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**THE LEGAL AND INSTITUTIONAL FRAMEWORKS FOR PROSECUTION OFFICE
IN ETHIOPIA: THE CASE OF OROMIA NATIONAL REGIONAL STATE JUSTICE
BUREAU**

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THE LEGAL AND INSTITUTIONAL FRAMEWORKS FOR PROSECUTION OFFICE
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ACRONYMS

AG	Attorney General
Art.	Article
NDPP	National Director of Public Prosecutions
CPC	Criminal Procedure Code
CUD	Coalition for Unity and Democracy
CCEJ	Consultative Council of European Judge
CCEP	Consultative Council of European Prosecutor
DG	Director General
FDRE	Federal Democratic Republic of Ethiopia
PDRE	Peoples Democratic Republic of Ethiopia

EPDRF Ethiopian People’s Democratic Revolutionary Front

NGOs Non-governmental Organizations

ONRS Oromia National Regional State

OLF Oromo Liberation Front

PC The Penal Code Proclamation of 1957

PPS Public Prosecution Service

NPA National prosecution Act

UDHR Universal Declaration of Human Rights

UN United Nations

Abstract

The Federal Democratic Republic of Ethiopian constitution in General and state constitution in particular recognize the fundamental human and democratic rights of the citizens in comprehensive way. For its full realization and observance, the constitution established an independent judiciary and contemplates the establishment of police institution. The office of attorney general /prosecution office/ which is an indispensable corollary to an independent judiciary in the enforcement of human rights missed from the ambit of constitutional framework both at Federal and state level and established as executive organ of the government through ordinary act of the parliament under the minister of Justice at Federal level and state Justice Bureau at Regional level.

Because of lack of constitutional framework, prosecution office in the ONRS is subject to both institutional and leadership instability through the ordinary act of council of state or “Caffee”. As prosecution institution is part of executive organ of the government, there is a conflict of interest between the judicial and political function of justice Bureau as the head of justice bureau is frequently appointed on the basis of partisan political affiliation rather than on merit based, but takes precedence over the decision of prosecutors in the administration of criminal justice.

Therefore, this study examines institutional and legal framework of prosecution office in ONRS. The study discloses that prosecution office in the ONRS is failed to secure an appropriate institutional and legal frameworks for its independent and autonomous function in the democratic era. The key recommendation that is presented in detail is to establish institutionally separate autonomous constitutional officer of the office of the attorney general that is accountable to the House of Peoples Representative. This move would constitute a major reform in one of the most prominent and crucial aspects of rule of law and good governance which would noticeably strengthen the office of the prosecutor in Ethiopia in general and the Oromia National Regional state in particular.

CHAPTER ONE

Introduction

1.1-Background of the study

The contemporary organization and function of prosecution office is the result of long historical evolution.¹ Historically, crime was considered as a private matter to be dealt with the victim of the crime where the victim of the crime took different forms of action as self redress mechanism.² Originally, official prosecution commenced so as to protect the interest of the king in England rather than for the protection of individuals from crime and hence they were called kings attorneys. In this vein, official prosecution meant nothing more than that a king's attorney would intervene when a crime implicated an interest relevant to the king who could use it to punish their enemies and reward their friends.³ History provides many examples of the use of prosecution for improper or political purpose of which the top examples were king Tudor of England and the Soviet system in Eastern Europe.⁴

However, modern world may have largely avoided this problem of abusive prosecution in recent times. Nowadays, in all criminal justice systems, there is a public prosecuting authority which, on behalf of the society and in the public interest responsible for the prosecution of alleged crime for the protection of human rights and to ensure rule of law. Thus, respect for human rights and the rule of law presuppose a strong prosecutorial authority in charge of investigating and prosecuting criminal offences with independence and impartiality.⁵ As essential actors in the administration of justice, prosecutors are entrusted with a number of functions, which they must carry out in an impartial and objective manner and avoiding political, social, religious, racial, cultural, and sexual or any other kind of discrimination.⁶

¹ Yue Ma(2008): Exploring the origins of public prosecution, international criminal justice review,p.190

² Ibid

³ .Ekaterina panayotiva... (1997): The new legal status of Bulgarian's prosecutor office. Annual survey of international and company law vol.4:1. p. 138

⁴ Report On European Standards As Regards The Independence Of The Judicial System: Part II – The Prosecution Service Adopted By The Venice Commission At Its 85th Plenary Session (Venice, 17-18 December 2010), At Par 20

⁵ International principles on the independence and accountability of judges, lawyers and prosecutors practitioner guide No. 1. 2007 at p. 71.

⁶ United Nations (1990), Guidelines on the Role of Prosecutors, adopted Eight, United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990 and art 2 of International association of prosecutors adopted in 1999 at Guideline 13,

Thus, in order to safeguard the impartiality and objectivity of prosecution service, it has become a standard of democratic rule to separate the executive and judicial competence of the Minister of Justice and establish an Office of the public prosecutor as a means to assure the autonomous work of the prosecution which means that public prosecutor is not subject to ministerial intervention and influences. Currently, there is a trend towards increasing the independence of prosecution services from the interference of executive organ both in most democratic state and in those countries previously under authoritarian regime transition to democratic governance such as Central Europe, Latin America and South Africa.⁷

Now days it is also the standard of democratic rule to provide for the criteria and the ground for removal of the attorney general in the constitution itself so as to limit politically motivated appointment and dismissal of the attorney general from his position.⁸ The need for prosecutors in nation states to be both independent and accountable in carrying out their role is, in the same fashion increasingly recognized in international instruments such as the United Nations (UN) Guidelines on the Role of Prosecutors and the International Association of Prosecutors' (IPA) Standards of Professional Responsibility.⁹

In Ethiopia as soon as the Ethiopian People's Revolutionary Democratic Front (EPRDF) came to power, the Transitional Government of Ethiopia established an independent office of central attorney general so as to strengthen the transition to a democratic system in Ethiopia.¹⁰ Later on with a promise to establish strong prosecutorial authority in the country that is compatible with state structure, the transitional governments dissolved the office of central attorney and merged it with the minister of justice and as a result of such merger, the powers and duties of the office of central attorney general were transferred to the minister of Justice.¹¹

As a result, the office of attorney general has no constitutional recognition and hence the powers and duties of the office of attorney general are exercised by the executive organs both at Federal

⁷ T Waters, Design and reform of public prosecution services, in Promoting prosecutorial independence, accountability and effectiveness: comparative research, Sofia: Open Society Institute, 2008, p25.

⁸ The Venice commission

⁹ Supra note 6 at guide line 4

¹⁰ Preamble of proclamation no.39/1993 a proclamation that established the office of central attorney general of the transitional government of Ethiopia

¹¹ Art 13 of proclamation no. 74/1993

and Regional government.¹² Thus the Federal Ministry of Justice and Justice Bureau of the regional state which are executive wings of the government combine and exercise quasi-judicial and executive (political) function.

The Minister and the head of Justice Bureau who are the head of the attorney respectively mingle an executive and judicial competency which seriously compromises the objectivity and independence of prosecutor in the administration of criminal justice system and the confidence of the public in the Public Prosecution Service (PPS). Even though the attorney general is the head of an attorney, there is no law in place that provides for the criteria of the appointment and the ground for removal of the attorney general and no adequate terms and condition of service granted to same and hence left to the unregulated discretion of political organ which affect the Ethiopian people's ambition for democratic governance and rule of law.

Thus, the current legal and institutional framework of prosecution office in the Oromia National Regional state (ONRS) is vulnerable to political influence because of the absence of constitutional recognition to an independent and autonomous function of the office of attorney general and putting the institution under the strong supervision and instruction of the head of the institution who is politically appointed person and not an expert in criminal justice system. Therefore, this study is attempted to investigate the legal and institutional framework of prosecution office of the Oromia National Regional state in comparative prospective. By examining the place of the Attorney General (AG) within the government structure and its relationship with certain political players, it discloses a general lack of independence that has undermined its law enforcement functions and the rule of law.

1.2. Statement of the problem

The Constitution of the Federal Democratic Republic of Ethiopian (FDRE) in general and the Oromia National Regional State in particular have comprehensively recognized the fundamental rights and freedoms of the citizens. For its protection and enforcement both constitution declared the establishment of an independent judiciary and contemplates the establishment of the police institution. However, prosecution institution being the most important justice institution corollary

¹² See proclamation no. 73/1993 and 74/1993 that dissolved the office of central attorney general and merges it with the minister of justice.

to the judiciary is omitted from the ambit of constitutional framework. Currently, Prosecution office in Ethiopia is part of executive organs of the government merged with the minister of justice at Federal Level and Justice Bureau of state at Regional level.¹³ As a result of such merger, the minister of justice and the head of Justice Bureau who are politically appointed and not an expert in criminal justice exercise final authority as the head of an attorney.

Thus, there are no normative guarantees for the autonomous function of prosecution office because of the political considerations for the appointment and re appointment of the head of the institution/ attorney general without required legal experience and knowledge. However, the criteria, mode and terms of appointment of prosecutor, and the removal of prosecutor from office, are of paramount importance for securing prosecutorial independence, accountability and efficiency based on professional competence. Like the judiciary, the prosecution authority and officials must enjoy professional independence. In order to build and sustain public confidence, the prosecution should be fair, transparent, and efficient, and accountable to appropriate a democratic institution which means the council of the state.

Thus, the current approach of merging the office of the attorney general with the minister of justice would result in the conflict of interest between the professional responsibility of an attorney general as a law officer and the partisan political considerations of a minister as the primary legal adviser to the government in power. Arising from this conflict is the concern that prosecution is sometimes employed as a tool for prosecuting and neutralizing political opponents and equally supporters of ruling parties who commit atrocious crimes may be relieved from prosecution.

Political interference in prosecution is probably as old as society itself. In early societies, indeed, the prosecution power would usually have been entirely in the control of princes who could use it to punish their enemies and reward their friends.¹⁴ In the same fashion, in modern dictatorships criminal prosecution has been and continues to be used as a tool of repression and corruption.¹⁵

¹³ Ibid

¹⁴ Supra note 4

¹⁵ Ibid

Ever since the establishment of prosecution office in Oromia National Regional state, operations of the institution were characterized by continuous instability between the tendencies to create independent and moderate prosecution system at one hand, and counter pressure from rulers attempting to impose political hegemony over prosecution institutions at another.

Thus lack of appropriate constitutional framework and institutional autonomy of prosecution office blurred the role of prosecution office within the executive organ that would undermine the credibility of prosecutorial authority and public confidence in the criminal justice system. The head of Justice Bureau who is an attorney general entrusted with both advisory role to the government on the one hand a chief prosecutor as the head of justice Bureau on the other hand. Looking the appointment criteria and the ground for his/her removal, prosecutor general is appointed and removed by the council of the region up on the presentation by the president of the region without any qualification criteria. And also there is no legally enumerated ground and their term of condition of service is at the mercy of the president of the region.

Therefore, the threat to independence resulting from the absence of appropriate constitutional framework of prosecution office for its autonomous function, when coupled with the absence of term of office of prosecutor general, and the unfettered discretion of political body in the appointment process and the dismissal of the Prosecutor General which is carried out on the basis of partisan political consideration undermine the role of law and adversely affects public confidence in the administration of criminal justice. Moreover, the integrity, independence and impartiality of prosecutors which are essential prerequisite for the effective protection of human rights and economic development would be vulnerable to accusation of political interference as there is no legislation safeguarding professional independence of the prosecutors.

