or her.

### 3.3. Judicial Independence in the Courts of Special zone of Oromia

In the previous chapter, we have briefly discussed that judicial independence is one of the core of values of fair trial rights and judicial conduct. In this chapter, we will try to examine some practical aspects of this value in courts of special zone of Oromia Surrounding Finfine in relation to fair trial and judicial ethics.

We have already mentioned that the FDRE Constitution establishes independent judiciary both at federal and state level. The relevant constitutional provisions in relation to independence of judiciary provide that: *"Courts of any level shall be free from any interference or influence of any governmental body, government official or from any other source and Judges shall exercise their functions in full independence and shall be directed solely by the law."*<sup>65</sup>

It is clearly understood that the Ethiopian judiciary is immune from interference of the executive, legislature or any other body. The Constitution further provides that:

*"No judge shall be removed from his duties before he reaches the retirement age determined by law except under the following conditions:*

*(a) When the Judicial Administration Council decides to remove him for violation of disciplinary rules or on grounds of gross incompetence or inefficiency; or*

*(b) When the Judicial Administration Council decides that a judge can no longer carry out his responsibilities on account of illness; and*

*(c) When the House of Peoples' Representatives or the concerned State Council approves by a majority vote the decisions of the Judicial Administration Council."*<sup>66</sup>

Security of tenure is one of the essential requirements of judicial independence. Judges cannot be removed from their office arbitrarily or at the discretion of the executive or legislature. The Constitution specifically provides the limited situations under which a judge may be removed from judicial office. The manner of selection and appointment is also one the essential

<sup>64</sup> Ibid. art. 25 (1 &2)

<sup>65</sup> FDRE Constitution, (Art.79 (2)(3))

<sup>66</sup> Ibid (Art.79 (4))

requirement of judicial independence and important power is given to the JAC subject to the approval of the HPR or the concerned state Council.<sup>67</sup>

The Independence of judiciary is also enshrined in the Constitution of Oromia in the same words.<sup>68</sup> Other subsidiaries laws of the state of Oromia also promote judicial independence.<sup>69</sup> For example, the judicial Code of conduct of oromia provides that "*Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects*".<sup>70</sup> This principle is directly taken from the Bangalore principles of judicial Conduct. The Code clearly indicates the importance of judicial independence in enforcing fair trial rights and it imposes the duty to maintain judicial independence on judiciary.

In this sub-topic, we will examine whether judicial proceedings are conducted fairly independent of external and internal influences. We will also try to examine whether the judges themselves were maintaining judicial independence. The external influences refer to independent from the other branches of the government, independent from the influence of advocates, litigants, public and media. The Internal influences refer to courts' presidents, members of judicial Administration Council, Inspection Team, judges of higher court levels.

### **3.3.1. Independence from external influences**

We have already discussed that judicial independence is a pre-requisite to a fundamental guarantee of fair trial. Therefore, the judiciary whether viewed as a whole, as its individual members, must be and seen to be independent of the legislative and executive organs of the government. The independence of the judiciary is closely tied to the merit of those selected for judicial office. The UNBPIJ provides that "*persons selected for judicial office: shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or*

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<sup>67</sup> Ibid art. 81 (3) (4)

<sup>68</sup> See, Art 63 (2 and 3) of the 2001 of the Revised Constitution of Oromia

<sup>69</sup> See, proclamation No. 141/2008, Proc. No.142/2009, judicial code of conduct, Rules for judges and judicial officers in Oromia

<sup>70</sup> see Rule 1 of the Judicial Code of Conduct of the state of Oromia

*status except that a requirement that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.*<sup>71</sup>

The process for appointments to judicial bodies shall be transparent and the establishment of an independent body for this purpose is very important. Any method of judicial selection shall safeguard the independence and impartiality of the judiciary. In Oromia, starting from 2008, the candidate for judgeship and prosecutor is primarily selected by the respective zonal Committee established for this purpose. The members of the Committee are: President of the respective High court ( chairman ), the head of zonal Prosecutor's Office, head of zone Police Office, the zonal head of Peace and Security, and the zonal head of Capacity Building office (currently changed to the Office of Civil service and Good Governance) .<sup>72</sup> In this selection, due attention is given to the political background of the candidates rather than individual integrity and qualifications.<sup>73</sup> The committee is empowered to select and send the candidates to Oromia Justice Sector Professionals Training and Legal Research Institute. The Oromia Justice Sector Professionals Training and Legal Research Institute is empowered to give an entrance exam. The Institute does not examine the conduct of each candidate before joining the training center. When candidates complete their training, the appointment for judgeship is decided by the Institute itself. The JAC of Supreme Court of Oromia is empowered to select those who meet the criteria to become judge from among candidates proposed by the chairman of the commission for judgeship in accordance with the existing regulations.<sup>74</sup> However, JAC did not practically exercise its power and judicial selection and appointment processes are being carried out by other bodies. This is a reflection of interference against institutional independence of the judiciary. If the manner of judicial selection is not strong and independent, it is difficult to obtain a person of high integrity and qualified for judicial office which in turn has a negative consequence on the fairness of judicial proceedings. Above all, the current practice completely

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<sup>71</sup> See paragraph 8 of the United Nations Principles on Independence of Judiciary, 2000

<sup>72</sup> See Art.10 to 12 of the Oromia's Justice Sector Professionals Training and Legal Research Institute Guideline for Selection of Trainees,

<sup>73</sup> Interview with Tetek Sexang, Judge of the High Court of the Special Zone of Oromia, august. 12, 2015

<sup>74</sup> A proclamation for re-establishment of Oromia Judicial Administration Council Proc. No. 142/2008 article 8(1).

contradicts with the constitution of the FDRE, the Constitution of the state of Oromia and international norms.

In the Special Zone of Oromia, attempting to influence judicial proceedings and their outcome is one of the threats against judicial independence. Some government officials try to induce the court to rule in their favor without paying regard to the law and the rule of natural justice. The government authorities have been influencing some court leaders through different means such as making discussion on pending cases in which the government is a party. Hence, some presidents of the courts assign such cases to judges who they thought that they will decide in favour of the government. The government officials sometime exert undue influence that their cases shall be seen by the presidents of the courts. However, there are presidents of the courts who do not allow discussing on pending cases and who never make a compromise on matters that erode judicial independence. Pressures against individual judges at high court level are low and judges at District court level often complain about external interferences.<sup>75</sup>

Interferences from the other branch of government had manifested in several ways. The refusal of enforcing court orders by the government agencies is a typical example. In several instances, the executive arm of the government has been failing or refusing to carry out courts orders. Few notable instances include:-*public prosecutor vs Fekadu Asrat (Sululta District Court, File No. 51520-2015)* in which the police refused to carry out the court order by not to release persons whose bail right was granted by the court.

In this connection, in *Assanidze v. Georgia*, the ECtHR held that a tribunal can only be regarded as independent if its decisions or orders are binding on the organs of the state. If the state administrative authorities could refuse or fail to comply with a judgment acquitting a defendant, or even delay in doing so, article 6 of the ECHRt guarantees the defendant previously enjoyed during the judicial phase of the proceeding would become partly illusory.<sup>76</sup>

A trial cannot be fairly conducted if the court order are not properly executed by the government authorities as for instance when a police fails to arrest defense witnesses in situations a bench warrant is issued against them. This implies that if the right to fair trial of

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<sup>75</sup> Interview with Judge Ajema Gaddisa, a case manager of a civil bench team of the high Court of The Special Zone of Oromia Surrounding Fintine, August.10, 2015

<sup>76</sup> Stefan Trechsel, *Human Right in Criminal Proceedings* 2005 p. 55

the accused is violated, a court or tribunal that see the case may not be considered as independent.

Interferences from the executive branch of the government in judicial activities of the courts of Special Zone of Oromia especially where a government is a party in a suit is a critical problem. Cases relating with urban land, urban house and investments are the areas where interferences occur. In criminal cases such as corruption cases, cases related with politics, offences committed against women and children, unlawful deforestation, and etc are the areas where external pressures are exerted against judges of the special courts of Oromia Surrounding Finfine and as a result some judges are less confident to see those cases. Some officials even try to communicate judge in his/her office in the absence of other party. They also exert pressures on the presidents of the courts and thus cases are assigned for some 'selected' judges. In addition, some judges claimed that government officials telephoned judges to dictate the decision on sensitive cases, in particular to direct refusals to release political prisoners.<sup>77</sup> . Getamesay Kassa, an advocate who is working in Federal and Oromia courts, has the opinion that the courts are not independent from the other branches of the government. In cases where the government is a party, despite there are attorneys who are representing the government, some public officials unduly attempt to interfere in the judicial process which may affect the fairness of the trial. This includes bringing unnecessary complaints against a judge and discussing about pending cases in public. This problem is not prevalent in High Court but in district courts<sup>78</sup>

Interferences against judicial functions definitely affect the fairness of the trial. Court users do not trust the fairness of judicial proceeding where judges are not independent from government interferences. Presidents of the courts and judges should not allow external interferences and it is their primary responsibility to protect and promote judicial independence. Making or allowing interferences is a violation the principles of judicial ethics.

On the other hand, influences by government bodies against the independence of the courts of Special Zone of Oromia is a violation of the Constitution of FDRE and international human rights instruments that recognize the rights of citizens to be heard by independent and impartial judicial body. Some government officials do not deny their interference against judicial body but

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<sup>77</sup> Interview with Judge Salomon Mogas, Judge of Walumara District Court, August.12, 2015

<sup>78</sup> Interview with Getamesay kassa, an advocate working in Federal and Oromia Courts, August.13, 2015

try to justify their interferences. They argued that courts at both levels do not give due attention to cases relating with public interest such as investments, urban land, crimes committed on children and women, crimes committed against government revenues, urban houses owned by states, crimes made against infrastructures etc. They justify that some judges are corrupt and hence they are not independent to see cases fairly. Further, because of their own political ideology (opposing government policy) some judges improperly carryout judicial proceedings and thus decisions have often been given against the government.<sup>79</sup> However, interfering against judicial independence from any source is not subject to justification and there are laws that regulate the activities of judges or judicial organ and it is only through those laws that any grievance made against judiciary is to be considered.

It is true that the ethical problem of some judges may open the door for external influences. Some government officials, especially in cases related with investment, made secret communication with some judges and as a result equal opportunity is not given in the proceedings. An order that facilitates the outcome of the case in favor of the government body has been given and an opportunity to challenge the result of such order was sometimes denied.<sup>80</sup> In France, the Superior court has stated in its decisions that independence, impartiality and neutrality are part of the obligations of the judges, as well as the obligation to respect the constitutional division of powers. Disciplinary sanctions have been imposed (ranging from reprimand to dismissal without pension) on judges for allowing influence, for corruption or for communicating confidential information to outsiders.<sup>81</sup> This implies that judges should always take care that their conduct, official or private, does not undermine their institutional or individual independence. Judges themselves should be vigilant to identify and resist any attack upon judicial independence, by whomever or by whatever means.

Dingade Chali, the president of Walmara District court has the opinion that government influences is not a big problem in his court but rather judicial misconduct and lack of competence are the primary problems that affect fairness of judicial process. However, he didn't

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<sup>79</sup> Interview with Teshoma Dugasa, Head of the office of Administration and security of the Special Zone of Oromia, August 2015, and Interview with Tasfasilase Nagara, Head of The Police Department of Burrayu Town

<sup>80</sup> Interview with Tujuma Deba, an advocate working in Oromia courts, August.25, 2015

<sup>81</sup> *Independence, Transparency and accountability in the judiciary of Ethiopia*, National Judicial Institute For the Canadian International Development Agency, Oct.2008 p. 58

deny that in politically sensitive cases, courts may be subject to intense pressure from various sources, including media and public.<sup>82</sup> Girma Abebe, the president of Sabata District Court, has also a similar opinion.<sup>83</sup> On the other hand, Ajema Gaddisa has the opinion that many judges are good in protecting their personal independence and judicial independence when facing influences from executive. He took a corruption case as an example in which his colleagues face challenges from officials. In this case, the accused requires some top government officials for defense witnesses and thus the court issue summons and the officials were not willing to appear before the court and they have attempted to divert the order of the court by proposing that the evidence shall be required from the Office of the president of the Oromia National regional state and it can be given in written form. However, the judges ordered the bench warrant and eventually the witness was heard successfully.<sup>84</sup> This particular case indicates that the strength of judges in resisting external interferences is important in maintaining judicial independence.

The role played by many judges and some presidents of the courts in promoting and protecting judicial independence is essential due to the fact that they have highly resisted and condemned the influences of government authorities. However, some judges lack self-confidence when there is a criticism from government officials and public and thus they failed to conduct fair trials. On the other hand, some judges are highly corrupted and they can easily be influenced by external pressure if they obtain some personal benefit.<sup>85</sup> Regarding the duty of judges in promoting judicial independence, the Code of Conduct for United States of judges provides that: *"A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved."*<sup>86</sup>

As has been stated, external influence is not limited to the legislative or executive branch of the government. Interference from advocates, litigants, public and media are also a major source of external influences. In this research, public and media influences are excluded due to the fact that time and space do not allow.

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<sup>82</sup> Interview with Dingde Chali, the president of Welmara District Court, August.17, 2015

<sup>83</sup> Interview with Girma Abebe, the president of Sabata District Court, August.13, 2015

<sup>84</sup> Public prosecutor Vs Hailu Dachasa et al High court case No 07583,2013.

<sup>85</sup> Interview with Tesfaye Asfewu, Defense council at high Court, August.20, 2015

<sup>86</sup> see Canon 1 of the Code of Conduct for the United states' judges

Court users have been complaining that some judges make ex-parte communication with the advocates and as a result trials are not fairly conducted. In other words, arguments from the opposite party are not properly heard and written which ultimately resulted in fair decision. Some advocates carry out the activity of go-between and they form special relationship with judges. When disputes are made between advocates and litigants with no legal knowledge the former's argument is better heard and less attention is given to the latter's argument. Generally, interference from advocates and litigants is a primary problem of these courts than influences from the other branch of the governments. External pressure from legal professionals and litigants can be resisted if our judges have high standard of conduct. Complaints regarding interferences from advocates are common against judges who do not adhere to standard judicial code of conduct.<sup>87</sup> On the other hand, using technique that delays the case, trying to communicate with the judge in the absence of other party, or attempt to exert personal influence on the court are some of the ways by which advocates interfere with the independence of the court.<sup>88</sup> In such situations, public do not have a confidence on the fairness of judicial proceeding and hence they usually ask that "*whether the advocates knows a judge they do not ask whether the advocate knows a law*".<sup>89</sup> Some advocates see the legal profession as a commercial activity and as a result they do not play necessary role in the administration of justice but they have been challenging the independence of judiciary. Further, some advocates use different technique to lengthen cases to an extraordinary degree; without concern for the process of justice. Aggressive tactics are not uncommon – for example, undue pressure is put on witnesses by insulting them.<sup>90</sup>

Regarding litigants, there is wide a perception that judiciary as an institution and individual judges are not independent and thus litigants often try to influence judicial proceeding through different ways. Ex-parte Communication and offering donation can be taken as example and some litigants even made an attack (threatening life) through different means against judges who

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<sup>87</sup> Interview with Judge Figist Diriba, Head of zonal Inspection team, August 12, 2015

<sup>88</sup> Interview with Dingde Chali, the president of Welmara District Court, August 17, 2015

<sup>89</sup> Supra note 78.

<sup>90</sup> Supra note 73.

see their cases.<sup>91</sup> Turuneh Rafera has the opinion that there are influences from litigants and such influences are not wide as compared to that of advocates.<sup>92</sup>

It can be concluded that influence from advocates and litigants in the judicial proceedings is a challenge in the courts of special zone and this problem is mainly related to judicial ethics. In situations where judges of the courts are ethically strong and resist the external pressure of different bodies, the rights to fair trials are less violated whereas in circumstances where the judge himself has ethical problem, judicial proceeding have been influenced by external bodies. Therefore, the recent challenges from the external organs specifically from advocates need to be considered in light of judicial ethic. However, this does not mean that judicial misconduct is always a cause for external influences.

Judicial independence is the one of the important principles of the FDRE Constitution and thus it must be respected by all. Therefore, All institutions must respect, protect and defend the judicial independence. Further, Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa provide that the independence of judicial bodies and judicial officers shall be guaranteed and must be respected by the government, its agencies and authorities.<sup>93</sup>

However, in Ethiopia, there is no law that imposes sanctions where officials of the executive or legislative branch clearly make interference against judicial independence. But judges have at least the duty to notify the president of the court and the judicial council of any attempts to influence them or to bring direct or indirect pressure to bear on them for the purpose of influencing judicial proceedings or decisions.

In Canada, making communication with the judge about a case by a member of the government body would be a ground for dismissal of the government member. Further, there is a possibility of criminal sanctions for attempting to influence or threaten a judge.<sup>94</sup>

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<sup>91</sup> Interview with Ayala Mamo, Court user, August.15, 2015

<sup>92</sup> Interview with Turuneh Rafera, Judge of the High court of the Special zone of Oromia, August.20, 2015

<sup>93</sup> Principles and Guidelines on the right to fair trial and legal assistance in Africa, African Commission on Human and people's Rights

<sup>94</sup> see Amnesty International Fair Trial Manual, second edition, 2014

### 3.3.2. Independence from Internal influences

Interferences from every corner is prohibited and a judge should be solely guided by the law. It is axiomatic that, apart from any system of appeal, a judge deciding a case does not act on any order or instruction of a third party inside or outside the judiciary. Any hierarchical organization of the judiciary and any difference in grade or rank shall, in no way, interfere with the right of a judge to pronounce the judgment freely, uninfluenced by extrinsic considerations or influences.<sup>95</sup>

Some judges Complain that there is internal interference against judicial independence. For example, a president or case managers may without good causes take files from a judge and see for themselves or they may assign cases to other judges. Similarly, in some courts, judges have been transferred from one bench to another bench even within a period of less than one month without sound reason. There is also a problem that judges are not assigned to bench according to their experience and interest.<sup>96</sup> When litigants bring their complaints to the president or to the case manager about the partiality of a judge, files were taken from a judge and assigned to other judge without considering the circumstances under which removal of judge from a case is to be made.<sup>97</sup> In the Courts of Special Zone Oromia, Presidents of the courts are generally not involved in case assignment. Cases are assigned by case managers on the basis of workload and bench division and mostly a judge handle a case from the start to finish. However, in few situations where a repeated allegation is made against the impartiality of a judge, a case may be taken from a judge and assigned to another judge.<sup>98</sup> The interview made with Tigist Diriba asserted that though there might be internal influences, administrative measures that enhance judicial accountability are perceived by some judges as a threat to judicial independence. But, it is incorrect to consider that it is against judicial independence when the inspection team, presidents of the courts and case manager see pending cases for the purpose of supervising the implementation of case flow management.<sup>99</sup>

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<sup>95</sup> J.A.G.Griffith, The Politics of the Judiciary,3rd ed.,1985,p. 46 as quoted in the commentary on Bangalore Principles on Judicial Conduct

<sup>96</sup> Interview with Betelchem Amanuel, Judge of the Sabbata District Court, August.13, 2015

<sup>97</sup> Supra note 72.

<sup>98</sup> Interview with Shiferawu Kebede, Case Manager of High Court, August.20, 2015

<sup>99</sup> Supra note 32.

Regarding influences from appellate courts, normally one does not think of higher levels courts as a threat to judicial independence. However, judicial independence may be undermined when higher courts exert undue influence on lower courts outside the normal channels of appeal. In this regard, some judges of District courts claim that few judges of the Supreme Court of Oromia have attempted to influence judges of the District courts to make a decision in the direction they need. They had also telephoned to some judges of the District courts and made an attempt to discuss about the way proceeding of the case is to be conducted. In addition, they claim that when presidents of the high Court and Supreme Court call to the presidents of District courts and discuss about a certain pending cases, undue influences have made against judges.<sup>100</sup>

The above discussion indicates that there are internal influences against judicial independence in the courts of Special zone of Oromia. Issues relating with case assignment, taking files from a judge without considering law and undue influences from higher court judges are the problems that erode judicial independence. Making a telephone communication with the lower court judges about a pending case will affect fairness of the trial. Further, it is unethical if higher court judges make unnecessary communication with lower court judges so as to influence judicial proceedings.

Generally, whether undue influences come from external or internal bodies, the main burden to protect both their personal and institutional independence rests on judges as they are the primary guardians of fair trial rights. It is their responsibility to ensure that proceeding in their court rooms, whether investigative, at trial or at the stage of execution of judgments comply with the all specified standards. In this regard, *Justice Jackson* concludes that the details of independence are fairness, impartiality, and good faith. Thus, an independent judge gives every party a full and fair opportunity to be heard without regard to the party's identity or position in society. An independent judge presides impartially, free from extraneous influences and immune to outside pressure. An independent judge rules in good faith, determined to follow the law as she understands it, unmindful of possible personal, political, or financial repercussions<sup>101</sup>.

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<sup>100</sup> Supra note 82.

<sup>101</sup> Steven Lubet, Judicial Discipline & Judicial Independence- law and contemporary problems, 1998 , p. 3

### 3.4. Issue of Impartiality in the Courts of Special Zone of Oromia

Impartiality is one of the basic ethical duties of judges in performing judicial activities. It is the fundamental quality of a judge and the care attribute to judiciary.<sup>102</sup> . According to Value 2 of Bangalore Principles of Judicial Conduct, “impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made”

The requirement of impartiality has two aspects. First, judges must not allow their judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial. For instance, a trial substantially affected by the participation of a judge who, under domestic statutes, should have been disqualified cannot normally be considered to be impartial.<sup>103</sup>

The impartiality of tribunals is tested in two ways. One is an objective test which examines whether the judge offered procedural guarantees sufficient to exclude any legitimate doubt of partiality. The other is subjective, examining personal bias. The appearance of partiality is considered along with actual partiality, but there is a general presumption that a judge is personally impartial unless one of the parties raises proof to the contrary, normally in the course of proceedings available under national law.