1.3. Research Questions

Based on the above statement of problem, the thesis attempts to address the following questions;

1. To what extent does the current legal and institutional frameworks of prosecution office at Federal level in general and the ONRS in particular ensure the independent and accountable institution of prosecution office?
2. What are the implications or impacts of the absence of constitutional recognition of prosecution office?

3. What are the safeguarding mechanisms that have been put in place for the appointment and unnecessary removal of qualified professional head of the institution?
4. What is the safeguarding mechanism of other countries prosecution office experience transition from authoritarian to democratic governance? What can Ethiopia/ONRS learn from these countries?

1.4. Objectives of the Study

The overall objective of this research is to assess to what extent the current legal and institutional framework of prosecution office in Ethiopia in general and the ONRS Justice Bureau in particular granted an autonomous and accountable institution of prosecution office that could be a genuine base for democratic governance and rule of law. In this vein, the thesis is aimed to analysis the impacts of or implication of denying constitutional recognition to the office Attorney General. Particularly the paper succinctly analysis the appointment, removal and terms of condition of service of the attorney general that are important safeguard to the independence and autonomous function of prosecution office. The paper also attempted to assess the experience of other countries legal and institutional framework of prosecution office transition from authoritarian regime to democratic governance particularly the legal and institutional frameworks of prosecution office, criteria for the appointment, security of tenure and ground for the removal of prosecutor general which could be relevant for Ethiopia in general and the Oromia National Regional State in particular.

1.5. Literature Review

As the history of prosecution office in Ethiopia is of a recent development, there is little literature that was written on prosecution office in Ethiopia. Among this few literatures Andargachew Tesfaye in his book titled “problem of crime and its correction” in Ethiopia question the merger of attorney general with the minister of justice and pose a question for its effectiveness for further research.¹⁶

Another literature was a Journal published by Professor Tilahun Tashome titled in Amharic” akabikenat, muyawuna sinamigabru” which means prosecutors and its professional ethics on a

¹⁶ Andargatchew Tesfaye (2004): The crime problem and its correction , Vol. II at p.78

journal published by Ethiopian Bar review.¹⁷ In his article Professor Tilahun has attempted to give historical development of prosecution office in Ethiopia and the absence of any rationale for merging the office of attorney general with the minister of justice.

Professor Tilahun also further noticed that the absence of clear law as to who is attorney general under the current Ethiopian legal system and attempted to show the gap in the absence of criteria to be appointed as minister of justice and hence showing that non lawyer can have the probability to lead prosecution office in Ethiopia. However, he did not recommend on the establishment of an independent constitutional officer of prosecutor general and the necessary qualification criteria for the appointment of prosecutor general as well as the ground for removal and security of tenure which are important safeguards to an independent and autonomous function of prosecution office. Moreover, professor did not touch up on accountability of prosecution office.

In order to fill the gaps in the above literature, the study attempts to provide an in depth analysis of prosecution institution and normative aspects concerning the development of prosecution institution, qualification and election of prosecutors particularly that of prosecutor general. The sources for the study are based on different legislation enacted at different times regarding prosecution office in Ethiopia in general and the Oromia National Regional state in particular and different literature of international and national standards on prosecution office will also be consulted.

1.6. Significance of the Study

The significance of this research is to evaluate the legal and institutional framework for the autonomous and independent function of the Public Prosecution Office (PPO) of the ONRS. Thus, it is significant to advocate scholars, prosecutors, judges, and other stakeholders in the institutional separation of prosecution office from minister of justice. The thesis is significant to designate the system of organization of prosecution office, the status of public prosecutors, the system and procedure for prosecutorial self-governance and to establish the system and the general procedure supporting the safeguards necessary to ensure an independent, autonomous, objective, impartial and accountable function of the prosecution service that could be a genuine base for democratic governance and rule of law. Moreover, as the study explores the experiences

¹⁷Tilahun Teshome, “AqabeHigenet, MuyawunaSenemegebaru”, Vol. 3 No.1. (Ethiopian Bar Review, 2009)

of some selected jurisdictions in the appointment and removal of prosecutor general it influences the Oromia National Regional State government to revise the current legislative framework of prosecution office in the way that best advances the protection of human rights and good governance. Moreover, it can serve as a reference for other researchers to make further study particularly other Federal and regional states prosecutor to assess the practice of prosecution office of their respective regions on related topics.

1.7. Research Methodology

The research methodology used in this paper is based on the interplay of normative and historic institutional approaches to prosecution office in Ethiopia in general and the Oromia National Regional state in particular. Thus, it is based on both qualitative and quantitative, though it will be more qualitative with descriptive and analytical methods. With the objective of evaluating the legal and institutional framework of prosecution office in ONRS, the thesis has principally used of International and Regional standards governing the role of prosecutors and makes a case study with respect to the constitutional position of prosecution office in Kenya, South Africa, Brazil and Namibia that could be relevant for reorganization to separate completely the prosecutorial and advisory role of prosecution office in the Oromia National Regional State. Moreover, personal observation and experience of the writer will be used. The writer of this paper has been appointed and serving as prosecutor from woreda to the head office since 2008-2012. Personal interview is also used so as to collect information from relevant person particularly those individual prosecutors serving in the justice Bureau ONRS at the head office.

1.8. Scope of the Study

This thesis will not focus on other prosecution institutions of other regional state in Ethiopia and also other prosecution institutions, anti corruption commission and Revenue and customs authority prosecutors. Thus, the scope of the paper is limited to the normative and institutional frame works of prosecution office at Federal level in General and Justice Bureau of the Oromia National regional state in particular.

1.9. Limitation of the Study

Because of the existence of diversity of prosecution system across the world, determining the legal and institutional framework of prosecution office is not a simple task. Because of such diversity of prosecution system, there are no universal and fixed standards that have a binding effect on states by which we can evaluate the legal and institutional framework of prosecution office of the states. Moreover, because of limitation of time and resource, it is difficult to assess and analysis the practical challenges facing prosecution office in the entire region of Oromia. In view of that, the focus of this study will be on discussing the relevant provision of the legislation establishing prosecution office and the practice in the appointment and removal of the attorney general the Oromia National Regional state Bureau of Justice.

1.10. Organization of the Study

This paper is divided in to five main chapters. The first chapter of the study offers introductory part of the paper. Accordingly, it deals with of background of the study; objectives of the study, literature review, scope of the study, research methods employed are briefly discussed. Chapter two of the paper discusses historical evolution and development of prosecution office under different legal systems. In doing so, International and Regional standards governing the role of prosecutors as well as comparative analysis of constitutional framework of prosecution office in selected jurisdictions will be analyzed. The third chapter of the thesis is attempts to deal with development and organization of prosecution office in Ethiopia from Emperor Haile sellasse era to the current EPRDF regime. The fourth chapter embarking on the discussion of institutional and legal frameworks of prosecution office in the Oromia National Regional State followed by conclusion and recommendation of the paper under its chapter five.

CHAPTER TWO

Historical Background of Prosecution Office

2.1. Introduction

The contemporary organization and function of prosecution office is the result of long historical evolution.¹⁸ Historically, crime was a private affair to be dealt with by the injured party.¹⁹ In seeking self-redress, the injured party took different forms of action as a response to a crime. In ancient times and the early middle Ages, the most common form of self redress was private vengeance carried out by the injured party against the perpetrators of the crime.²⁰ In the latter part of the middle Ages, rulers and tribal leaders put limitation on the use of private vengeance so as to minimize the damage caused by the wild justice and replaced by judicial settling of dispute through the court of law.²¹ The emergence of law courts, however, did not change the nature of crime and the crime continued to a private affairs and it fell on the aggrieved party to bring an accusation before the court.²²

The 13th century brought about significant changes in the modes of criminal trial and investigation in that traditional method of guilt determination both in England and the continent was changed to the civilized or the rational one.²³ As a result of such change, both the common law and civil law peoples were in search of alternative method to the investigation and adjudication of crime and at this stage departed from one another and settled on different modes of criminal trial and adjudication process.²⁴ England turned to the use of laymen in its system of justice, whereas continental Europe embraced the inquisitorial system thereby shifted from private prosecution to public prosecution.²⁵ Now, let me highlight on the development of prosecution system in both common law and civil law legal system.

¹⁸ Supra note 1

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid. 190

²² Esmein, 1913; Forsyth, 1852; Plucknett, 1956; Van Caenegem, 1991, cited at supra note 18

²³ Supra note 18

²⁴ Ibid

²⁵ Esmein, 1913; Forsyth, 1852; Merryman, 1985; Plucknett, 1956; Van Caenegem, 1991 cited at supra note 18 at p. 191

2.1.1. In common law legal system

The history of criminal prosecutions at common law begins with the absence of state prosecuting authority.²⁶ Gradually, however, in the early period of Anglo Saxon times in England, crime was not only considered as private matter, but also a wrong against the interest of the state which was the beginning of the involvement of state in criminal matters.²⁷ Indeed, the prosecution power during that time would usually have been completely in the control of princes who could use it to punish their enemies and reward their friends.²⁸ As a result of the involvement of state in criminal matters, such involvement increased the liability of the offender in the sense that the offender was not only to compensate the victim of the crime for his wrong act, but also pay money to the government known as Wite.²⁹ Then, the king was involved in criminal matter so as to collect his revenue rather than to support the victim of the crime.³⁰

The Anglo Saxon maintained the peace and order of the society by establishing the mechanism of the Frank Pledge system, an organ established with a view to conduct criminal investigation and accusation which was one aspect of law enforcement mechanism by state organ.³¹ In this system, each family were made a promise so as to cooperate in solving their conflict and where a crime was committed by certain members of the family groups, the other member of the group was obliged to bring the perpetrator to the court for punishment.³² Thus, this pledge system which based itself on the community served as criminal accusation process. The Anglo Saxon, furthermore, established a court system known as the hundred and the shire with a view to settle conflicts through judicial process.³³

The establishment of these law courts, however, did not change the private nature of the crime and the burden of bringing accusation of the crime was still shouldered by the victim of the crime. The change brought because of the establishment of these law courts was that the victim of the crime no longer use private vengeance as a self redress and hence only make an accusation

²⁶ Toney Krone(2003): convergence of criminal justice system, building bridges, bridging the gaps.p.4

²⁷ Supra note 18, at p.192

²⁸ King Tudor of England was considered as the best example who were used prosecution as a means of punishing their enemies and hence prosecution was established with a view to protect the interest of the king rather than the citizens

²⁹ Supra note 18: at p.192

³⁰ Ibid

³¹ Ibid

³² Critchley(19720), cited at supra note 9.