In considering challenges to impartiality in criminal cases, while the opinion of the accused is important, it is not decisive; rather what is decisive is whether the doubts can be objectively justified<sup>104</sup> . With regard to impartiality, the Criminal Procedure Code of Ethiopia provided that if a fair and impartial trial could not be held in the court trying the case, the accused or the prosecutor could move the High Court to remove the case from that court and transfer it to another. The provision of the Code reads as: “ *Whenever it is made to appear to the High Court by application before a trial has started either by the public prosecutor or by the accused that a fair and impartial trial cannot be held in any criminal court subordinate thereto; it may make an*

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<sup>102</sup> United Nations Office on Drugs and Crime. September 2007. Interantional Group for Anti-Corruption Coordination. 11 August 2015 [http://www.igac.net/pdf/publications\\_unodc\\_commentary-e.pdf](http://www.igac.net/pdf/publications_unodc_commentary-e.pdf)

<sup>103</sup> see Amnesty International Fair Trial Manual, second edition, 2014

<sup>104</sup> Ibid.

order against which no appeal shall lie to the effect that: (i) *any offence be tried by any court not empowered under the provisions of Art. 99.104 but in other respects competent to try such offence; (ii) an accused person be committed for trial to itself.*<sup>105</sup> Similarly, the Code of Civil procedure of Ethiopia provides that an application for change of venue can be made by either party at any time before judgment when a fair and impartial trial cannot be held by lower court.<sup>106</sup> Accordingly, every person has the right to be tried by an impartial body free from bias or influence. There is a presumption that the judge is impartial and strong evidence is required to convince it that this is not case. Any party to proceedings before a judicial body shall be entitled to challenge its impartiality on the basis of ascertainable facts that the fairness of the judge or judicial body appears to be in doubt.<sup>107</sup>

The way judges behave is crucial to maintain their impartiality. Improper behavior toward parties or their advocates conveys an impression of bias. Disrespectful behavior towards litigants infringes their rights to be heard and compromise the dignity of the court. Impolite treatment of the parties affects their satisfaction with handling of their cases. Thus, judges should always act courteously and respect the dignity of all before them. Unjustified reprimands of advocate, offensive remarks about litigants are some of conducts contrary to the ethical duties of judges.

In *case No. 23427-2015 (Civil case) the claimants Belay Daba and et al. q-* requested for withdrawal of judge and they claim that insulting and offensive remarks were made against them by the judge of Walmara District Court and they were unable to forward their arguments and their witnesses were precluded from freely expressing what they know. The high court of the special zone of Oromia Surrounding Finfine rejected the claim on the ground that the claimants should have requested change of venue not withdrawal of judge which shall be seen in District court. Judges must avoid any action which in the mind of reasonable person would give rise to a reasonable suspicion of a lack of impartiality in the performance of judicial functions. In this particular case, the offensive and insulting remarks made by judge gave rise to a reasonable suspicion and the claimants perceived that a court is not impartial.

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<sup>105</sup> Criminal procedure of Ethiopia (art.106 (a) d

<sup>106</sup> The civil procedure code of Empire of Ethiopia, Decree No. 52 /1965, *Negarit Gazeta*, 25st year, No 3, Addis Ababa .Art.31

<sup>107</sup> principles and Guidelines on the right to fair trial and legal assistance in Africa, African Commission on Human and people's Rights

In another civil case *No. 20656-2014, Abba Kiros (name of the local Orthodox church)*, applied for change of venue from Barak District court on the ground that an application for amendment of evidences by the opposite party was granted without notifying it. In addition, the judge of the court treated the legal representative of the applicant in a hostile manner and he was warned that he will be punished. The High Court of special zone has examined the case and held that the district court is not impartial and the case was transferred to Sululta District court. When we analyze this case, denying the opportunity to challenge the application made by the opposing party and showing hostile manner amount to a violation of fair trial rights that actually emanates from the judge's misconduct. Further, some judges are impatient and they do not carefully listen to litigants and thus several court users complain against the appearance of partiality of these judges. Court users know that if their cases are not properly heard the probability that their cases will be corrected through appeal is less. In trial court, litigants usually concern about the fairness of the proceeding than the final judgment.<sup>108</sup> This shows that the courts should work towards enhancing the fairness of the trials at all stages.

An interview made with kuma Dabala- one of the court users- asserted that most judges of Courts the Special Zone of Oromia properly enforce the right to be heard. But some judges are very offensive and impatient to hear the arguments of the parties. On the other hand, Some judges took bribe from one of the party and thus they harass the opposite party when judicial proceedings are conducted.<sup>109</sup> Similarly, Silashi Itafa- one of the court users has the opinion that some judges pay attention to the arguments of one party and ignore the arguments of the opposite party and thus the issue of partiality in judicial proceeding is still a problem need to be solved.<sup>110</sup>

An interview made with Tigist Diriba asserted that the judicial conduct of majority of the judges working in the Courts of Special zone of Oromia Surrounding Finfine is courtesy, patient, fair and free of bias (both actual and perceived). However, some judges especially in District courts behave badly towards the litigants and they harass a party to a proceeding. This is often reflected

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<sup>108</sup> Supra note 78.

<sup>109</sup> Interview with Kuma Dabala- court user, August.15, 2015.

<sup>110</sup> Interview with Silashi Itafa- Court user- august .16,2015.

in abuse of contempt power.<sup>111</sup> Bias in rulings, questions, or comments in favor of one party is a critical problem observed in some benches. Restricting, interrupting, and irrelevant reference to personal characteristics are also a manifestation of judicial misconduct occurring in courts of special zone, though in majority cases judicial proceeding have been conducted in accordance with the established procedural laws.<sup>112</sup>

Generally, a malicious intent on the part of the judges may not exist when judges engage in type of behaviors which are not acceptable, but they cast a big doubt on the impartiality of the court and thus the judges should be objectively impartial as justice should not only be done but also seen to be done. Insulting and improper remarks about litigants and witnesses, statements evidencing prejudgments and intemperate and impatient behavior may destroy the appearance of impartiality, and must be avoided and court users must be treated with dignity. It is the judge who sets the tones and creates the environment for a fair trial in his or her court. Unequal and desperate treatment of court users, whether real or merely perceived, is unacceptable.

During the presentation of the case, the judge shall maintain absolute impartiality, and shall neither by word or sign indicate favor to any party to the litigants. It is the first and foremost duty of a judge to see that his court is surcharged with an atmosphere of impartiality.

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<sup>111</sup> Supra note 82.

<sup>112</sup> Supra note 73.

### 3.4.1. Disqualification/Withdrawal of judges

Judicial recusal is the mandatory, optional, or self-proscribed removal of a judge from a case. The standard has most recently been objective: recusal is necessary when the judge's impartiality might reasonably be questioned. Thus, actual bias or prejudice by the judge is not necessary. Judges must have the appearance of justice. When the recusal is not voluntarily initiated by the judge it is called disqualification.<sup>113</sup>

A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration. A decision to withdraw a case from a judge should be taken by an authority which enjoys the same judicial independence as judges.

The Oromia Code of Judicial Conduct provides that judges must recuse themselves of their own motion as soon as they are aware of or they are expected to know grounds on which the law prohibits them from sitting over the case.<sup>114</sup> These grounds are provided under article 18 of proclamation No. 141/2008. The Grounds are:-

- (a) *Where one of the parties or his pleader is related to him by consanguinity or affinity. or the disputes relates to a case in which he acted as council or a pleader or representative*
- (b) *Where the matter has earlier been brought to his attention in his capacity as a judge or as an arbitrator or where he knows the case in any capacity or where he has interest in the subject matter of the dispute*
- (c) *Where he has a law suit against one of the parties*
- (d) *Where there are sufficient reasons, other than those specified that there are good reasons to conclude that fair and impartial decisions may not be held.*

Similar grounds are provided in Federal Courts Proclamation No. 25/1996.<sup>115</sup>

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<sup>113</sup> Jeremy M. Mille, Judicial Recusal and Disqualification: The Need for a Per Se Rule on Friendship (Not Acquaintance), Pepperdine Law Review 2005 / 2006 33 Pepp. L. Rev. 575 p.1

<sup>114</sup> See art.49 of judicial code of conduct of oromia

<sup>115</sup> See art. 27 (2) of Proc.No.25/1996 the proclamation

The grounds listed above seem to envisage only civil cases. The Criminal Procedure Code has no provision dealing with withdrawal of judge.

The Bangalore principle provides similar conditions under which a judge is withdrawal from a case. The conditions are: Where the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding, where previously served as lawyer or was a material witness in the matter in controversy, and where a judge, or a member of the judge's family, has economic interest in the outcome of the controversy.<sup>116</sup>

Judges must recuse themselves when one of the parties or their advocates is their relatives by consanguinity or affinity. Impartiality might be so questioned when a relative is intimately involved.

In Civil case *file No. 48416,2014* Walmara District court *kuli Abdisa Vs. Masida Hasan*, the plaintiff is a sister of the judge presiding over the case and the judge intentionally did so and he finally decided in favor of her and he was accused of violation of disciplinary rule. A trial flawed by the participation of a judge who should have been disqualified cannot normally be considered to be fair.

In *civil case file No. 09315, 2014- applicant kachine Begna-* applied for with drawl of judge on the ground that the advocate of her opponent has some affinity relationship with the judge presiding of the case and her application was rejected. Later, she applied to the high court for change of venue on the grounds that the Sabata District Court adjourned her cases for several times and the advocate of her opponent is the relative of a judge presiding her case. The high court then held that an impartial and fair trial cannot held by the lower court and thus it transferred the case to Walmara District court.

The above cases clearly show that partiality was demonstrated due to consanguinity and affinity relationship with one of the party to a case and the judges should have voluntarily

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<sup>116</sup> Value 2- 2.,5- 2.,5.3 of the Bangalore Principle of Judicial Conduct,2006

removed themselves from the cases and hence it is a violation of judicial ethics and above all it undermines the right to fair trials.

The grounds for withdrawal of judge from a case are not exhaustive. Other grounds are also allowed where there are good reasons to conclude that fair and impartial decisions may not be held. This indicates that the law gives special protection for enjoyment of fair trial rights which is in fact related with judges' conduct.

In *Eliyas Teferi v. Ayela Mamo- case file No.47645, 2015 (Sabata District Court)*, the plaintiff applied for the withdrawal of judges. The plaintiff was absent on the day on which additional documentary evidence from town's municipality was to be submitted to the court. Then the document was sent to court by municipality and a copy of the document was given to the defendant's advocate in the bench and his opinion on the document was heard. The claim in this case is that an opportunity to comment on the document should not be allowed to defendant in the absence of plaintiff and it demonstrates partiality of the judge. Withdrawal of judge as per art.18 (1) (d) of the proclamation No. 141/2008 was granted.

In *Yosef Kebede v Merefik case- high court file- No. 04329,2010* - the decree was executed and the file was closed. However, after months, the applicant (decree holder) applied to the court that the decree was not executed and he requested for order for execution. Then, the high court judge considers the application and the judgment debtor was summoned for proceeding. The judgment debtor argued that the decree holder himself had confirmed to the court that the decree was executed and as a result the file was closed. It is the matter that had already been settled and considering such application is a violation of procedural law. He requested for withdrawal of judges on the ground that a judge has some secret relationship with the decree holder and the judge was withdrawn from the case and the application was eventually rejected.

In this case, it is clearly understood from the file that the order of the court was completely executed and there is no way to carry out a new proceeding between the parties. Any kind of trial should be in pursuance of the procedural law and such clear violation of law is related with ethical problem of the judge. Issues relating with withdrawal of judges is a common problem of the Courts of Special Zone of Oromia Surrounding Finfine. It is more prevalent in District courts. Litigants often complain that some judges do not conduct the trial in a fair and efficient

manner as they are not free from bias. The source of bias or prejudice may be judicial corruption. For example, a bribe offered to a judge directly affects the impartiality of that judge and hence violate the right to a fair trial.<sup>117</sup>

When application for withdrawal of judges from the case is frequently requested it has the implication that the trust of litigants on courts would obviously decrease from time to time which finally resulted in eroding the general public confidence. Therefore, enhancing the ethics of judges of the courts of Special zone of oromia and ensuring judicial accountability should get a primary consideration.

In sum, impartiality which is the core element of fair trial can be ensured in the courts of Special zone of Oromia if the existing ethical problem of judges is improved. This means that the right to be heard by impartial court can be enjoyed if the judges of the courts respect and maintain the required ethical standard.

### **3.5. Equality of arms**

We have already discussed that 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. In criminal trials, where the prosecution has all the machinery of the state behind it, the principle of equality of arms is an essential guarantee of the accused's right to defend him or herself. It ensures that the defence has a genuine opportunity to prepare and present its case, and to contest the arguments and evidence put before the court, on a footing equal to that of the prosecution. The requirements of the principle of "equality of arms" include the right to adequate time and facilities to prepare a defence, including disclosure by the prosecution of material information. The requirements also include the right to legal counsel, to challenge evidence, to call and question witnesses, and to be present at the trial. However, the principle does not require the parties to have equal financial or human resources.<sup>118</sup>

The principle of equality of arms is commonly understood and applied in criminal proceedings. However, this principle certainly can be applied in civil proceedings where two private parties confront each other before neutral tribunal. Principles and Guidelines on the right to a fair Trial

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<sup>117</sup> Supra note 93.

<sup>118</sup> See Amnesty International Fair Trial Manual, second edition, 2014.

and Legal Assistance which was developed by The African Commission on Human and people's rights provides that "equality of arms" applies to civil, criminal, administrative or military proceedings.<sup>119</sup> . In this research, both criminal and civil cases of the courts of special zone of Oromia Surrounding Finfine have been examined.

Although the principle of equality of arms is incorporated in different laws of Ethiopia, it has often been violated by courts of the country. In Courts of Oromia, many court users complained that there are violations of equality of arms especially in lower courts. In this regard, a large amount of disciplinary complaints comes especially in relation to family cases. Complaints come from court users against the Non-observance of equality of arms in proceeding are commonly related with the conduct or behavior of a judge.<sup>120</sup> Judges have the responsibility to maintain balance between the parties, affording each of them equal opportunity in the proceedings. However, in Special Courts of Oromia, violation of equality of arms is a critical problem which is resulted in eroding public confidence. For example, in certain cases when the prosecutor was unable to present his witnesses, repeated adjournments had been allowed where as accused were denied to equal opportunity. This problem is partly due to lack of competence and partly related with misconduct of judges.<sup>121</sup>

The HRC stated in its General Comment that the accused must have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. What is "adequate time" depends on the circumstances of each case, but the facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel.<sup>122</sup>

*In Prosecutor v. Dagafu Abebe case file No.35514,2010 Walmara District Court,* the accused was charged with the violation of article. 555 (B) of the Criminal Code of the FDRE and he was denied the opportunity to present his witnesses. Similarly, in *Prosecutor v.Zenbaba Kano,File No.29719,2010- Sabata District Court,* the accused was charged with the violation of Article 620

<sup>119</sup> See Paragraph 2 (a) of principles and Guidelines on the right to fair trial and legal assistance in Africa, African Commission on Human and people's Right.

<sup>120</sup> Interview with obbo Worku Gabisa, Head of Regional Inspection Team of the Supreme Court of Oromia, august.26, 2015

<sup>121</sup> Supra note 87.

<sup>122</sup> HRC General Comment No.32 Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14)-CCPR

of the Criminal code of Ethiopia and he was denied to present his witnesses. In both cases, the High Court reverse the decisions of the lower courts on the ground that trials were not fair as the right to present defense witnesses was denied without good cause. On the Contrary, when the prosecutor failed to present its witnesses, repeated adjournments had been granted.<sup>123</sup>

In *Prosecutor v. Chonbe Nuguse- case file No. 34551,2010 Walmara District Court* the accused was charged with the violation of article 556 (1) of the Criminal Code of Ethiopia. Defense witnesses were present outside the bench while prosecutor's witnesses were heard but when they were called to testify they went to their home and then the court refused to give adjournment and rejected the right to defense.

Contrary to the above, in high Court of the special zone of Oromia, in cases such as *Prosecutor v. Fayitu Tafa (file No.12390,2015)*, *Prosecutor v. Anbasu Mul'ata (file No.13418,2015)*, *Prosecutor V. Abboye Warku (file No.13435,2015)* reasonable adjournments were given for accused persons for several times so as to give opportunities to defend themselves. When we analyze cases that were entertained by district courts, the principle of equality of arms is violated as trial judges refused to grant an adjournment to enable accused persons to present their witnesses, whereas several adjournments have been granted when prosecution witnesses were unavailable or not ready. This problem could be attributed to the ethical problem of the judges. It is a responsibility of every judge to respect and comply with the law, to be faithful to the law and maintain professional competence in it, and to accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. Giving wider opportunity to a party to present its witnesses and refusing the opposite party is not a complex legal matter but it is a problem of the unequal treatment.

In *Frank Robison v. Jamaica case*: the author was charged with murder; while the hearing had been postponed no less than seven times because the prosecution had not been able to present its main witness, postponement for the defense was refused when counsel had withdrawn. The HRC decided that the principle of Equality of arms is violated when the defence was denied the opportunity to present witnesses under the same conditions as the prosecution; when the accused was not granted a postponement of a hearing when defence counsel was absent.<sup>124</sup>

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<sup>123</sup> See also *Prosecutor v. Mesay Mulugeta*, file No. 34769 Walmara District Court.

<sup>124</sup> Communication No. 223/1987, *Robinson v Jamaica*, [10.4]

Generally, related to the principle of equality of arms is the right of each party to proceedings to call witnesses in support of their case and to examine witnesses called by the other parties to the proceedings. The accused has the right to call and examine witnesses on his behalf under the same conditions as witnesses against him. The above cases indicate that due attention was not given to the right to defence. Normally, a trial is a true seeking process and hence it is injustice to convict the accused without hearing his/ her witnesses. Therefore, it is the duty of each judge to protect the equality of arms. A judge should carefully consider the reasons why an accused person fails to present his/her witnesses.

The right to legal Assistance/ Counsel is a fundamental aspect of the principle of equality of arms. Accused persons are laymen who lack the relevant knowledge of law to bring and defend causes of actions brought against them. Consequently, they are urged to seek lawyers/advocates/ to defend causes on their behalf. To this end most legal systems allow accused persons to have the service of lawyers of their choice or appointed by the state so that they will be able to protect their liberty at stake. Lawyers then are duty bound to cooperate in the realization of such rights by effectively and diligently discharge their responsibilities.<sup>125</sup>

In this regard, the FDRE Constitution provides that "*Accused persons have the right to be represented by legal counsel of their choice, and if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense.*"<sup>126</sup>

When we look at the practice of the courts of the special zone with respect to the enforcement of the right to legal Counsel, defense lawyers are hired at High court level and thus accused persons who do not have sufficient means to pay for lawyers have enjoyed the right to be assisted by legal counsel in the high court of the special zone. Similarly, the right of accused person to use legal representation of their own choice is fully respected at high court level. The basic problem lies in District Courts where almost all criminal cases have been heard in the absence of legal assistance. One of the causes for this problem is that there are no hired defense lawyers at District Court level. But this does not mean that there is no other means by which such basic right of the accused can be enforced. For example, licensed advocates have the

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<sup>125</sup> Aderajew Teklu and Kedir Mohammed, Ethiopian Criminal Procedure Teaching Material, Justice and Legal System Research Institute March, 2009 Addis Ababa p. 250

<sup>126</sup>The FDRE Constitution, Art. 20 (5)

obligation to give free legal service (pro bono service) and thus judges of the District courts can use these legal professionals so as to realize the right at issue. However, most judges of the district Courts did not use these legal professionals and hence the accused persons' right to fair trial had been violated.<sup>127</sup>

Both national and international laws provide that legal representation should be available to those who do not have the resources to hire a lawyer of their choice. A vital component of this obligation is the duty to inform the accused of their right to legal representation.

The following cases are instances in which accused persons were convicted without obtaining legal assistance.

In *Prosecutor v. Worku Tola* file No. 33860,2014 the accused was charged under 620(1) of the Criminal code of Ethiopia. The Sululta District Court didn't inform him that he has the right to legal counsel of his choice or where he does not have sufficient resources the government has the obligation to cover the expenses. The accused was eventually sentenced to 7 years rigorous imprisonment. Similarly, in *prosecutor v. Iyob Zeleke & Bereket Tesfaye*, file No. 51934 , 2015- where they were accused in violation of article 620 (2) (d) of the Criminal Code of Ethiopia, the Walmara District court didn't inform the accused anything about the right to legal assistance/legal counsel of the accused. *Iyob zeleke* was sentenced to 15 years rigorous imprisonment and *Bereket Tesfaye* was sentenced to 14 years rigorous imprisonment.

In another case, *Prosecutor v. Yohanis Siyum* file No. 31376, 2013 the accused was charged under article 620 (2) (a) of the Criminal Code of Ethiopia. The right to legal Counsel of the accused was not respected and the Walmara District Court sentenced the accused to 8 years rigorous imprisonment.

It is against the principle of fair trial and violation the Constitution of the country to try serious offences in the absence of legal representatives. The convicted persons in the above cases might be acquitted had they were assisted with legal counsel. It is obvious that the outcome of absence of fair trial is often unfair decision. According to proclamation 141/2008, the Court has the obligation to assign a defense Counsel to an individual who is accused of a crime punishable with rigorous imprisonment not less than five years.<sup>128</sup>

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<sup>127</sup> Supra note 80.

<sup>128</sup> Art.17 (2) of the proclamation .No. 141/2008

It is the duty and responsibility of every judge to respect and apply laws correctly in a way that citizens' rights are fully respected. A clear violation of laws shows the non-adherence of the ethical duties or ethical standards of judicial activities. In the above cases, the judges clearly knew that the offences are serious and at least it is their duty to inform the accused that they have the right to legal counsel. Where the accused lacks sufficient means to cover the expense there is an opportunity to use advocates since they are bound to give free legal assistance<sup>129</sup> for limited hours. However, it should be noted that the problem related to legal counsel has institutional aspect and it cannot only be solved by individual judges. Defense lawyers should be hired in all district courts.

As has been discussed above, the principle of equality of arms is also applicable in civil proceedings. In hearings, some judges properly hear the arguments of one party and restrict the arguments of the other sides. Sometimes adjournments are made without equally considering the situations of both parties. Orders given to different organs to produce documents ( for example, it is a common practice to order the city administration or municipality to identify disputes relating to land ) are sometimes made in a way that favour one of the parties or in the direction that a judge want to make his decision and a party may not be allowed to challenge or give his opinion on the document submitted to the court.<sup>130</sup>

On the other hand, litigants who do not have knowledge of law are not treated equal with advocates. An inclination and attention is given to the advocate or legal profession. In labor cases, some judges usually try to favor the employees while proceedings are made.<sup>131</sup>

Relating to hearing of witnesses, in some cases the witnesses of one party may unreasonably ignored and a decision is given against such party. In *Ejerso Ragasa v. Ajama Beyene file No.38461,2014* ( Sabata District Court) the court gave a judgment without observing and hearing the evidences presented by plaintiff and the decision was reversed by high court and the case was remanded.