³³ Supra note 18 at p. 192

to these courts of law.³⁴ In England meaningful development of prosecution system took place in the 13th century due to the declaration of the Magna Carta (1215) which state that no one should be prosecuted except by the judgment of his peers which paved the way for the shift to the use of trial by jury as an alternate method of guilt determination.³⁵

From the 13th century until the late 20th century, England held on to private prosecution. Despite the predominance of private prosecution, there had always been the participation of official investigation and prosecution. This element of official investigation and prosecution was undertaken by constable, justice of the peace, the police, the Attorney general, and the director of public prosecutions.³⁶ Eventually, many police forces set up their own in house departments of prosecuting solicitors or employed local firms of solicitors to act on their behalf.³⁷

Though these institutions were established so as to maintain the peace and order of the community, still initiation of the crime was inherently vested to the private individual affected by the crime. In comparing the distinction between the French and English model of prosecution system Bentham in 1790 pointed out that:

*The French model was described as “closed” because of its reliance on a public official to commence proceedings and the English model was described as “open” because individuals were responsible for initiating criminal prosecutions. The open system of prosecution was justified on the basis that it allowed the citizens to make action against another citizen to prosecute others including government officials themselves.*³⁸

Alongside the system of private prosecution, there are also developed significant institutions of official prosecution. Official prosecution at first was the duty of king’s attorneys. Throughout the middle Ages, the Crown hired a number of attorneys to represent it in various courts and hence Official prosecution meant nothing more than that a king’s attorney would intervene when a crime implicated an interest relevant to the king.³⁹

³⁴ Forsyth, 1852; Plucknett, 1956; Van Caenegem, 1991 cited in Yue Ma at p. 192

³⁵ Yue Ma(2008) at p.194

³⁶ Supra note 1 at p. 195

³⁷ Sanders, A., Prosecutions in England and Wales in Tak, J. P. (Ed.), Tasks and Powers of the Prosecution Services in the EU Member States Volume I, (Nijmegen: Wolf Legal Publishers2004): p.100.

³⁸ Bentham(1790) cited in Toney Krone at p.4

³⁹ Supra note 1 at p.195 official prosecution was come in to picture only where the crime committed affects the interest of the king. In the rest of the case private prosecution is continued to be the practice of the day.

In 1970 the Committee of Justice was established so as to investigate complaints and opposition to the system of police prosecutions and published a report in which they highlighted the danger to public perception and the quality of justice when the same police officer decides on whether to charge a suspect, selects the charge, acts as prosecutor, and also takes the stand as his or her own chief witness.⁴⁰ This resulted in 1985 in the creation of the public prosecution service which marked the breakaway from the ancient tradition of private prosecution and was celebrated as a significant constitutional step forward in British criminal justice system.⁴¹

Since then in England, statutorily independent Directors of Public Prosecutions carry out prosecutions quite independent from government and the endless stream of political pressures are now conducted or supervised by the Director of Public Prosecutions, but answerable to Parliament for the decisions of the Crown Prosecution Service through the Attorney General.⁴² Of course the Attorney General is also neither a member of Cabinet nor had ministerial responsibility for a government department.⁴³ The precise relationship between the director of public prosecution and that of attorney was perhaps best described by Sam Silken, a former Attorney General:

Some seem to think that the director is a mere creature of the Attorney General. They are mistaken. The director is essentially an independent, non-political figure....his decisions are his own and not those of the Attorney General...The vast majority of cases dealt with by the director or his staff are never seen or heard of by the Attorney General....thus it is vital to a successful relationship that the director and his staff should be perceptive as to the kind of case about which the [Attorney General is] likely to be concerned and as to the public interest factors which are likely to concern [him] and it is equally vital that so far as practicable the [Attorney

⁴⁰ Sanders, A., Prosecutions in England and Wales in Tak, J. P. (Ed.), Tasks and Powers of the Prosecution Services in the EU Member States Volume I, (Nijmegen: Wolf Legal Publishers 2004): p 102. See also Bruce A. MacFarlane (2000): Sunlight and disinfectants: prosecutorial accountability and independence through public transparency p. 2

⁴¹ Supra note 18 at p. 196

⁴² Geoffrey Flatman (1996): independence of prosecutor Australian institute of criminology at p.6

⁴³ L.J. King, AC QC (1999): The Attorney General, Politics and the Judiciary”, a paper delivered to the fourth Annual Colloquium of the Judicial Conference of Australia. cited Bruce A. MacFarlane (2000): Sunlight and disinfectants: prosecutorial accountability and independence through public transparency p 13

General] should leave the director to carry out his functions without any greater interference than is necessitated by the duty of “general superintendence.”⁴⁴

Therefore, in England since 1985 the Crown Prosecution Service (“the CPS”), which is an independent statutory agency headed by the Director of Public Prosecutors has been established and independently responsible for the conduct of prosecutions in respect of cases brought by the police and hence the police no more act as public prosecutor in the English court.⁴⁵

2.1.2. In Continental System

The evolution and practice of Public prosecution system in the European continent before the 13th century was the same as that of the English system where it was characterized by private vengeance system.⁴⁶ In the early middle ages in the European continent like its English counterpart, wild justice was a common method of responding to the crime. Where the crime was committed among certain members of neighbor groups it took the nature of war and continued until one family or the other was completely wiped out. As a result of such devastating war, later on, kings and princes put limitations on the right of private vengeance and victims of crime were required to seek compensation from the offender before resorting to vengeance and hence they took their case to the court for adjudication.⁴⁷

Later on in the 13th century, an important land mark took place in the conduct of criminal trial in which outmoded method of guilt proof gradually transformed to rational method of guilt determination. At this time private method of prosecution was shifted to public prosecution under the command of the king in order to maintain the peace and order of the society.⁴⁸ This was a time when the inquisitorial system emerged in the continent.⁴⁹ With the changed notion of crime, the sovereign was no longer satisfied with leaving the prosecution of crime to the uncertain initiative of private avengers. As a result, official organs were created to conduct investigation and prosecution. Thus the changed perception about crime and the official

⁴⁴ The Parliamentarian, published by the Commonwealth Parliamentary Association in July 1978 cited in Sunlight and disinfectants: prosecutorial accountability and independence through public transparency p 13

⁴⁵ David Plate (2011): The Changing Role of the Modern Prosecutor: has the notion of the “Minister of Justice” Outlived its Usefulness? at p.11

⁴⁶ Supra note 1 at p. 196

⁴⁷ Bar, 1916; Esmein, 1913 cited in Yue Ma at p. 196

⁴⁸ Supra note 1 at p.196

⁴⁹ Mueller & Poole-Griffiths, 1969 cited in supra note 1 at p.196

involvement in criminal matters greatly facilitated the movement away from the traditional methods of proof to the modern and rational one.⁵⁰

In France the office of prosecutor emerged in the 14th century with the mission of looking after the pecuniary interest of the king.⁵¹ Accordingly, the king entrusted this power to the prosecution office so as to control the power abused by the feudal landlords during exercising their judicial power. The French king employed the *procurer duroi* (the king's prosecutor) to protect his own interests. The king's prosecutor would not intervene in criminal matters unless the crime implicated an interest relevant to the king.⁵² Gradually, the king's prosecutor monopolies prosecution of the crime irrespective of the crime was being lodged by private complainant. As the king's prosecutor took more responsibility in prosecution, his title changed from the king's prosecutor to the public prosecutor.⁵³

In the 16th century, the role and function of the public prosecutor increased and hence gained exclusive control over prosecution. Thus the role of private individuals was limited to that of seeking indemnity. As in France, public officials initially handled prosecution only when there were no private complainants gradually, public officials took over prosecution regardless of the presence or absence of a private complainant. As a result of the promulgation of the law designed to discourage private prosecution, by the 16th century public officials gained a principal role in prosecution.⁵⁴

The development of prosecution system before 12th century in Germany also followed a similar path with that of English and French prosecution system where there was no official prosecution system established to handle criminal cases.⁵⁵ Although by the 16th century public prosecution had become an established institution on the European continent, the modern day prosecutorial system developed in the mid-19th century in the wake of the French Revolution.⁵⁶ The basic

⁵⁰ Esmein, 1913; Langbein, 1974; Van Caenegem, 1991 cited in supra note 9 at p.197.

⁵¹ Ekaterina panayotiva... (1997): The new legal status of Bulgarian's prosecutor office. Annual survey of international and company law vol.4:1. p.137

⁵² Supra note 1 at p.197

⁵³ Ibid

⁵⁴ Supra note 18 at p.198

⁵⁵ Supra note 1 at p.198

⁵⁶ Ibid

structure of the French public prosecution was created by the Code of Criminal Procedure of 1808 and went on to influence other parts of Europe.⁵⁷

The influence of the public prosecution service established in the Napoleon era was not confined within the French borders. The French system of public prosecution, like the French Civil Code, was brought to other countries by Napoleon's military expansion. Countries and regions that came under the French influence, for instance, Belgium, the Netherlands, Luxembourg, Italy, the western region of Germany, and part of Poland, regained sovereignty later on. But they either retained the French system of public prosecution or reformed their system based on the French model.⁵⁸ The German system originally featured an inquisitorial judge who carried the responsibility for investigation, prosecution, and adjudication. In the middle of 19th century, Germany abandoned its old system and established a prosecutorial system based on the French model.⁵⁹

Currently, Public prosecutors in continental jurisdictions normally belong to the judicial branch (e.g. in France Italy and the Netherlands) or they are considered as quasi-judicial officers (e.g. in Germany). This is in harmony with the inquisitorial tradition in which the prosecutor is seen as a neutral and impartial party. In French Prosecution Service, the impartiality of the Public Prosecution Service is stipulated in Article 66 of the Constitution.⁶⁰ As part of the judiciary, the mission of the Public Prosecution Service is to secure citizens basic rights to freedom and liberty and as a result, the relationship between judges and prosecutors in France is strong.⁶¹

The office of prosecutor is headed by deputy prosecutor.⁶² The chief prosecutor and deputy prosecutors are independent from the minister of justice.⁶³ The deputy prosecutor is not subordinated to the chief prosecutor.⁶⁴ The relationship between the judge and public prosecutor in France is also further reinforced by the fact that they are appointed after following the same education program at the Ecole nationale de la Magistrature, and they become members of the

⁵⁷ The 1808 criminal procedure code of the French Republic

⁵⁸ Fionda, 1995; Šelih, 2000; Albrecht, 2000; Kühne, 1993; Corso, 1993; Spielmann & Spielmann, 1993; Swart 1993. Cited in Yue M at p.198

⁵⁹ Supra note 55

⁶⁰ Art 66 of the 1958 French constitution

⁶¹ Hodgson, J., French Criminal Justice: A Comparative Account of the Investigation and Prosecution of Crime in France(Oxford: Hart Publishing, 2005)

⁶² French legal system edited by minister of justic2012 at p.6

⁶³ Ibid

⁶⁴ Ibid

same body and it is common practice in France to change from the position of public prosecutor to the judge or vice versa during their career.⁶⁵ Similarly, in the Netherlands and Germany judges and prosecutors usually train together on the same postgraduate training course with some law graduates opting to enter the judicial branch of the legal profession and others the prosecution and defense branch.⁶⁶

The discussion so far on the historical evolution of prosecution office both in the common law and civil law legal system reveals, historically prosecution of a crime was conducted by the victim of the crime in the form of revenge. Later on Prosecution office gradually emerged as a result of the increased interest of the king in state of affairs and the increased activities of the attorney in the criminal adjudication change the title from king prosecutor to public prosecutor so as to maintain the peace and order of the society. Moreover, such change was motivated by the development of human rights both at international and national level which calls for the function of prosecution office to be impartial and objective.⁶⁷ Because of historical and legal system and cultural diversity across the world, there is no uniform model on the organization and function of prosecution office in the world. As a result, there are no binding laws on the structure of prosecution system across the world. However, there are few soft laws that provides for a minimum stranded on the role of prosecutors both at international and regional standards. Thus, the following section is embarking on a brief discussion of such international and regional instruments on the role of prosecutors.