In this connection, *-in Bekele Amare vs. Bezunesh Girma file No.52546 -Volume 12-* the Federal Supreme Court Cassation Bench held that it is a due process of law and mandatory for the court

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<sup>129</sup>Advocates have the obligation to provide free legal service for 48 hours within a year. See Proclamation No.182/2013, Proclamation Licensing and Administration of Advocates and Paralegals of Oromia National Regional State, art. 33 (5)

<sup>130</sup> Supra note 84.

<sup>131</sup> Supra note 72.

to hear the witnesses that is produced by the party as long as it has relevance with the issue under examination and it is mainly a right for the party.

In the high court case *file no.21067,2013* – the applicant *Eshetu Yadate* requested for a change of venue on the ground that the judge of district Court refused him to accept his written evidences for the purpose of helping the oppose party. When he brought this issue to the attention of the president of the district court, he was put in to custody for three days. In this case, the lower court would have stated the reason why the applicant's written evidences was not accepted. Otherwise, it is against the principle of the fair trial rights.

In case *Sela Husen v. Abebe Bayecha* file No. 42330,2014 - , the plaintiff was absent on the day fixed to hear the witnesses of both parties and the Sabata District Court ordered that the plaintiff's right to present his witnesses is set aside and the witnesses of the defendant were heard.( in the absence of plaintiff). The advocate of the plaintiff made a petition to the Zonal Inspection team that it is against the procedural law and a violation fair trial right. It is intended to provide an opportunity for the defendant to win the case. In this case, the plaintiff's advocate explained his reasons for absence and requested for setting aside the order. Finally, another judge of the same court grant the application and the witnesses of both parties were heard.

In the above case, a procedural law is clearly violated. According to article 73 of the civil procedure code, where the defendant appears and the plaintiff does not, unless the defendant admits all or part of the claim, in which case the court shall pass a decree against him based on the admission, the suit must be dismissed. Departure from the rules and principles of procedure according to which the law required a trial to be conducted is a violation of judicial ethics.

Regarding judicial questioning, a judge should refrain from questioning in such way or to such an extent as lose his judicial impartiality and objectivity. A judge should desist from questioning in a way which may intimidate or disconcert a witness so as to affect his credibility. Some judges may influence the trial process in ways that correspond to their expectations for trial outcome during the trial in accordance with these expectations--for example, in comments on the evidence, in responses to witnesses, or in rulings on objections. Judges should not place themselves in the position of an advocate to examine or cross examine witnesses. Judges have the power to pose questions to witness to clarify an issue. But, that power should not go to the extent of asking questions that must be asked by the parties or their advocates.

Most of the benches in courts of special zone of Oromia conduct hearing in a manner that both parties obtain equal opportunity and present their allegations and particularly the judges of high court conduct hearing fairly. However, in few benches harassing the witnesses of a party, Pushing the witnesses to the direction the judge seek to decide, asking the question that is required from the party to ask ( putting himself as a party) are the problems need be solved. Such problems may be attributed to the conduct of the judges as some judges do not want to continue in their career and thus they carelessly carry out judicial activities or they may be corrupted.<sup>132</sup>

Very often questioning by the court takes place after re-examination. The main purpose of such questioning is to clear up any points which are still obscure.

The principles of equality of arms have been violated in our courts in several cases. The causes for such problems are many which include problems from the part of the litigants, workload, resources, competence, diligence, absence of constant supervision and generally judicial misconduct. The primary causes for these problems are the unethical problems of judges rooted in the courts. Judges who are ethical, Competent and diligent do not generally disregard the fairness a trial<sup>133</sup>

Incompetence and inefficiency is a ground of removal of judges as per article 79 (4) of the FDRE Constitution. The ethical duties of competence require "legal knowledge, skill, thoroughness and preparation".<sup>134</sup> Because of lack of competence several procedural provisions that promote fair trial rights have been violated. In state of Oromia, the Disciplinary Rule for judges and Judicial Officers does not Contain provisions relating to competence. As a result, it is difficult to charge a judge in Oromia with disciplinary offences related to lack of Competence. This is to mean that there is lack of legal sufficiency to regulate problems related to judicial incompetence. Codes of judicial conduct invariably require judges to be competent. The Code of Conduct for United States Judges is typical. It states: "A judge should be faithful to and maintain professional competence in the law."<sup>135</sup>

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<sup>132</sup> Interview with Tujuma Deba, an advocate working in Oromia Courts, August 13, 2015

<sup>133</sup> Supra note 115.

<sup>134</sup> United Nations Office on Drugs and Crime. September 2007, 129

<sup>135</sup> See American Bar Association Model for Judicial Conduct

### 3.6. The right to be tried without undue delay

Fair Trial rights guarantee the process of determining rights by courts and one of the procedural guarantee in fair trial right is the right to speedy trial or the right to trial without undue delay. The right to trial without undue delay is linked to other rights, including the rights to liberty, to be presumed innocent and to defend oneself. It aims to limit the uncertainty faced by an accused person and any stigma attached to the accusation, despite the presumption of innocence. Moreover, if there is inordinate delay, this may impair the quality or availability of the evidence, for example as witnesses' memories fade, witnesses become unavailable or evidence disappears, degrades or is destroyed. The guarantee of a prompt trial serves the interests of justice for the accused, victims of the crime and the public at large, while the violation of this guarantee encapsulates the maxim that "justice delayed is justice denied".<sup>136</sup>

Further, it must be acknowledged that speedy proceedings are not always in the defendant's interests, particularly if he or she is not remanded in custody. The accused may have the chance to benefit, for example, a statute of limitations which may encourage the defence to use delaying tactics.<sup>137</sup>

*Accused persons have the right to a public trial by an ordinary court of law within a reasonable time after having been charged.*<sup>138</sup> Literally, the right to speedy trial only applies to accused persons in criminal proceedings. However, the HRC acted quickly to remedy this situation, declaring that any undue delay was incompatible with the right to fair trial.<sup>139</sup> But, if it is a civil case, you can opt for alternate methods which are faster like Arbitration and conciliation. In this paper, an attempt is made to examine the issue of undue delay in both criminal and civil cases. Court delays drive from numerous circumstances, some of which are understandable in principle, while others are not. For example, it is true that on many accessions, particularly in remote areas, there are too few judges, whose workloads are heavy; they lack both adequate equipment and assistance in their work. It is also true, however, that on other occasions judges simply do not

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<sup>136</sup> Amnesty International Fair Trial, 2nd edition p.144

<sup>137</sup> *Ibid.* p.144

<sup>138</sup> Art.20 (1) of the FDRE Constitution

<sup>139</sup> Casanovas v. France, in Stefan Trechsel, *Human Rights In criminal proceeding*, 2005 p.134

care about urgent of poor claimants, or prefer to direct their attention to other cases, which may be more important in terms of prestige, power, or illegal benefits.<sup>140</sup>

Under the European human rights system, the reasonableness of the length of the proceedings could be assessed according to the particular circumstances of the case and with reference notably to the complexity of the case, the conduct of the defendant and the conduct of the (prosecuting and judicial) authorities.<sup>141</sup>

Many factors are taken into consideration in examining whether the time within which proceedings have been completed is reasonable in view of the complexity of the case. They include the nature and seriousness of the alleged offence(s); the number of charges; the nature and type of the investigation required; the number of people allegedly involved in the crime; the volume of evidence; the number of witnesses; and the complexity of the facts and any legal issues arising. Even in complex cases, however, particular diligence to administer justice expeditiously is required if the accused is detained pending trial.<sup>142</sup>

In High Court of the Special zone of Oromia, there are many Criminal cases which are Complex in nature. Corruption cases are typical examples in which the number of accused are large and several issues are involved and the evidences are very complex.<sup>143</sup> In this regard, the defense Counsel of the high court who represents some of the accused and takes part in these proceeding states that the delay of the case is justifiable as the case is too much complex and the number of witnesses heard is even large.<sup>144</sup>

In a case involving 723 accused and 607 criminal offences, the European Court held that it was reasonable that the trial lasted about eight and a half years. However, it held that subsequent periods of delay and inactivity, including three years before a court issued written reasons for its judgment, and appeals processes in two courts which lasted more than six years, were not reasonable.<sup>145</sup>

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<sup>140</sup> Hailu Teddese, Judicial Reform in Ethiopia, MPADM thesis, 2010, AAU Unpublished

<sup>141</sup> (See Paul Mahoney, Right to a Fair Trial in Criminal Matters Under Article 6 E.C.H.R., Judicial Studies Institute Journal,(2004), at 119.

<sup>142</sup> Amnesty International Fair Trial , 2nd edition p.145

<sup>143</sup> Prosecutor V. Bifa Badada , file no.11305

<sup>144</sup> Supra note 80.

<sup>145</sup> European Court: Mitap and Müftüoglu v Turkey

The authorities have a duty to expedite proceedings. If they fail to advance the proceeding at any stage due to neglect, allow the investigation and proceedings to stagnate or if they take an excessive time to complete specific measures, the time will be deemed unreasonable. Similarly, if the criminal justice system itself inhibits the speedy conclusion of trials, the right to trial within a reasonable time may be violated.<sup>146</sup>

The conduct of the accused is taken into consideration in determining whether there was undue delay. For example, delays caused by the accused absconding have been taken into account when determining whether proceedings were conducted within a reasonable time. However, an accused is not obliged to cooperate actively in criminal proceedings against him or herself. Furthermore, delays attributable to the exercise of procedural rights in good faith must not be taken into account when evaluating whether proceedings were conducted within a reasonable time.<sup>147</sup> Delay of almost three years in an appeal in Canada, largely caused by the 29 months it took to produce the trial transcripts, was found by the Human Rights Committee to violate Article 14 of the ICCPR<sup>148</sup>.

In the High Court of the special zone Oromia, several cases of negligent Homicide take a long time to be decided due to the conduct accused persons. After released from custody by bail rights, accused persons charged with negligent homicide commonly abscond from the trial. The police are also reluctant from arresting those accused persons. The victims of offences are usually criticizing the courts.<sup>149</sup>

We have already mentioned that there are several causes for the undue delay of cases in courts. In this research, the conduct of judges in the courts of special zone of Oromia as one cause for the undue delay shall be particularly examined. Expeditious disposition of a case is one aspect of judicial Conduct. According to, Value 6.5 of the Bangalore principle "A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness".

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<sup>146</sup> Amnesty International Fair Trial, 2nd edition p.146

<sup>147</sup> Ibid p.145-146

<sup>148</sup> See Pinkney v Canada (R.7/27), HRC, UN Doc. CCPR/C/OP/)

<sup>149</sup> Interview with Shiferewu Kebde, case manager of Criminal Bench of High Court, august 20,2015

The Judicial Code of Conduct of Oromia Provides that "prolonging cases without reasonable cause or repeatedly adjourning cases without good cause is a violation the code ".<sup>150</sup> However, the code doesn't specify what are "reasonable causes" and hence it often difficult to ensure judicial accountability in this regard. In many situations when cases are adjourned, work load is taken as a justifiable reason for delay by many judges. However, cases have been delayed for a long time due to lack of necessary diligence and prejudice from the judges. Defendants or victims usually complain the trial judge/ judges as responsible for unreasonable delay. For example, in *Fikire kuma V. Dinkinesh* case file No.23537,2015- high court file- it was adjourned for five consecutive times for first hearing. In case *Rahel Mogas v. Aman H/ Mariyam* - High Court file No. 23397, 2015- it took one year even without conducting first hearing. In *prosecutor vs Yilma* high court file 12566,2015 the accused was charged with aggravated homicide and the case adjourned for judgment for seven consecutive times and all the reasons for adjournments were workload.

When we analyze these cases, work load<sup>151</sup> could be a ground for adjournment but long and repeated adjournments cannot be a ground for undue delay and it is attributable to the conduct of the judges which violates the right to speedy trial. The cases clearly show that the conduct of the judges affects the right to trial without undue delay which is one of the essential components of fair trial.

*In Degu Debebe V. Yilma Yigazu case- High Court file No. 23360,2014* - it was adjourned for eight times for file investigation and as a result withdrawal of judge from the case was requested. In this case, adjournments were made for several times for the purpose of investigating the case so as to conduct first hearing. In the Courts of Oromia, the time standard is set for every type of case. According to the Business Process Re-engineering (BPR), the Maximum time Standard set

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<sup>150</sup> The Judicial Code of Conduct of Oromia, Art.25

<sup>151</sup> Cases are increasing from year to year- the five years Statically report of courts of the Special zone Oromia shows that cases are increasing every year. in 2003 E.C, 25,828 files, in 2004 E.C.26,353 files, in 2005 E.C. 28712 files, In 2006 E.C.32,251 files, in 2007 E.C,32607 files were entertained by the courts.- where as the number of judges is not substantially increasing. (2003, 66 judges,2004, 60 judges, 2005, 64 judges,2006,67 judges and 2007 E.C, 75 judges. Thus, work load can be taken as source for delay. (Source: Analysis of Five Years (2003-2007E.C) performance of the Courts of the Special Zone of Oromia, Report July,2015- Unpublished)

for civil matters is three months.<sup>152</sup> Therefore, in this particular case, no condition can justify the delay and it is the failure of professional duty and responsibility of the judge.

The main cause for undue delay of cases in the courts of the Special zone of Oromia specifically in high court is lack of adequate man power and thus the judges have been overburdened. In District Courts, most criminal cases have been disposed expeditiously and undue delay is not a big challenge in these courts. However, some judges deliberately cause undue delay for the purpose of benefiting or injuring one of the parties.<sup>153</sup>

Further, workload is a major cause for undue delay but some cases took several months or years to be disposed because of the absence of due diligence from the judges and as some judges are also corrupt they deliberately delay cases to favor one of the party. The problem with respect to lack of sufficient number of judges may be solved in recruiting more judges whereas problem related with judicial ethics requires time and strong effort to bring a fundamental change. In connection to undue delay, Court users usually connect judicial misconduct as a primary cause for the undue delay.<sup>154</sup>

The main problem with enforcing the right to be tried expeditiously arises from the fact that 'reasonable time' for concluding a matter is not a something that can be reduced to a mathematical equation to be applied to all cases in the same manner. It is usually left to the discretion of individual judges to decide whether there has been an inordinate delay in matters before them. These judges cannot be expected to be fully impartial when they have contributed to the perceived delays.<sup>155</sup> "Justice delayed is justice denied" as long as court cases are not settled on the right time, they could open doors for corruption, injustice decision, public anger and the like.

Judiciary is not less responsible for delays. Several factors knowingly or unknowingly contribute to delays. The first and foremost is inadequacy of judges in comparison to the load of litigation pending in courts. But it is not a correct proposition to say that if there are more judges,

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<sup>152</sup> See BPR Document- Oromia Supreme Court, Unpublished, 2008- According to BPR, every case has its own time standard. Three months is the maximum time Standard for civil and criminal cases. But, cases such as Corruption offences and tort cases which are complex in nature took more than year to be disposed.

<sup>153</sup> Supra note 70.

<sup>154</sup> Supra note 82.

<sup>155</sup> Jack Mwimali, Conceptualization and operationalisation of the right to fair trial in criminal Justice System in Kenya, PHD thesis August 2012, p.62

quicker will be disposal. Incompetence and misconduct of judges could be causes for delay. Some judges allow advocates to go on arguing on questions of law or facts which are irrelevant to the case. They are not confident to stop the advocates from arguing on irrelevant issues.

Probably the greatest source of frustration for lawyers and litigants is the failure of judges to deliver decisions in a timely manner. This frustration is all the greater because of the fear that even a request to expedite a decision will incur the judge's wrath and produce an undesirable result. While the heavy workloads of many judges may cause inevitable delays in the issuance of opinions, it is often necessary for a judge to prioritize in order for time-sensitive cases to receive early attention

### **3.7. Judicial Accountability in the Courts of Special Zone of Oromia Surrounding Finfine**

We have already discussed the constitutional position of judicial independence and the practical challenges to judicial independence and their impact on the right to fair trial. In this part, we look at the numerous ways in which judges are restrained and which together, ensure that judges are accountable for their actions. Judicial Accountability is an indispensable Counterbalance to judicial independence, for unaccountable judge would be free to disregard the ends that the independence is supposed to serve.<sup>156</sup>

There is a commonly held view that setting judicial standards of conduct and making judges accountable for their breach will interfere with the independence of the judiciary. This conflict between independence and accountability is more apparent than real. But, judicial independence and accountability are mutually supportive. The ultimate goal of both concepts is to advance impartial justice and increase public confidence in the capacity of judges to do so. A recognition of this view might decrease the resistance of judges to the articulation of judicial codes of conduct.<sup>157</sup> J. Miner explained the cause for an increasing demand for judicial accountability in the following ways:

*"The major cause of the loss of public confidence in the American judiciary, however, is the failure of judges to comply with established professional norms, including rules of conduct specifically prescribed. In brief, it is the unethical conduct of judges, both on and off the bench, that most concerns the citizenry and is principally responsible for the crisis in confidence that*

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<sup>156</sup> Cyrus Das K Chandra., Judges and Judicial Accountability, 2003 p.7

<sup>157</sup> Supra note 7.

*the judiciary faces in these early years of this new millennium. As a result there is an increasing demand for judicial accountability".*<sup>158</sup>

Further, Steven Luet asked why should judges be accountable and he stated that it is probably safe to say that a broad consensus of the public expects judges to be answerable, one way or another, for broad categories of misconduct that include misuse of office, undignified behavior, bias or prejudgment, harmful or offensive conduct, dereliction of duty, or disrespect for the law (including, of course, lawbreaking).<sup>159</sup>

Generally, Judicial Accountability is a cardinal principle of a court and it is a concept that cannot be separable from judicial independence. However, it is important to know that judicial accountability should not be applied in a way that contradicts with judicial independence.

There are different forms of judicial accountability. Professor Shetreet classifies the forms of accountability in to three categories: legal accountability, public accountability, and informal social controls. The first category is disciplinary jurisdiction over judges, appellate review of their decisions and their civil and criminal liability. The second relates to controls over judges exercised by parliament, executive the press and pressure groups. The third category is informal social control exercised by judicial and professional colleagues.<sup>160</sup>

Previously we have seen that judicial ethics affects fair trial rights in several ways and now we will try to examine how judicial accountability is ensured in courts of Special Zone of Oromia where fair trial rights have been violated because of judicial misconduct. Accountability in this sense primarily refers to disciplinary accountability. Here it is also important to know that judges cannot be held accountable for making wrong decisions.

Accountability is the basic principle of the constitution of Ethiopia. According to Article 12 of the FDRE Constitution, any public official or an elected representative is accountable for failure in official duties. As judges are public officials they are not exceptions to this principle. The constitution of the FDRE specifically empowers the Judicial Administration Council to remove a

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<sup>158</sup> Roger J. Miner, *Judicial Ethics in the Twenty-First Century: Tracing the Trends*, Hofstra Law Review Summer, 2004 p.2)

<sup>159</sup> Supra note 96, p.3

<sup>160</sup> Cyrus Das K Chandra, *Judges and Judicial Accountability*, 2003 p.215

judge for violating disciplinary rules.<sup>161</sup> Thus, prohibition of interference of the influence of any governmental body or governmental official does not mean judges are immune from disciplinary proceedings. Judicial Administration Council is generally vested with the power to determine on Matters of code of professional conduct and discipline as well as transfer of judges of any court.<sup>162</sup>

Proclamation No.142/2008- a proclamation for the Re-establishment of Oromia judicial Administration Council provides in its preamble that restructuring the organization of Judicial administration Council in such a way that enables it to maintain the balanced independence and accountability of the state judiciary is necessary. Accordingly, Judicial Administration Council is organized as having Supreme Commission, Adjudicatory team, Inspection team and District Courts Disciplinary Process Manager.<sup>163</sup> Each of them has its own defined power.

Inspection team is formed at high court and Supreme Court level. The Regional Inspection Team (formed at Supreme level) has the power to receive complaints and grievances and frame the charge, prosecute when it is convinced that there are sufficient evidences for the breach of ethical conduct.<sup>164</sup> Further, it has the power to investigate and prosecute grave disciplinary offences committed by judicial community in the region.<sup>165</sup> The Zonal Inspection Team is vested with the power to investigate and frame the charge on disciplinary matters which are not assigned to the Regional Inspection Team.<sup>166</sup> The Regional Adjudicatory Team is vested with the power to make decisions on issues relating to grave Disciplinary offences committed by judicial community in the state's courts.<sup>167</sup> The Zonal Adjudicatory Team is empowered to determine on issues relating to offenses committed by judges and appointees at zonal level.<sup>168</sup>

The Judicial Administration of Oromia has developed Code of judicial conduct and Disciplinary Rule of Judicial Conduct. Violation of a disciplinary rule may constitute misconduct and may entail disciplinary action, while ethical principles or code of judicial conduct are self-regulatory

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<sup>161</sup> The FDRE Constitution, Article 79(4)(a).

<sup>162</sup> *ibid*, Art. 81 (6)

<sup>163</sup> Proclamation. No.141/2008, Art.2 sub article 2-5

<sup>164</sup> *Ibid* art.15

<sup>165</sup> *Ibid* art. 15 (7)

<sup>166</sup> *Ibid* art. 25-3

<sup>167</sup> *Ibid* art.12 (3)

<sup>168</sup> *Ibid* 22 (1)

standards of conduct. The failure to observe such principles does not of itself constitute misconduct. The disciplinary measures to be imposed on a judge that violates Disciplinary rule range from oral warning to removal from office.

We have already discussed that judges are accountable for their misconduct or inability to perform the functions of their office. Judicial accountability includes the requirement that proceeding in courts are fair and impartial. In Oromia, the relevant concepts that are incorporated in Disciplinary rule No.2/2008 in relation to fair trial include: prohibition of ex-parte communication, undue delay, treatment the parties with full respect and patience, public hearing, equal treatment of the party, intentionally violating clear provisions of the law, withdrawal of judge from the case, and accepting bribe .