2.2. International and Regional Standards Governing the Role of Public Prosecutors

2.2.1. International Standards Governing the Role of Prosecutors

The diversity of prosecution systems across the world has made the task of framing universal standards and principles for the organization and function of public prosecutors.⁶⁸ And hence, such diversity of legal cultures and system across the world is not without influence on the organization and function of prosecution office under different legal jurisdiction. This can be

⁶⁵ Fionda, J, *Public Prosecutors and Discretion: A Comparative Study* (Oxford: Clarendon Press1995) 104

⁶⁶ Nijboer, J.F., *The Requirement of a Fair Process and the Law of Evidence in Dutch Criminal Proceedings* (Amsterdam: Elsevier1992):P. 310

⁶⁷ *Supra* note 6

⁶⁸ Gabriel Knaul(2011):Report of the special Rapporteur on the independence of judges and lawyers at p.5

explained by the existence of prosecution system in common law system where it was originally characterized by private prosecution though it is gradually shifted to state based prosecution institution as discussed in the above section in prosecution office in the common law legal system under the instruction of independent director of the public prosecution and the civil law legal system where state monopolizes prosecution of the crime. Even within the civil law legal system, the organization and structure of prosecution office varies in that some states organize prosecution office under the judicial organ of their country like in France, Netherland and Italy and the others administer it under the executive organs of the government.

As a result of such diversity, there are no legally binding conventions in relation to model of organization of prosecution office internationally. However, there are soft laws that exist at international level. These are the United Nations Havana Guidelines on the Role of Prosecutors adopted in 1990 and the International association of prosecutor that provides for the standards of professional responsibility and statement of essential duties and rights of prosecutors that was adopted to complement the United Nation guideline in 1999 at Budapest.

At regional level, the most relevant legal documents deals with the role of prosecutors in the criminal justice system are; Council of Europe Recommendation Rec (2000) 19 on the role of public prosecution in the criminal justice system, Bordeaux declaration adopted by consultative council of European judge and prosecutors in 2009 and the recommendation of Venice Commission of 2010 on European Standards as regards the Independence of the Judicial System, Part II of which deals with the prosecution service. These instruments are especially important in that they establish common standards for domestic institutions and systems for prosecution office at national level. They are helpful tools that can be used to generate pressure on governments to meet internationally recognized standards and measures for dealing with the menace of crime. Thus, the paper briefly discusses each of these instruments in the following sections.

2.2. 1.1. The 1990 UN Guidelines on the Role of Prosecutor

The UN guideline on the role of prosecutors is the first International instruments which deal with the role of prosecutors in the administration of criminal justice. It was enacted with a view to promoting and ensuring the respect for human rights and fundamental freedoms enshrined in Universal Declaration of Human Rights (UDHR) and subsequent conventions enacted so as to

implement the declaration, and hence for the effective realization of such rights, it is convinced that prosecutors play crucial role and to that effect they should possess the necessary professional qualifications required for the achievement of their functions, through improved methods of recruitment and legal and professional training and through the provision of all necessary means for the proper performance of their role in fighting criminality, mainly in its new forms and dimensions.⁶⁹

Thus, the guidelines was enacted with a view to assist member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings should be respected and taken into account by governments within the framework of their national legislation.⁷⁰

The UN guideline which briefly contains about 24 articles set a minimum standard on the selection criteria, role, function and the professional grantee of the prosecutors. Accordingly, as prosecutors play significant role in the administration of criminal justice, the selection of prosecutors in any jurisdiction should be free from partiality and prejudice of any kind (race, color, sex, language, religion, political outlook or other opinion, national, social or ethnic origin, property, birth, economic or other status) save in the case of the nationals of other country.⁷¹ This provision of the guidelines presumed to avoid any kind of discrimination and prejudice made during the selection of prosecutor except the nationality issues where provided by the laws of the respective countries.

As prosecutors are one of the most influential actors in the administration of criminal justice, the guidelines stipulated that persons selected as prosecutors declared to be individuals of integrity and ability having necessary qualifications and training in laws.⁷² Thus, to be a prosecutor one has to be qualified professional and a necessary training in laws. The guidelines further provides that the prosecutor as an agent of administration of justice is guaranteed to perform their function free from intimidation, harassment, hindrances, and improper interference from any

⁶⁹ Supra note 6 preamble

⁷⁰ Ibid

⁷¹ Ibid at guide line 2

⁷² Ibid at guideline 1

organ.⁷³ These are an important provision of the guideline that aimed to safeguard professional independence and impartiality of the public prosecutors in the administration of criminal justice.

Furthermore, the professional independence and the impartiality of the prosecutors are also clearly set out in the guidelines in that prosecutors shall Carry out their functions impartially and avoid all kinds of political, social, religious, racial, cultural, sexual or any other kind of discrimination in carrying out their prosecutorial function and protect the public interest with objectivity even to take the position of both the victim and the suspect.⁷⁴ Thus the above stated principles of the guidelines aimed to realize the independence and autonomy of the prosecutor which enables him to find the truth rather than run for conviction at any cost.⁷⁵ In the administration of criminal justice, the guidelines recommends that the office of prosecutor should strictly be separated from the court and take active role in the criminal investigation, Supervision on the legality of criminal investigation by the police officer, on the execution of court decision, and the exercise of other function that advance public interest.⁷⁶

As attempted to discuss above, the guidelines imposed an obligation on the public prosecutor to carry out its function impartially and without discrimination of any kind and hence protect both the interest of the victim and the suspect/accused objectively and neutrally by putting him/herself in the position of the victim and the suspect whether it favors the suspect or not.⁷⁷ Thus, the prosecutor acts not as a partisan advocate bent solely on the conviction of the accused but rather as the impartial minister of justice whose only purpose is to assist the court in arriving at the truth of the matter in criminal adjudication and promoting justice.⁷⁸ Sir John Simon KC in 1926 observed that:

“The business of an advocate who is prosecuting a criminal is to be in the strictest sense a Minister of Justice. His duty is to see that every piece of evidence relevant and admissible is presented in due order, and without fear and favor; and unless there be some other advocate to assist the accused, it is his duty to present the evidence which is

⁷³ .ibid

⁷⁴ Ibid at guideline 13, in this case the prosecutor is obliged to give an evidence that support the accused or suspected person so as to be an objective and impartial

⁷⁵ Fred C. Zacharias (1991): structuring the ethics of prosecutorial trial practice. Can prosecutor do justice? 44 van L.Rev.45. p.4

⁷⁶Supra note 6 at guidelines 1990

⁷⁷ ibid

⁷⁸ Supra note 45

*in favor of the accused with exactly the same force and fullness with which he calls attention to the circumstances tending to make a suspicion against him”.*⁷⁹

Though prosecutors are party in criminal cases, the prosecutor is not expected to run for conviction at all cost so that he has a duty to assist the accused so as to avoid the risk of miscarriage of justice. As it is stated in the preamble of the guidelines, one of the mandates of the prosecutors in the administration of criminal justice system is to apply the criminal law without discrimination of any kind like sex, religion and political status. In this regard one of the relevant provisions related to prosecutors role in ensuring the equal application of criminal law to all citizens irrespective of their official status or position is stated in the UN guidelines as the prosecutor:

*“shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences”*⁸⁰

The implication of this guidelines tells us that in the administration of criminal justice the public prosecutor should not be influenced because of the status of an individual and expected to give due attention to the prosecution of crimes committed by the public officials. Thus, in order to carry out such function fairly, objectively and impartially, appropriate institutional and legal framework is demanded so as to safeguard undue influence of prosecutors from official influence. As in modern dictatorship criminal prosecution is continued to serve as a mechanism of suppression and corruption,⁸¹ and hence the guideline granted the prosecutor to be free from political influence in carrying out his/her function. These principles of the guidelines could be realized when the organization and operation of the prosecution office as an institution enjoys certain degree of autonomy from the influence or subordination of the political organ.

The guidelines gave important coverage to the security and benefits of the prosecutors. In many countries prosecutors' independence may be subject to physical threats, in particular from

⁷⁹ Simon, J, “The Vocation of an Advocate” [1922] Can LN 228 at 231. The prosecutorial role in the presentation of its case at trial and the discretion in calling witnesses

⁸⁰ Supra note 6 at guide line 15

⁸¹ Supra note 4 at p.5

organized crime, and sometimes even from the forces of the state itself as a result of discharge of prosecutorial function.⁸² Accordingly, Prosecutors and their families are entitled to be physically protected by the authorities when their personal safety is in jeopardy as a result of the discharge of prosecutorial functions.⁸³ With regard to condition of security and benefits, the guideline provides that reasonable condition of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be clearly set out by law.⁸⁴

The guidelines furthermore lay down disciplinary accountability of the prosecutors. As prosecutors are public servant they should be accountable for their prosecutorial misconduct based on appropriate legal basis. Accordingly, disciplinary offences of prosecutors shall be based on law or lawful regulations.⁸⁵ In establishing disciplinary fault committed by the prosecutor therefore appropriate procedure should be followed so as to respect due process rights of the prosecutors and to avoid arbitrary dismissal of the prosecutors from his position and such disciplinary decision to be free from subjectivity and subject to review by an independent review body.⁸⁶

Finally the guidelines provide procedures that guarantee a proper selection of prosecutors and to prevent their arbitrary dismissal which are very important in safeguarding prosecutorial independence. In the same fashion, the guidelines granted prosecutor to carry out their function impartially and neutrally and safeguarded to perform their function without harassment and intimidation. Appropriate remuneration and security of tenure is also granted by the guideline to the prosecutors. The guideline furthermore stipulates the disciplinary accountability of the prosecutors to be carried out under appropriate procedures and the reviewability of the decision of disciplinary proceeding by an independent review body.

2.2.1.2. International association of prosecutor

International association of prosecutor was established in 1995 at UN office in Vienna and was formally inaugurated in 1996 in Budapest. The standards of the International Association of Prosecutors follow broadly similar lines with that of the principles enshrined in the UN

⁸² James Hamilton(2011): independence and accountability of prosecutors at p.9

⁸³ Supra note 6 at guidelines 5

⁸⁴ Ibid at guideline 7

⁸⁵ Ibid at guideline 21

⁸⁶ Ibid

guidelines on the role of prosecutors. The aim of the association was to Promote and enhance those standards and principles which are generally recognized internationally as necessary for the proper and independent prosecution of offences.⁸⁷ The association recognized a crucial role played by all prosecutors in the administration of criminal justice, make every effort to be, and to be seen to be, consistent, independent and impartial; always protect an accused person's right to a fair trial.⁸⁸

In order to carry out prosecutorial function effectively therefore, the international association of prosecutor declare that when prosecutorial discretion is permitted in a particular jurisdiction, it should be exercised independently and be free from political interference. However, where non-prosecutorial authorities have the right to instruct the prosecutors, such instructions should be transparent; consistent with lawful authority subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.⁸⁹ This is particularly a case in point where prosecution office is organized and subordinated to the executive wings of the government.

The standards furthermore enumerates the role of prosecutors in criminal proceeding in that where prosecutors are authorized by law to participate in the investigation of crime, or to exercise authority over the police or other investigators, they will do so objectively, impartially and professionally, and similarly seek to ensure that any aggrieved party is informed of the right of recourse to some higher authority/court. Its mandate also extends to examine proposed evidence whether it has been lawfully or constitutionally obtained and hence the right to refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's of human rights and particularly methods which constitute torture or cruel and inhuman treatment.

⁸⁷ Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors(IAP) on the twenty third day of April 1999

⁸⁸ preamble of IAP

⁸⁹ Ibid., at art 2

2.2.2. Regional Standards Governing the Role of Prosecutors

2.2.2.1. Recommendation Rec (2000)19 of the Committee of Minister of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System.

The Minister of the Council of Europe drafted the above recommendation for the member states of the council of Europe with a view to promote the role of law that could be a genuine basis for democratic governance and to that effect the public prosecutor play important role in democratic governance and the rule of law, and hence aspired to adopt common principles on the role of prosecutors among the member states to base their legislation on the comments given on the role of prosecutors in their national legislation.⁹⁰

Comparing this recommendation with the principles enshrined in the UN guideline on the role of the prosecutors, this recommendation is more specific than UN guideline and it is also made after the adoption of the UN guideline. Thus Council of Europe's Rec(2000)19 goes further and attempts to set out, in addition to matters related to the rights and duties of prosecutors, basic rules which should govern the relationship between public prosecutors and the executive and legislative powers, the relationship between public prosecutors and judges, and the relationship between public prosecutors and the police.

As there was no definition given in the UN guidelines on the role of prosecutors, this recommendation define public prosecutor as: "Public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system".⁹¹

Thus, according to this definition, public prosecutor is a public authority established with a view to represent the public interest and individual rights in criminal justice and responsible for the effectiveness of the criminal justice system. Briefly, the role of public prosecutors in the criminal justice which is common principles to all systems is summarized by the recommendation as; to

⁹⁰ Preamble of Recommendation Rec(2000)19 of the committee of Minister of the council of Europe on the role of prosecution in the criminal justice system(here after Recommendation Rec(2000)19)

⁹¹ Ibid., at art 1

decide whether to initiate or continue prosecutions; conduct prosecutions before the courts; may appeal or conduct appeals concerning all or some court decisions.⁹²

The recommendation also provides an important safeguard to the well function of prosecutor's office by imposing an obligation on the member states to take effective measure so as to guarantee public prosecutors are able to fulfill their professional duties and responsibilities under adequate legal and organizational conditions in general and to secure adequate budgetary means at their disposal in particular.⁹³ When prosecutors are budgetary depend on the discretion of the executive organs, such dependence would affect the effective performance of prosecution office as the political body grant the budget based on their interest as opposed to the interest of justice. Thus adequate organizational condition and adequate budgetary means contributes to the autonomous function of prosecution office.

An important development under the council of ministers of Europe recommendation on the role of prosecutor is that it attempts to clarify the relationship of the public prosecutors with that of the executive, legislative and judicial organs of the government.⁹⁴ Accordingly, Public prosecutors should not interfere with the competence of the legislative, judicial and the executive powers of the government.

Where the public prosecution is part of or subordinate to the government, states should take effective measures to guarantee that the nature and the scope of the powers of government with respect to the public prosecution are established by law.⁹⁵ This recommendation is particularly relevant in countries where prosecution office is subordinated to the executive body and aimed to safeguard the prosecutors from unjustified instruction to prosecute or not to prosecute. In countries where the public prosecution is independent of the government, the state should take effective measures to guarantee that the nature and the scope of the independence of the public prosecution are established by law.⁹⁶

⁹² Ibid., at art 2

⁹³ Ibid., at art 4

⁹⁴ Ibid., at art 11

⁹⁵ Ibid

⁹⁶ Ibid

Regarding the relationship of the public prosecutor with the court, the recommendation speaks of ensuring that the legal status, competencies and procedural role of the prosecutor do not cast any doubt on the independence and impartiality of judges and in particular that a person should not at the same time be able to perform duties as a public prosecutor and as a court judge.⁹⁷ However, this does not mean that the same person may not successively perform the two functions; only that they may not be performed at the same time. Public prosecutors are to strictly respect the independence and the impartiality of judges; in particular they should neither cast doubt on judicial decisions nor hinder their execution.⁹⁸

Unlike UN guideline and international association of prosecutors, the council of Europe recommendation clearly set out periodical accountability of the prosecutor for its activities. In this case government exercises its powers in a transparent way and in accordance with international treaties, national legislation and general principles of law.⁹⁹

Owing to the relationship between the police and the prosecutors, the recommendation empowered the prosecutor to scrutinize the lawfulness of police investigation at the latest when deciding whether a prosecution should commence or continue.¹⁰⁰ In this respect, public prosecutors will also monitor the observance of human rights by the police. In the case of states where the police is independent of the public prosecution the recommendation merely provides that the state should take effective measures to ensure that there is appropriate and functional cooperation between the public prosecution and the police.¹⁰¹

Thus in order to promote the effectiveness of the criminal justice, public prosecutors should cooperate with government agencies and institutions in so far as this is in accordance with the law. Public prosecutors should, in any case, be in a position to prosecute without difficulty public officials for offences committed by them, particularly corruption, unlawful use of power, grave violations of human rights and other crimes recognized by international law.¹⁰²

⁹⁷ Ibid, at Art 17

⁹⁸ Ibid, at 19

⁹⁹ Ibid ,at art 13(b)

¹⁰⁰ Ibid at, art 21

¹⁰¹ Ibid at, art 22

¹⁰² Ibid at, art 16

2.2.2.2. The Bordeaux Declaration: Judges and prosecutors in democratic society

The Bordeaux declaration was adopted by the joint consultative council of European Judges (CCEJ) and consultative council of European prosecutor (CCEP) which deals with the status of judges and prosecutors in democratic society.¹⁰³ The declaration underlined that the independence of the public prosecution service constitutes an indispensable corollary to the independence of the judiciary and hence articulated that they shall be independent and autonomous in their decision-making and carry out their functions fairly, objectively and impartially.¹⁰⁴ For an independent status of prosecutors, the same declaration provides minimum requirements particularly that: their position and activities are not subject to influence or interference from any source outside the prosecution service itself; that their recruitment, career development, security of tenure including transfer, which shall be effected only according to the law or by their consent, as well as remuneration be safeguarded through guarantees provided by the law.¹⁰⁵

The same declaration provides that the independence of public prosecutors is indispensable for enabling them to carry out their mission. It strengthens their role in a state of law and in society and it is also a guarantee that the justice system will operate fairly and effectively and that the full benefits of judicial independence will be realized.¹⁰⁶ The idea behind this requirement of independence is that it is the only way the public will have confidence in such a body and will contribute with information and support to its success. Thus, akin to the independence secured to judges, the independence of public prosecutors is not a prerogative or privilege conferred in the interest of the prosecutors, but a guarantee in the interest of a fair, impartial and effective justice that protects both public and private interests of the persons concerned.¹⁰⁷

According to the declaration, the independence of the judge and of the prosecutor is inseparable from the rule of law. Judges as well as prosecutors act in the common interest, in the name of the society and its citizens who want their rights and freedoms guaranteed in all their aspects. They

¹⁰³The Bordeaux Declaration This Declaration is accompanied by an Explanatory Note. This Declaration has been jointly drafted by the Working Groups of the CCJE and the CCPE in Bordeaux (France) and has been officially adopted by the CCJE and the CCPE in Brdo (Slovenia) on 18 November 2009.

¹⁰⁴ Ibid at, art 6 and 10

¹⁰⁵ Ibid, at art 8

¹⁰⁶ Explanatory note of the Bordeaux declaration at par. 27

¹⁰⁷ Ibid

intervene in areas where the most sensitive human rights individual freedoms, privacy, protection of possessions, deserve the greatest protection.¹⁰⁸The idea behind this requirement of independence is that it is the only way the public will have confidence in such a body and will contribute with information and support to its success.

Ensuring the above principles implies that the status of prosecutors be guaranteed by law at the highest possible level in a manner analogous to that of judges.¹⁰⁹ The proximity and complementary nature of the role of judges and prosecutors creates similar requirements and guarantees in terms of their status and conditions of service, namely regarding recruitment, training, career development, discipline, transfer, remuneration, termination of functions and freedom to create professional associations.¹¹⁰

Both judges and prosecutors should, according to the national system in force, be directly associated with the administration and the management of their respective services. For this purpose, sufficient financial means as well as infrastructure and adequate human and material resources is guaranteed by the declaration to be put at the disposal of judges and prosecutors and should be used and managed under their authority.¹¹¹

2.2.2.3. The Venice Commission Report on European Standards as Regards the Independence of the Judicial System: The Prosecution Service`

This recommendation was drafted and adopted in 2010 by the Venice commission at its 85th plenary session at Strasbourg. The standards adopted were very detail and assess the role and function of prosecutor, models of organization of prosecution office, accountability of prosecution office, mechanism and criteria for the appointment and dismissal of prosecutor general are the major issues addressed by the recommendation. As it is latest document on prosecution office it is relevant for the subject matter under discussion and it's valuable for recommendation.

¹⁰⁸ Ibid, at par. 34

¹⁰⁹ Ibid at, par 34

¹¹⁰ Ibid at par 37

¹¹¹ Ibid at par38

As the recommendation is the cumulative assessment of different legal instruments dealing with the role of prosecutors¹¹², it emphasizes that prosecutor's act on behalf of the society and as a result they must act to a higher standard than litigant in civil matter and the prosecutors should act fairly and impartially.¹¹³ In order to realize the full impartiality and neutrality of the prosecutors like a judge, the prosecutor may not act in a matter where he or she has a personal interest in the outcome of the case and ought to be declined from handling such case.¹¹⁴

Thus having regard to the importance of prosecutors, the commission stress that qualities required of a prosecutor are similar to those of a judge, and require that appropriate procedures for appointment, promotion and discipline should be in place. Procedures to guarantee a proper selection of prosecutors and to prevent their arbitrary dismissal are very important in safeguarding prosecutorial independence.¹¹⁵

The independence of prosecution office begins from the independence of attorney general from the influence of political organ of the day.¹¹⁶ To that effect, the Venice commission recommends on the appointment and dismissal of attorney general. The manner in which the Prosecutor General is appointed and recalled plays a significant role in the system guaranteeing the correct functioning of the prosecutor's office. The Venice Commission stated:

It is important that the method of selection of the general prosecutor should be such as to gain the confidence of the public and the respect of the judiciary and the legal profession. Therefore, professional, non-political expertise should be involved in the selection process. However, it is reasonable for a Government to wish to have some control over the appointment, because of the importance of the prosecution of crime in the orderly and efficient functioning of the state, and to be unwilling to give some other body, however distinguished, carte blanche in the selection process. It is suggested, therefore, that consideration might be given to the creation of a

¹¹²As provided under article 5 of the recommendation, these instrument includes; recommendation Rec(2000)19 of the Committee of Minister of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System, the 1990 United Nations Guidelines on the Role of Prosecutors, the 1999 IAP (International Association of Prosecutors) Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors and others

¹¹³ Art 14 and 15 of the draft recommendation

¹¹⁴ Art 17 of the draft commission

¹¹⁵ James Hamilton(2011): prosecutorial independence and accountability at p.9

¹¹⁶Bruce A.MacFarlane(2000): Sunlight and disinfectants: prosecutorial accountability and independence through public transparency at p. 7

*commission of appointment comprised of persons who would be respected by the public and trusted by the Government.*¹¹⁷

As there was no definite principle as to whom the president or the parliament should appoint the prosecutor general, the commission is of the opinion that the creation of the commission would be appropriate mechanism of avoiding or counter balancing unilateral political nomination and appointment of the prosecutor general. As prosecutor general is professionally responsible for the administration of criminal justice, the commission recommends that in nominating prosecutor general, advisory opinion on professional qualification of candidates should be secured from relevant persons such as representatives of the legal community (including prosecutors) and of civil society.¹¹⁸

Thus, the participation of diverse group in the nomination of the prosecutor general would enhance the public confidence in administration of criminal justice in general and minimizes the risk of unilateral appointment of prosecutor general by political organ. Furthermore, the use of a qualified majority for the election of a Prosecutor General could also be seen as a mechanism to achieve consensus on such appointments.¹¹⁹ The commission is also of the opinion that the Prosecutor General should not be eligible for re-appointment, at least not by either the legislature or the executive. This is because of a potential risk that a prosecutor who is looking for re-appointment by a political body will act in such a manner as to obtain the favor of that body or at least to be perceived as doing so.¹²⁰ In this case, the commission recommends that:

A Prosecutor General should be appointed permanently or for a relatively long period without the possibility of renewal at the end of that period. The period of office should not coincide with Parliament's term in office which thereby would ensure the greater

¹¹⁷ Opinion on the Regulatory Concept of the Constitution of the Hungarian Republic CDL-INF (1996)2, and CDL (1995)73, II.11. In recommending the composition of such commission for the appointment of the prosecutor general for the Republic of Hungary, the Venice commission recommends that the President of each of the courts or of each of the superior courts, the Attorney General of the Republic, the President of the Faculty of Advocates, the civil service head of the state legal service, the civil service Secretary to the Government, the Deans of the University Law Schools to be the member of the commission.