Though the rule contains different provisions that ensure judicial accountability some of its provisions are ambiguous and it also does not incorporate some important matters that are linked to judicial conduct such as competence. We know that Competence is one of the ethical duties of a judge and it requires that a judge is required to have necessary skill to carry out his judicial Functions. Incompetence and inefficiency is a ground of removal of judges as per article 79(4) of the Constitution of FDRE.

An interview made with Tiruneh Rafera asserts that in the courts of Special Zone of Oromia Surrounding Finfine, there are judges who are in gross incompetence and the Disciplinary rule does not contain the conditions under which incompetent judges are removed from judicial offices.<sup>169</sup> Worku Gabisa has a similar opinion and he said that some judges in Oromia have very poor professional quality and this impairs the quality of judicial service specifically the right to be heard which in turn resulted in loss of public confidence<sup>170</sup>.

Incorporating mechanism of accountability for gross incompetence in the Disciplinary rule is not a matter of choice but it is a matter of enforcing constitutional provisions and in the context of Special Courts of Oromia it can be taken as one aspect of minimizing the problem that hinder the quality of judicial service.

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<sup>169</sup> Supra note 87.

<sup>170</sup> Supra note 115.

When we generally look at the issue of accountability in the Courts of Special zone Oromia Surrounding Finfine, there is a need to ensure more accountability in a manner that responds to the grievances of court users and public complain. In fact, different measures have been taken in order to enhance judicial accountability. These include creating awareness on issue of judicial conduct, making discussions with court users, public and other stakeholders, facilitating accessibility for those who want to bring complaints on judges or judicial officers' conduct and taking appropriate measures when judicial ethics is violated.<sup>171</sup>Next, we shall examine some of the disciplinary cases.

In- *Regional Inspection vs. Adugna Biru, file no.00328*- Disciplinary case- the judge was charged of violating a clear provision of the law which is a grave disciplinary offence. The fact of the case is that in Sululta District Court the judge after hearing the witnesses of the prosecutor gave an order that the accused shall present his witnesses. On the day fixed to hear the witnesses of the accused, the accused informed the court that he has no defense. Then the judge reversed his previous order and acquitted the accused as per article 141 of the criminal procedure code. The Regional Adjudicatory Team held that the judge violated a clear procedural law in reversing his own order and acquitted the accused who is expected to present his defense. It further states that the judge violated a clear provision of the law for the purpose of favoring or helping the accused and he was convicted under article 43 of Disciplinary Rule No. 2/2001 and a penalty of cut of three months' salary was imposed upon him.

According to article 43 of the Disciplinary Rule, when a judge intentionally deviates from applying clear provision of the law for the purpose of helping or making advantages for the other party or for the purpose of injuring either of the party, he /she is answerable. In the above case, the judge has violated a clear provision of the law. (In fact, it is against the principle of fair trials). However, it is questionable whether it is possible to identify from the case itself that the judges intentionally disregard clear provision of the law for the purpose of benefiting the party.

However, it is important to note that a mere legal error cannot amount to violation disciplinary rule. Disciplinary proceedings should not be instituted against a judge for mere legal error. Subjecting a judge to discipline for legal error undermines the judicial independence. Part of the

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<sup>171</sup> Supra note 82.

justification for the "mere legal error" doctrine is that making mistakes is part of being human and is inevitable in the context in which most judicial decision-making takes place. It is not unethical to be imperfect, and it would be unfair to sanction a judge for not being infallible while making hundreds of decisions often under pressure.<sup>172</sup>

In *Regional Inspection Team v. Girma Wekjira*, the judge was charged with a disciplinary offence in violation of article 43 of the code (violation of clear provision of the law). The fact of the case is that in file No. 42117 Sebeta District Court, the decree debtor brings an order of stay of execution from the supreme court of Oromia and he submitted it to the judge. Then the judge disregard the order of the supreme court and without the knowledge of the decree debtor he ordered the Commercial Bank of Ethiopia to withdraw and give 88,951.56 to the decree holder and such money was given to the decree holder. The judge was convicted under the stated article and a penalty of two months' salary was imposed upon him. The adjudicatory team reasons out that it is a personal bias of the judge to favor the decree holder.

In this case, the judge had clearly violated the Disciplinary Rule as he intentionally disregarded the order (stay of execution) of Supreme Court. There is no way for the judge to give any further order except closing the file. It is also against the principle of fair trials as the order is given even without noticing the decree debtor.

In another case which is related to the right to be heard without undue delay, the Zonal Inspection Team instituted a disciplinary charge against the judge of Walmara District Court. The fact of the case: The charge states that in file No.40424 the judge adjourned the case without good cause for three consecutive times. In addition, the case involves child matter which needs special attention and he was charged under article 25 of the Disciplinary Rule. The zonal Adjudicatory Team examined the matter and it held that the Rule is not violated as the judge clearly stated the reasons why he failed to decide the case.

In many situations it may be difficult to institute disciplinary charges against judges for absence of speedy trials as the Rule itself is not clear as to what amounts to 'good cause'. But, this does

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<sup>172</sup> Gray, Cynthia. "The Line between Legal Error and Judicial Misconduct: Balancing Judicial Independence and Accountability." *Hofstra Law Review* (2004). p.20

not mean that any avoidable delays could be tolerated. As we have seen under the topic the right to be tried without undue delay, there are standards such as the complexity of the case, the conduct of defendant and the conduct of the authorities that justify the delay of cases and these standards should be taken into account.

In *Regional Inspection Team v. Misganu Idosa*, the judge of high court was charged for accepting bribery. The charge of the Inspection Team states that the judge makes secrete relationship with the police man and he agreed to release the person under custody. He was caught by the police red handed (flagrant delicto) while he is accepting bribe. The Regional Adjudicatory Team removed him from the office.

The above cases show that the judicial administrative Council has tried to ensure accountability in the courts of Special Zone Oromia where Disciplinary rules for judges (judicial Code of Conduct) are violated. On the other hand, the Code of Disciplinary Rule adopted for regulating the activities of judges is not sufficient to minimize the current problems of judicial misconduct. For example, it is impossible to institute disciplinary action related to incompetence against the judges of the courts of Special court of Oromia. Further, though fair trial rights have been violated in several ways because of lack of required professional ethics or judicial misconduct, few judges were made accountable for such violations.

## Chapter Four

### Conclusions and Recommendations

#### 4.1. Conclusions

Fair trial right is very important in the protection of human rights due to the fact that the implementation of all other rights depends upon proper administration of justice. Almost all states incorporated the concept of fair trial rights in their constitutions and other laws. However, the rights to fair trial have been continuously violated in many ways and thus it is a permanent concern of all governments, international and national organizations and international Community. In Ethiopia, fair trial rights have been enshrined in the FDRE Constitution and other subsidiary laws. Establishing independent judiciary is one of the fundamental principles of fair trial and in this regard independent judicial organ is unequivocally established by the FRDE constitution and Constitution of the state of Oromia.

The right to be tried by an independent and impartial tribunal is so fundamental that the Human Rights Committee has stated that "it is an absolute right that may suffer no exception". The fairness of any judicial system relies on its independence and impartiality. Judicial independence requires decision-making to be transparent, well-reasoned, and based on sound criteria such as legislation, jurisprudence, judicial guidelines and codes of ethics. In order to maintain such independence political considerations, personal interests and relationships must not be allowed to influence judicial decision-making.

It is imperative that trials are presided over by judges who are both individually impartial, free from prejudice or bias and individually independent, devoid of any ties with any parties which may have a bearing on his objectivity. A court of law and its members therein should also, collectively as an organ, be independent from political, administrative and other forms of control, pressure or influence.

Though the realization of right to fair trial is highly interrelated with judicial ethics, the issue of fair trial has rarely been analyzed from point of view of judicial ethics. Judicial ethics and Fair trial rights are the two intertwined concepts. Fair trial rights are the fundamental human rights norms that everyone is entitled to enjoy. Judicial ethics is the standard that each judge is expected to follow so as to effectively enforce the fair trial rights that are provided in

international human right instruments, constitutions and other national legislations. In other words, judicial ethics is the standards and norms that bear on judges and covers such matters as how to maintain independence, impartiality, and avoid impropriety.

A trial is a truth-seeking process designed to resolve human and societal problems in a rational and efficient manner and only judges who have required ethical behavior can enforce this right effectively. Like in any other courts in Ethiopia, in the Courts of the Special Zone of Oromia Surrounding Finfine, problem related with fair trial rights is an area yet to be improved. In this research, the issue of fair trial rights in the Courts of the special Zone is analyzed from the angle of judicial ethics. Accordingly, some major components of the fair trial have been selected for the purpose of examining how judicial ethics affects the realization of the right to fair trial in these courts. These selected Components of fair trial are: judicial Independence, Impartiality, Equality of arms and the right to be tried without undue delay.

With respect to judicial Independence, the source of interference may be categorized as external and internal. External interferences mainly refer to pressures from the other branches of the government (executive and legislature). It also includes influences from litigants, legal professionals (commonly advocates), public and media. Whereas internal interferences refer to pressure from court administrators, judges of higher court and member of JAC. The research identified that interferences have occurred against the independence of the courts of Special Zone of Oromia both from external and internal and such interferences have different dimension. Pressure from the government bodies is a prevalent problem in the districts courts particularly where a case involves politically sensitive and in a suit the government is a party. Influences from advocates and litigants in the judicial proceedings are also a challenge in the courts of special zone. However, interferences made by advocates are serious which are actually related with judges and advocates ethics. Similarly, it is proved that there are internal influences against judicial independences. The important point need to be noted here is that whatever the kind and extent of influence is, it affects the right to fair trial. Thus, judicial independence needs to be maintained. Normally, it is impossible to absolutely avoid interference against judicial independence but it is important to identify the circumstances that encourage interferences. In this regard, judicial misconduct has been found as the internal problem that invites external pressure on the courts of Special zone of oromia Surrounding Finfine. This means that in circumstances where judges allow or do not resist interferences because of their own personal

benefits or any other reason influences are high. In contrast, in situations where judges are ethically strong to maintain judicial independence, external influences have rarely occurred. As judges are not subject to improper control or pressure, whether governmental or private and it is their ethical duty and responsibility to protect judicial independence by rejecting any attempts to influence them.

When we come to issue of impartiality, independence and impartiality are closely related concepts and are mutually reinforcing. Even the constitutional requirement of judicial independence is essentially a means to the end of impartiality. But, they are separate concepts. The requirement of impartiality is simply that proceedings must be free from bias and the objective perception of bias. Conducting judicial proceeding in a partial manner violates the fundamental rights to fair trial. Therefore, any party to a proceeding is entitled to challenge the impartiality of court on the basis of ascertainable facts that the fairness of the judge or judicial body appears to be in doubt. The way judges behave is crucial to maintain their impartiality.

The research identifies that biasness, impatient to the litigants, disrespectful to wards litigants, showing hostile attitude towards litigants, insulting and improper remarks about litigants and witnesses, bias in rulings, questions, or comments in favor of one party, restricting, interrupting, and irrelevant reference to personal characteristics, and abuse of contempt power are the problems where some judges failed to maintain their impartiality . The analysis of practical court cases revealed that applications for Change of venue had been guaranteed because of clear problem of the partiality of the courts. The root cause for these problems is that some judges are unethical and they are neither objectively nor subjectively impartial while they are conducting judicial proceedings. The final result of the above stated problems is the violation of the fair trial rights and it has a wider consequence of diminishing public confidence on judicial organ.