¹¹⁸ Ibid At par 35

¹¹⁹ Ibid

¹²⁰ Ibid

*stability of the prosecutor and make him or her independent of current political change.*¹²¹

Moreover, in order to strengthen the autonomy of the prosecution institution the commission recommends that the law on the prosecutor's office should clearly elaborate the conditions of the Prosecutor's pre-term dismissal. In its Opinion on the Draft Law of Ukraine amending the Constitutional Provisions on the Procuracy, the Commission found that:

*The grounds for such dismissal would have to be prescribed by law and even further by providing the grounds for a possible dismissal in the Constitution itself. Moreover, there should be a mandatory requirement that before any decision is taken; an expert body has to give an opinion whether there are sufficient grounds for dismissal and hence in any case, the Prosecutor General should also benefit from a fair hearing in dismissal proceedings, including before Parliament*¹²²

This is an important statutorily mechanism to secure the independence of the institution by limiting arbitrary action of political body from removing prosecutor general from his position. As stated above the ground for dismissal should constitutionally be pre-determined and the involvement of expert body in determining the ground for such dismissal would also ensure the objectivity of such dismissal and minimizes the risk of politically motivated removal of prosecutor general from his position. As it is dismissal from the position, the presence of appropriate hearing procedure ensures due process rights of the prosecutor general.

2.3. Accountability of prosecutors' office

In every jurisdiction, Prosecution offices like other state organs are accountable for public expenditure through different public auditing procedures in place.¹²³ Independence without accountability poses an obvious danger to the public interest which requires the fair and just administration of the criminal justice system.¹²⁴ The fair, independent and impartial administration of justice also requires prosecutors to be held to accountable should they not fulfill their functions in accordance with their professional duties. In this vein, the writer

¹²¹ Ibid, at par.37

¹²² Ibid, at par.39

¹²³ James Hamilton(2011): independence and accountability of the prosecutor at p 12

¹²⁴ Geoffrey Flatman(1996): independence of the prosecutor, Australian institute of criminology at p.4

emphasizes that autonomy should not exist to the detriment of accountability. Coldrey J argued that: “Whilst it is argued that prosecutorial independence is an essential element in the proper administration of criminal justice it must be equally recognized that inherent in independence without accountability is the potential for making arbitrary, capricious, and unjust decisions.”¹²⁵

As prosecution office is one of the state authorities undertaking the business of the public so that it should be accountable to the public. The Venice commission has identified different mechanisms of accountability of prosecution office. One of such accountability mechanism is control by the executive, which provides indirect democratic legitimacy through the dependence of the executive on the elected Parliament. Another means is control by a prosecutorial council, which cannot only be an instrument of pure self-government but derives its own democratic legitimacy from the election of at least a part of its members by Parliament.¹²⁶ In many systems there is accountability to Parliament. Accountability in these cases could be sought through the submission of public reports by the Prosecutor General.¹²⁷

In countries where the prosecutor general is elected by Parliament, it often also has the power to dismiss him or her. In such a case, a fair hearing is required. Even with such a safeguard, there is a risk of politicization in that parliamentary accountability may also put indirect pressure on a prosecutor to avoid taking unpopular decisions and to take decisions which will be known to be popular with the legislature.¹²⁸ However, accountability to Parliament in individual cases of prosecution or non-prosecution should be ruled out. The crucial element seems to be that the decision whether to prosecute or not should be for the prosecution office alone and not for the executive or the legislature.¹²⁹

Another method of ensuring the accountability of prosecution office is the submitting of public reports by the Prosecutor General either to the parliament or the executive organ depends on the

¹²⁵ Coldrey, John QC (1990) Paper entitled The Office of the Director of Public Prosecutions: Independence Professionalism and Accountability. p.12

¹²⁶ Art 41 of the recommendation of the Venice commission

¹²⁷ Gabriel Knaul(2011):Report of the special Rapporteur on the independence of judges and lawyers at p.5

¹²⁸Opinion on the Draft Law on the Public Prosecutors Office and the Draft Law on the Council of Public Prosecutors of "the former Yugoslav Republic of Macedonia"2007 par. 25.

¹²⁹Supra note 4 at par 41

model in force as well as national traditions.¹³⁰ Guidelines for the exercise of the prosecutorial function and codes of ethics for prosecutors have an important role in standard setting. In this regard the content or substance of prosecutorial decisions can increase accountability without undermining the prosecutor's ability to act independently and if the prosecutor is required to notify its decisions to the police and to victim parties this will also act as a safeguard against arbitrary decision making of prosecutor.¹³¹

Another method of ensuring accountability of the prosecutor is scrutiny by the court of law. The fact that so much of the prosecutor's work is subject to scrutiny by courts of law also provides a form of accountability. In systems where the prosecutor does not control the investigation, the relationship between the prosecutor and the investigator necessarily creates a degree of accountability.¹³²

2.4. National Standards governing prosecution office in Selected Legal Jurisdiction

Having the historical evolution and international standards and regional instruments governing on the role of prosecution office in mind, the study attempts to discuss the experience of the organization and structure of prosecution office in South Africa, Kenya, Brazil and Namibia as comparative analyses for the thesis. The rational for selecting these countries as a case study is that as these countries where like Ethiopia previously ruled under authoritarian regime and on the course of transition to democratic governance, it is assumed to be relevant and appropriate to conduct comparative analysis of the latest constitutional frame work on the organization and operation of prosecution office of these selected countries.

2.4.1. South Africa

Prosecution office in the Republic South Africa was constitutionally established institution responsible for the administration of criminal justice. The 1996 Constitution of the Republic of South Africa has established prosecution institution under chapter eight of the constitution which established and deals with court and the administration of justice. Accordingly, the constitution established a single national prosecuting authority that will structure and function based on the

¹³⁰ Ibid, at par.44

¹³¹ Supra note 123

¹³² Supra note 112 at art 45

act of parliament is to be established.¹³³ This national prosecuting authority according to the constitution is lead by the National Director of public prosecutions (NDPP) who is the head of the prosecuting authority.¹³⁴ The constitution vests on the prosecution institution the power to institute criminal proceeding on behalf of the state and to carry out any necessary function incidental to instituting criminal proceeding.¹³⁵ Thus, prosecution office in the Republic of South Africa is constitutionally established institution responsible for the administration of criminal justice.

The constitutional evolution of this office is a kind of guarantee where it cannot be dissolved through ordinary act of the parliament. To change the role and position of this institution, at least it calls for the amendment of the constitution. The National Director of Public prosecution according to the constitution is mandated to determine, with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of Public Prosecutions, enact prosecution policy and policy directives which must be observed in the prosecution process and may also intervene in the prosecution process when policy directives are not respected.¹³⁶

The National director of public prosecution further mandated to review a decision to prosecute or not to prosecute, after consulting the relevant Director of Public Prosecutions and after taking representations within a period specified by the National Director of Public Prosecutions, the accused person, the complainant, and any other person or party whom the National Director considers to be relevant.¹³⁷

Owing to the independence of the institution, the constitution states that the national legislation must insure that the directors of public prosecutions are appropriately qualified and the prosecuting authority exercises its function without fear, favor or prejudice.¹³⁸ This constitutional stipulation is framed in harmony with the principles enshrined in the 1990 UN guidelines on the role of prosecutors, international association of prosecutors, and the Venice commission which

¹³³ Article 179(1)(a) of the 1996 of the Republic of South Africa constitution

¹³⁴ *Ibid*

¹³⁵ *Ibid.*, at article 179(2)

¹³⁶ *Ibid*

¹³⁷ *Ibid.*, at art 179(5)

¹³⁸ *Ibid.*, at article 179(3)

granted the prosecutors to be free from harassment, intimidation and to be free from any prejudice.

Regarding the appointment of the national director of public prosecution, the constitution empowered the president of the Republic to appoint the (NDPP).¹³⁹ The national prosecution act (NPA) of 1998 stipulates that a person who the president appointed as the director of public prosecution must have legal qualifications to practice law in all courts of the country, be a South African citizen, and be a fit and proper person.¹⁴⁰ Thus whomever the president appointed as the director of public prosecution should be qualified as legal professional and extensive experience and practiced in the courts of the country. This legal provision restricts the discretionary power of the president not to appoint the director of public prosecution only based on political loyalty to the ruling party.

The national prosecution act clearly set out security of tenure of the national director of prosecution office and the ground for the removal from his position. Accordingly, the act provides that the NDPP be appointed by the president for a non-renewable term of ten years, and that he/she can only be removed by the president and Parliament for misconduct, sustained ill-health, incapacity or because he/ she generally is not a fit or proper person for office.¹⁴¹ This is a clear restriction on the power of the president not to use his discretionary power in appointing and dismissing the director of the national prosecuting authority from his position.

Regarding the accountability of prosecution office, the director of public prosecution in the Republic of South Africa is accountable to two bodies. The first body is the ministers of justice which exercise the final responsibility over the prosecuting authority. This was clearly stated in the constitution while stating that the Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority.¹⁴² However, the Constitution is silent on the scope of this responsibility whether the minister of justice gives instruction to prosecute or not to prosecute.

¹³⁹ Supra note 133

¹⁴⁰ National Prosecuting Authority Act 1998 (Act 32 of 1998) sec. 9(1)

¹⁴¹ .Ibid., art.12(6)(a)

¹⁴² Constitution 1996 at article 179(6)

The NPA Act seems to restrict this responsibility to the accounting function in which the director general (DG) of Justice and Constitutional Development is legislatively responsible for accounting for state monies paid out for the NPA.¹⁴³ The NPA Act further provides that the NPA is accountable to Parliament in respect of its powers, functions and duties under the Act, including decisions regarding the institution of prosecutions.¹⁴⁴ The Act provides that the NDPP must submit an annual report to the minister of Justice, which the minister must then submit to Parliament within 14 days of its next sitting.¹⁴⁵

Thus, evaluating the legal and institutional framework of prosecution office and the safeguard accorded to the national director of the prosecutors, the constitution established the director of prosecution office having its own legal personality responsible for the administration of criminal justice separated from Minister of Justice. Moreover, the ground for appointment, dismissal and security of tenure of the national director of prosecution office is enumerated both in the constitution and in the national prosecuting act of South Africa. Thus such enumeration are an important safeguard accorded to the national director of public prosecution in counterbalancing the discretion of the president in appointing and removing the director of the prosecution.

2.4.2. Kenya

Like its South African counterpart, Prosecution office in Kenya is also constitutionally established institution responsible for the administration of criminal justice system.¹⁴⁶ In Kenya, the advisory and prosecution service is constitutionally separated in which the attorney general (AG) is constitutionally mandated to advise the government on legal matters and to represent the government in the court of law in civil matters and the Director of public prosecution (DPP) is autonomously established for the administration of criminal justice.¹⁴⁷ The attorney general is nominated by the president of the republic and approved by the national assembly and thereby appointed by the president. In nominating the attorney general, the president is constitutionally

¹⁴³ National prosecuting Act 1998 at Article 36

¹⁴⁴ Ibid., art 35

¹⁴⁵ Ibid., art 35(2)(a)

¹⁴⁶ Art 156(1) of the 2010 Constitution of Kenya. The director of public prosecution in Kenya is part of the executive branch of the government under chapter 9 of the constitution but with special part in the constitution as other office having its own separate legal personality function autonomously from the instruction of any organ under the director of public prosecution. Chapter 9 part 4 of the constitution discuss about attorney general.

¹⁴⁷ Ibid art 156(4)(a)&(b) and art 157

obliged to follow constitutionally set procedure and criteria for the appointment of the president of the supreme court of Kenya. The constitution stipulated that, the qualifications for appointment as Attorney General are the same as for appointment to the office of Chief Justice who is the president of the Supreme Court.¹⁴⁸

The qualification enumerated in the constitution for the appointment as a chief justice are; to have a law degree from a recognized university, to have a high moral character, integrity and impartiality, advocates of the High Court of Kenya, persons who have at least fifteen years experience as a superior court judge; or at least fifteen years' experience as a distinguished academic, judicial officer, legal practitioner or such experience in other relevant legal field; for a period amounting, in the aggregate, to fifteen years.¹⁴⁹

Thus, the discretionary power of the president in nominating the attorney general is counterbalanced by the constitutionally stipulated criteria which are having a legal knowledge and extensive work experience in academics, to have relevant experience in the judiciary of the country. The attorney general is a principal legal advisor to the government and represents the national government in court or other legal proceeding to which the national government is a party, other than criminal proceedings.¹⁵⁰ Thus, the mandate of the attorney general according to the constitutional principles is limited to advisory role to the government and to represent the same in civil litigation alone. The major mandate of the Attorney General (AG) in Kenya shall be promote, protect and uphold the rule of law and defend the public interest.¹⁵¹ In the reply to Parliament by a former AG, Mr. Joseph Kamere, when Parliament sought to have one Stanley Munga Githunguri prosecuted on charges of violating the provisions of the Exchange Control Act. In his reply the A.G. said:

Kenya as a constitutional government is totally committed to the rule of law. We cannot talk of the rule of law without an efficient machinery to enforce the ordinary laws of the land. The police, the judiciary and my office are the components of that machinery, and if any of those cogs break down, that essential machinery can easily come to a grinding halt...The question as to whether to prosecute or not to

¹⁴⁸ Ibid., at 156(3)

¹⁴⁹ Ibid., at 166(3)

¹⁵⁰ Ibid., at 156(4)(a)&(b)

¹⁵¹ Ibid., at 156(6)

*prosecute is entirely left to the discretion of the A.G. In this country, we believe in the rule of law; we believe in the separation of the judiciary; and we also believe that you cannot be a judge and prosecutor. Prosecution and only prosecution, play one of the most important roles in the administration of criminal justice in any form of a constitutional government.*¹⁵²

As gleaned from the above quotation, the office of attorney general is qualified as an important component of the machinery of rule of law responsible for the administration of criminal justice. In order to ensure the administration of criminal justice by impartial and neutral organ, the constitution also separately established the office of the director of public prosecution that empowered to exercise state power of prosecution autonomously and independently.¹⁵³ In order to safeguard the autonomy and independence of the director of public prosecution, the constitution in the same manner as the appointment of attorney general provides for the criteria to be appointed as the director of public prosecution. It states that the qualifications for appointment as Director of Public Prosecutions are the same as for the appointment as a judge of the High Court.¹⁵⁴

The qualifications for the appointment of the high court judge stipulated in the constitution are; at least ten years' experience as a superior court judge or professionally qualified magistrate; or at least ten years' experience as a distinguished academic legal practitioner or such experience in other relevant legal field.¹⁵⁵ Therefore, as the director of public prosecution is responsible for criminal prosecution, it is directed by legal expert having qualified experience in the legal and judicial system of the country. According to the constitution, the directors of public prosecution exercise his/her prosecutorial power autonomously and independently. This autonomy is constitutionally granted power to the director of public prosecution. The constitution stipulated that: "The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority".¹⁵⁶

¹⁵²Jonathan John Mwalili (2012): "The Role and Function of Prosecution in Criminal Justice." available at http://www.unafei.or.jp/english/pdf/RS_No53/No53_23PA_Mwalili.pdf. (accessed on October 17, 2013), p. 219

¹⁵³ Art 157(1) of the constitution

¹⁵⁴ Art 166 of the constitution

¹⁵⁵ Supra note 48 at art. 166(5) (a)&(b)

¹⁵⁶ Ibid., at art.157(10)

In this vein, in exercising his powers, according to the constitution, the Director of Public Prosecutions only shall have regard to the public interest; the interests of the administration of justice and the need to prevent avoid abuse of the legal process.¹⁵⁷ Thus the director of public prosecution function autonomously without the instruction of any organ and guided by the interest of the public and the interest of justice. Moreover, the constitution also provides terms of office of the director of public prosecutor to hold office for the term of Eight years and shall not be illegible for re appointment.¹⁵⁸ The provision of the terms of the director of public prosecution is majorly designed to safeguard the stability of leadership in the administration of criminal justice system and politically motivated dismissal of the director of public prosecution by the political organ.

Furthermore, in order strengthen the independence and autonomy of the director of public prosecution the constitution enumerates the ground for removal of the director of public prosecutor. These grounds are inability to perform the functions of office arising from mental or physical incapacity; non-compliance with Chapter Six of the constitution, Bankruptcy, incompetence, or gross misconduct or misbehavior.¹⁵⁹ Where the director of public prosecution is suspected of violating the above stated discipline, an application is made to the public service commission that is mandated by the constitution to investigate such petition and where the commission is satisfied by the petition they send such petition to the president.¹⁶⁰ Thus the presidents acted up on the assessment of the commission before taking any measure/removing the director of public prosecution from his position.

Thus, assessing the legal and institutional framework of prosecution institution in Kenya, one can conclude that institutional autonomy of prosecution office in Kenya is granted because of the fact that prosecution office is constitutionally established institution function independently and autonomously under the direction of professionally appointed person of the director of public prosecution based on competency. Furthermore, the constitution elaborated the ground for the appointment, removal and terms of office for the director of public prosecution which is important constitutional safeguards for an independent and autonomous function of prosecution office.

¹⁵⁷ Ibid., at art 157(11)

¹⁵⁸ Ibid, at Art 157(5)

¹⁵⁹ Ibid, at Art 158(1)(a)-(e)

¹⁶⁰ Ibid, at Art 158(2)

2.4.3. Brazil

Before the promulgation of the 1988 Constitution, prosecution office in Brazil was not autonomous and hence subordinated to the minister of justice which was executive branch of the government¹⁶¹. However, with the enactment of the new constitution in 1988 independent and autonomous institutions of prosecution office both at federal and state level that is separated from both executive and judicial organ have been come in to picture. The constitutional assembly of the 1987/8 constitution of Brazil decided to grant greater autonomy to the prosecution institution so as to prevent political and government interference in the work of the attorney.¹⁶²

In this vein, the constitution stipulated the Public Prosecution's office unity and indivisibility in addition to guaranteeing it administrative and functional autonomy.¹⁶³ Accordingly, unity, indivisibility and functional independence are institutional principles of public prosecution office declared by the constitution. In Brazil, the prosecutors' main job is to promote justice and as a result the constitution specifically stipulated that prosecutors are clearly prohibited from being a member to any political parties.¹⁶⁴ This constitutional principle is aimed to guarantee the impartiality and neutrality of prosecutors in the administration of criminal justice. The constitution state that "the Public Prosecution is a permanent institution, essential to the jurisdictional function of the State, and it is its duty to defend the juridical order, the democratic regime and inalienable social and individual interests".¹⁶⁵

The head of the Public Prosecution of the Union according to the constitution is the Attorney General (AG) of the Republic, appointed by the President of the Republic from among professional members over thirty five years of age, after his name has been approved by the absolute majority of the members of the Federal Senate, for a term of office of two years,

¹⁶¹Maria Tereza Sadek Rosangela Batista Cavalcanti(2000): The New Public Prosecution and the Efficacy of Accountability Mechanisms Paper presented for the Conference, "Political Institutions, Accountability, and Democratic Governance in LatinAmerica", Nortre Dame, May, 8-9, 2000. P.5. See also <file:///C:/Documents%20and%20Settings/user/Desktop/Dados%20%20Autonomy%20and%20discretionary%20power%20of%20the%20Public%20Prosecutor%27s%20Office%20in%20Brazil.htm> accessed December 19,2013

¹⁶² Dados –autonomy and discretionary power of the public prosecutors' office in Brazil accessed at <file:///C:/Documents%20and%20Settings/user/Desktop/Dados%20%20Autonomy%20and%20discretionary%20power%20of%20the%20Public%20Prosecutor%27s%20Office%20in%20Brazil.htm> on December 19, 2013 at 4:59 AM

¹⁶³ Art 127(1) of the 2010 constitution of Federative Republic of Brazil 3rd Edition

¹⁶⁴ Ibid., at art 128

¹⁶⁵ Ibid., at art 127

reappointment being allowed.¹⁶⁶ Thus, in order to be appointed as Attorney General (AG), one has to be professional members and must be over thirty five of age and such candidate must be supported by absolute majority of the legislative body.

Regarding the removal of the Attorney General of the Republic, such removal is initiated by the President of the Republic, and shall be subject to prior authorization by the absolute majority of the Federal Senate.¹⁶⁷ In this regard, there is no precondition stated in the constitution which requires the participation of different groups that evaluates the ground for removal of the attorney general. In fact the constitution did not provide ground for the removal of the attorney general and it's the discretion of the president to propose the idea for the removal of the attorney general to the senate.