Furthermore, the proclamation for re-establishment of Courts of Oromia provides the circumstances under which a judge shall withdraw himself/ herself from seeing a case and the non observance of such law is a violation disciplinary rule. However, in the courts of Special Zone of Oromia it was found that the judge see his sister's case and decided in her favor . Similarly, the judge has seen the case of the person who has affinity relationship with him. These cases clearly show the personal interest of the judges in the cases.

We may conclude that though impartiality is one of the core elements of fair trial which must be observed by courts, the right to be tried by impartial court has been violated in several cases

because of problem related with judicial ethics in the courts of Special Zone. Thus, litigants usually bother about the fairness of the proceeding than the final judgment.

Another critical area related to fair trial and judicial ethics is the principle of equality of arms. Judges have the responsibility to maintain balance between the parties, affording each of them equal opportunity in the proceedings. In this regard, the analysis of some practical cases demonstrate that when the prosecutor was unable to present his witnesses, repeated adjournments had been allowed whereas accused were denied to equal opportunity. Giving wider opportunity to one party and denying the same to the opposite party is a violation the principle of equality of arms and it is very critical in criminal matters as the accused has constitutional right to obtain genuine opportunity to prepare his witnesses or evidences so as to defend himself. Departure from the rules and principles of procedure according to which the law required a trial to be conducted is violations of both fair trial rights and of judicial ethics.

The right to legal assistance or legal counsel is one of the requirements of the principle of equality of arms. Accordingly, the right to legal counsel has been effectively implemented in the High court of the Special court of Oromia. In District courts, proceedings of serious criminal offences have been conducted in the absence of legal counsel. The examination of some cases show that judges did not inform accused persons that they have Constitutional right to legal counsel of their own choice or where they do not have sufficient means to pay for it, they have the right to be provided with legal representation at state expense. Without considering such constitutional right, sentences of rigorous imprisonment had been entered against accused persons and such violation fair trial right can be attributed to judicial misconduct. The principle of equality of arms has been violated in several ways by the courts of Special Zone of Oromia. The findings demonstrate that one of the causes for the violation of this principle is lack of competence which is also part of the judicial ethics.

A trial court should meet its responsibilities to everyone affected by its actions and activities in a timely and expeditious manner one that does not cause delay. Unnecessary delay causes injustice and hardship. It is a primary cause of diminished public trust and confidence in the court.

Court control of the trial itself will reduce delay and inconvenience to the parties. The reasonableness of the length of the proceedings could be assessed according to the particular circumstances of the case and with reference notably to the complexity of the case, the conduct of the defendant and the conduct of the (prosecuting and judicial) authorities. Accordingly, it is

concluded that the main cause for undue delay of cases in the courts of the Special zone of Oromia specifically in high court is lack of adequate man power and thus the judges have been overburdened. In District Courts, most criminal cases have been disposed expeditiously and undue delay is not a big challenge in these courts. However, some judges deliberately cause undue delay for the purpose of benefiting or injuring one of the parties.

We have already discussed that judicial misconduct is a primary cause for the non observance of the fairness of trials in the courts of special zone of Oromia Surrounding Finfine. Ethical problems of judges can be reduced or eliminated when judicial accountability is ensured. In other words, accountability has a potential impact upon a judge's capacity to be fair and impartial and to rule in good faith. Accordingly, judicial accountability has been enhanced through various ways which includes creating awareness on issue of judicial conduct, making discussions with court users, public and other stakeholders, facilitating accessibility for those who want to bring complaints against judges or judicial officers' and taking appropriate measures when judicial ethics is violated. Different Disciplinary measures were taken against judges who had violated Disciplinary rules.

In relation to fair trials, rules contain different provisions that ensure judicial accountability are incorporated. However, some of the provisions of Disciplinary rule are ambiguous and inadequate. For example, provision relating to "undue delay "does not clearly identify what amounts to undue delay. On the other hand, the Disciplinary rule does not incorporate issue of incompetence which is one of the causes for violation of fair trial right and thus it is difficult to institute a disciplinary charge against a judge who lacks necessary skill to carryout judicial activities. We know that gross incompetence is a ground of removal of judges as per article 79(4) of the Constitution of FDRE.

In sum, the right to fair trial is not effectively implemented in courts of the special zone of Oromia and one of the causes for such problem is the unethical conditions of some judges which are reflected in judicial proceeding in different manners. Where there are violations of the right to fair trials because of the absence of independence, impartiality and competence, public do not trust the judiciary and they refrain from using and supporting courts which has a wider negative consequence on the general functions of the judiciary.

## 4.2. Recommendations

Based on the foregoing discussions and findings, the writer would like to recommend the following few points.

1. The independence of the judiciary is closely tied to the merit of those selected for judicial office. Therefore, the selection of judges should be based on merit, integrity, and qualification, not on political attitude or patronage. In Oromia, the selection process lacks transparency and it has not been practically exercised by the JAC of Supreme Court of Oromia despite it is constitutionally empowered to do so. Therefore, JAC should exercise its constitutional power and the selection process has to be rigorous and transparent. Above all, special emphasis must be given to knowledge, skill and ethics of candidates.
2. The experiences of some countries show that the fairness of trial is evaluated by Trial observation or Trial Monitoring system. Therefore, it is important to develop Trial Observation or Monitoring system which is to be carried out periodically by an independent organ such as JAC, Academic institutions or NGO. The result of the trial observation should be communicated to the judges and concerned organs and so that judges and those who unduly influence the trial process can learn from the result.
3. The unethical condition of some advocates have been challenging the independence and impartiality of the courts in different ways and thus Oromia's Bar Association and Oromia's Justice Bureau should play key roles in regulating and developing ethics of advocates.
4. Protecting and promoting judicial independence is the primary responsibility of every judge and court administrator. Therefore, a judge and court administrator should never allow any interference and where it is proved that they have allowed interference accountability must be ensured.
5. Continuous discussions with the public and users of the court system are essential. Thus, the courts' presidents, Inspection Team, and judges should discuss with the public and court users about independence, impartiality and the ethical conditions in the judiciary and so that public trust will be built.
6. Continuous ethical training needs to be developed and made compulsory for all judges. Special training and Seminar that fill the gap of incompetence should be given to judges whose professional competence is low especially in relation to how to conduct fair trial.

7. Effective performance evaluation will contribute to improving the quality and accountability of the judiciary. It is difficult to make accountable a judge who is incompetent to carryout judicial function unless there is performance evaluation. Therefore, performance standards for the judiciary and judges, with time-based, volume-based and disposal based indicator should be developed by JAC.

8. The existing Disciplinary Rule for judges and judicial officers of Oromia is insufficient to ensure accountability in situations where the right to fair trial is violated due to judicial misconduct and thus it should be amended and it should incorporate issue of incompetence in light of the FDRE constitution.

9. The work load of judges affects their ethical duty to be diligent. It is very difficult to decide the matters thoroughly. A judge with overload cannot pay attention to the details of the matter. Therefore, there is a serious need to increase man power especially in high court and promote effective case flow management system to reduce work load.

10. Improving working conditions is essential to reduce ethical problems in the judiciary. In particular, benefits such as salary, house and transport allowances should be improved.

11. Improper system of case assignment should be avoided. In this regard, Court Presidents and case managers must be careful about how they exercise their power to assign cases to avoid the perception of interference.

12. Judicial accountability must be strengthened specifically in situations where judges deliberately violate the right to fair trials.

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### List of Interviewees

1. Interview with obbo Ajjema Gaddisa, Case manager of the High Court of the Special Zone of Oromia (Civil Bench), August 10, 2015
2. Interview with Ayala Mamo, Court user, August 15,2015
3. Interview with Adde Beteleem Amanu'el, judge of the Sabbata District Court, August 13, 2015
4. Interview with Obbo Dinagde Chali, president of the Walmara District Court, August 17, 2015
5. Interview with Obbo Galata Akkuma, Zonal Prosecutor of the Special zone of Oromia, August 15, 2015
6. Interview with Obbo Girma Abebe, President of the Sabbata District Court, August13, 2015
7. Interview with Obbo Getamasay Kassa, an advocate working in Federal and Oromia courts, August 13, 2015
8. Interview with Kuma Dabala- court user, August 15, 2015
9. Interview with Silashi Itafa- Court user- August 16, 2015
10. Interview with Obbo Solomon Mogas, Judge of the Walamara District Court, August 12 2015
11. Interview with Shiferawu Kebede, Case manager of the High Court of the Special Zone of Oromia (criminal Bench), August 20, 2015
12. Interview with Obbo Teshoma Dugasa, Head of the office of Administration and security of the Special Zone of Oromia, August 25, 2015
13. Interview with Tasfasillase Nagara, Head of the Police Department of Burrayu Town, August 25, 2015
14. Interview with obbo Tasfaye Asfewu, Defense counsel at high Court, August 20, 2015
15. Interview with Obbo Tetek Saxegn, Judge of the high Court of the Special Zone, August 12, 2015
16. Interview with Adde Tigist Diriba, Head of zonal Inspection Team, August12, 2015
17. Interview with Obbo Turuneh Rafera, Judge of the High Court of the Special Zone, August 20,2015
18. Interview with Obbo Tujuma Daba, an Advocate working in Oromia courts, August 13,2015
19. Interview with Obbo Worku Gabbisa, *Head of Regional Inspection Team of the Supreme Court of Oromia*, August 26, 2015.

# Annex

## Questions to Interviewees

1. Do you think that there are problems relating to the fairness of judicial proceedings in the Courts Of Special Zone of Oromia? What are the possible causes for such problems?
2. Do you think that the existing judicial Code of Conduct of Oromia is sufficient to regulate problems related to fair trial in the courts of Special Zone Oromia?
3. How do you evaluate judicial ethics in relation to the realization of fair trial rights?
4. Do you believe that judges of the Courts of Special Zone are independent from the interference of executive or legislative branch of the government? If your answer is no how interferences are manifested?
5. How interferences from legal profession (commonly advocates) and litigants affect the fairness of a trial in the Courts of Special Zone?
6. Are judges of the Courts of Special Zone strong and independent enough to resist undue influences from the executive or legislature or any other external influences?
7. Does the Ethics of judges play any role in minimizing external interferences?
8. Is there any internal interferences against judicial independence? What are their manifestation and their impact on trial process?
9. What are the causes for undue delay of cases in the Courts of Special Zone? How do you evaluate the ethical problem of judges and others institutional problems in this regard? May repeated adjournments be given to benefits one of the parties? What about lack of Commitment and lack of due diligence?
10. Is political attitude and interest taken as a requirement in the process of selection of judges? Is the Judicial Selection process transparent?
11. Why some judges disregard the values and principles of judicial ethics when they conduct trial?
12. Do the Courts of the Special Zone Conduct trials in an impartial manner? Are both actual and perceived impartiality are properly enforced? If not? What are the possible causes?
13. Do applications for withdrawal of judges from a case usually related to actual judicial misconduct?
14. Why the judges of District Courts failed to inform the accused persons that they have the right to legal counsel of their choice or at the state expense if they have no sufficient means to pay? (especially in serious criminal offences)
15. Were judges made accountable when they violate the right to fair trial of a citizen because of their own ethical problem? Is judicial accountability generally enhanced?
16. Do the courts effectively provide equal opportunity for parties to litigation? What are the main problems in this regard?