Regarding the appointment of state AG of Public Prosecutions of the states, of the Federal District and the Territories shall prepare a list of three names from among profession members, under the terms of the respective law, for the selection of their Attorney General, who shall be appointed by the Head of the Executive Power for a term of office of two years, one reappointment being allowed.¹⁶⁸ The Attorneys General in the states, in the Federal District and the Territories may be removed from office by deliberation of the absolute majority of the Legislative Power, under the terms of the respective supplementary law.¹⁶⁹ It further granted the Public Prosecution office the same prerogatives granted to the Judiciary: life-long tenure for its members, guarantee prosecutors won't be transferred to other jurisdictions against their will, and a constitutional guarantee of due benefits.¹⁷⁰

2.4.4. Namibia

The 1990 constitution of Namibia established both the office of Attorney general and prosecutor general where the former is appointed by the president of the country as any other minister and the later is appointed by the president up on the recommendation of judicial service commission.¹⁷¹ The judicial service commission according to the constitution is composed of the

¹⁶⁶ Ibid., at art 128 (1)

¹⁶⁷ Ibid., at art 128 (1) paragraph 2

¹⁶⁸ Ibid., at paragraph 3

¹⁶⁹ Ibid., at paragraph 4

¹⁷⁰ Supra note 161., at P. 6

¹⁷¹ Arti.86&88 of the 1998 first amendment republic of Namibian constitution

members of chief justice, a judge appointed by the president, two members of legal profession and the Attorney general.¹⁷² Among the members of the judicial service commission, Attorney general is the only political appointee and hence minimizes the political influence in the commission.¹⁷³

The approach of the 1990 of Namibia constitution in the appointment of Attorney general and prosecutor general indicates that the appointment of Attorney general is political appointment and the appointment of prosecutor general is quasi-judicial appointment because of its selection and nomination is first scrutinized and selected by the judicial service commission established by the constitution. According to the constitution, the appointment of prosecutor general follows the appointment of judges and ombudsman as their appointment is under taken up on the selection and nomination of judicial service commission.

When we see the power division between Attorney general and prosecutor general, the constitution under its article 87(a) provides the power of Attorney general in such a way that the Attorney general to exercise the final responsibility for the office of prosecutor general. This provision raises conflict between the Attorney general and office of the prosecutor general in relation to the scope of power of Attorney general.

The phrase... final responsibility for the office of prosecutor general” under article 87(a) of the constitution was tested where the prosecutor general refused to accept the instruction of the Attorney general on the case that the prosecutor general institute a charge against the Namibian Broadcasting Corporation for racial discrimination against the broadcaster.¹⁷⁴ On this case, the Attorney general instruct the prosecutor general so as to withdraw the charge from the Corporation and the prosecutor general refused to accept such instruction by arguing that he is not bind by the instruction of Attorney general.¹⁷⁵ As a result, the Attorney general made a petition to the Supreme Court whether the Attorney general in accordance with Article 87(a) of the Constitution and in the exercise of the final responsibility for the Office of the Prosecutor-General, has the authority to:

¹⁷² Nico Horn(2008): The independence of prosecutorial Authority of South Africa and Namibia.p.120

¹⁷³ *ibid*

¹⁷⁴ *Ibid.* ,at P.124

¹⁷⁵ *Ibid*

*Instruct the Prosecutor-General to institute a prosecution, to decline to prosecute or to terminate a pending prosecution in any matter; to instruct the Prosecutor-General to take on or to take any steps which the Attorney-General may deem desirable in connection with the preparation, institution or conduct of any prosecution and to require that the Prosecutor-General keeps the Attorney-General informed in respect of all prosecutions initiated or to be initiated which might arouse public interest or involve important aspects of legal or prosecutorial policy.*¹⁷⁶

The Supreme Court after evaluating the claim of Attorney general vis a vis the constitution interpreted the phrase “final responsibility” to mean the responsibility of the Attorney general to account to the president, legislative and executive organs of the government and declared the full independence of the prosecutor general regarding prosecution.¹⁷⁷ In affirming the independence of the Prosecutor-General from the instruction of the attorney general, Judge Leon made the following assertion that;

*I do not believe that those rights and freedoms can be protected by allowing a political appointee to dictate what prosecutions may be initiated, which should be terminated or how they should be conducted. Nor do I believe that would be in accordance with the ideals and aspirations of the Namibian people or in any way represent an articulation of its values.*¹⁷⁸

This reasoning is meant to emphasize that political function of prosecution office should be separated from its judicial function. The court also tried to evaluate the case from the perspective of the appointment of Attorney general as s/he is directly appointed by the president and hence responsible for the executive function of the office and the prosecutor general is appointed by the president up on the nomination and recommendation of judicial service commission through the procedure any judge can be appointed and hence the role of prosecutor general is quasi- judicial function which does not consistent with political role of the executive organ. By virtue of the court decision, prosecutor general of Namibia granted full independence regarding prosecution function.

Thus, evaluating the institutional and legal framework of prosecution office in South Africa, Kenya, Brazil and Namibia, the office of prosecution in these four countries is constitutionally

¹⁷⁶ Ibid

¹⁷⁷ Ibid

¹⁷⁸ Ibid., at 126

competent institution with safeguard autonomy in the administration of criminal justice. To that effect, the appointment, removal and security of tenure (except in the case of Namibia where terms of office prosecutor general is not enumerated in the constitution) of the head of prosecution office are constitutionally enumerated so as to minimize the danger of politically motivated appointment and removal of the head of the office. Having the experience of these countries as a bench mark, the next chapter will attempt explore the institutional and legal frameworks of prosecution office in Ethiopia in general and the ONRS in particular?

CHAPTER THREE

Prosecution Office in Ethiopia

3.1. A General Background of Prosecution Office in Ethiopia

The modern criminal justice system in Ethiopia is of a recent development. Like in the common law and civil law legal system, the history and development of criminal prosecution in Ethiopia was historically characterized by community prosecution.¹⁷⁹ Before the adoption of the modern criminal justice system, the great volume of crimes against private property or person was initiated and prosecuted by the victim of the crime.¹⁸⁰ The oldest laws used in the country before the adoption of modern laws (before the enactment of the 1930 and 1957 Penal Code) was the Fetha Nagast.¹⁸¹ The Fetha Negast was presumed to have been introduced to Ethiopian legal system during the reign of Zara Yacob(1426-1460).¹⁸² However, Fetha Negast used was only in the high land part of Ethiopia (Abyssinia) and hence not for the larger part of the southern part of Ethiopia of the pre-Menelik II era.

According to the provision of Fetha Nagast, prosecution of crime was carried out by the victim of the crime or the families of the injured party. Thus, such private vengeance by the injured party was deep rooted in the traditional customary law of the country. The prosecution systems carried out by the victim involves either to compromise with the accused by receiving the blood money, or inflict punishment decided by the judge or the elder of the community.¹⁸³ The process involve that the elder of the community conduct litigation process in the presence of both the victim and the accused at the public place.¹⁸⁴ As stated above, regarding the execution of the sentence, there was no prosecuting agency responsible for the execution of the judgment and hence the injured party took the position of execution of judgment. A convicted murderer was handed over for punishment to the victim's family, who could inflict on him any kind of horrible death they chose.¹⁸⁵ The Fetha Negast was continued to serve as a legal instrument until the coronation of Emperor Minilik II.

¹⁷⁹ Stanley Z. Fisher (1971):Traditional Criminal Procedure in Ethiopia: The American Journal Of Comparative Law [Vol. 19) p. 713

¹⁸⁰ibid

¹⁸¹ Supra note 16 p.63

¹⁸² Mezigebe Mitike (1983) cited in Andargatchew Tesfaye at p 63

¹⁸³ Id., at p. 63

¹⁸⁴ Fetha Nagast, at p.253, the provision of Fetha Negast states that “the judge shall not receive the litigants individually, in the absence of their adversaries, nor must he see them individually after they are separated.”

¹⁸⁵ Supra note 179: at p 742

The origin of prosecution institution in Ethiopia dates back to Emperor Minilik II era where he established ministries in the history of the country.¹⁸⁶ Despite such change, private prosecution was continued to operate particularly in the high land part of the country. After Emperor Haile Selassie took over power, the government made certain efforts so as to centralize his power and thereby to assert its interest in the outcome of the cases. Among the efforts made firstly, the law granted to the Emperor personally the sole right to decide capital cases, and forbade blood revenge without mediation of the official court process.¹⁸⁷ Secondly, the government periodically tried to supervise the manner and means of execution by the kin group, by requiring that executions take place at special government selected locations.¹⁸⁸ This shows the beginning of some degree of involvement of state control in the administration of criminal justice.

As discussed in chapter two of this paper, one may find scattered facts that indicate the existence of similar public prosecutorial trend of common and civil law legal system also happened in the development of Ethiopian criminal justice system in that the administration of criminal justice system developed from private prosecution to state controlled system of administration of justice.

3.1.1. Legal and Institutional Framework of Prosecution Office in Ethiopia

3.1.1.1. Prosecution Office during Emperor Haile Selassie Regime

As part of his efforts to modernize the country, Emperor Haile Selassie undertook several reforms to improve law enforcement in the country. The development of law dealing with the administration of criminal justice took place in 1930 where the country enacted the first Penal Code so as to monopolize the administration of criminal justice. Despite the enactment of the new Penal Code, private prosecution was continued to operate because of the codes failure to establish the office of attorney general for its enforcement. The process of legal development that emerged in Ethiopia was broken up by the invasion of Italian force.¹⁸⁹ However, the modern criminal justice system in Ethiopia was begun with the eviction of Italian force in 1941 where major laws dealing with criminal justice system were enacted.

¹⁸⁶Mahtama Selassie Wolde Maskal (1951) cited at supra note 16 at p.64. In 1907 emperor Minilik established 12 ministers in which the minister of judiciary was emerged with a responsibility to check whether all judgments were carried out in accordance with Fetha Nagast.

¹⁸⁷Supra note 179 at p 64

¹⁸⁸ Ibid

¹⁸⁹ Ibid

The first legal document that established the office of public prosecution was enacted in 1942. Accordingly, a proclamation was issued in 1942 so as to establish and control the office of the public prosecutors. The proclamation defined public prosecutor as “an advocate for prosecution of cases before the courts and his duty is to prosecute the cases, which affect public security in general.”¹⁹⁰ Thus, the proclamation defined prosecutor as an advocate established with a view to indict crimes against the public safety and security in the court of law. The proclamation further goes to provide for the appointment and qualification of the prosecutor. Accordingly, principal public prosecutor and the deputy prosecutors who were subordinated to principal public prosecutor were established and appointed by the Emperor.¹⁹¹

Regarding the qualification for the appointment of prosecutors, the proclamation states that a prosecutor shall possess sound knowledge of law or shall have judicial experience.¹⁹² In addition, in order to be appointed as a prosecutor one had to be an advocate, official in the government service, police officers or above the rank of Assistant inspector of police.¹⁹³ Thus, knowledge of law, having status in government office and judicial experience were legally required qualification criteria so as to be appointed as prosecutors. However, the proclamation was silent on the manner of appointment of other prosecutors and it did not define and clarify who appoint other prosecutors. The proclamation furthermore goes to stipulate that despite the existence of principal public prosecutor, public prosecutors were subject to the general instruction of the minister of justice.¹⁹⁴ Thus, principal public prosecutor and all other prosecutors were under the supervision of the minister of justice.

Later on, this proclamation was repealed by proclamation no. 118/1951. The change introduced by the latter proclamation was that firstly, the name principal public prosecutor and deputy public prosecutor was changed to the advocate general and deputy advocate general.¹⁹⁵ Secondly, advocate general and deputy advocate general were appointed by the emperor up on the recommendation of minister of justice.¹⁹⁶ Thirdly, as the appointment of other prosecutor was

¹⁹⁰ Art. 2 of proclamation No.29/1942 a proclamation to provide for the appointment and control of public prosecutors

¹⁹¹ Ibid., at art.3

¹⁹² Ibid., at art 4

¹⁹³ Ibid

¹⁹⁴ Ibid., at art 5

¹⁹⁵ Art 3 of proclamation No. 118/1951, the Public Prosecutors Proclamation 1942(amendment) proclamation, 1951.

¹⁹⁶ Art 3 of proclamation No.118/1951. Article 3 of this proclamation modified article 3 of proclamation 2/1942

not clarified under proclamation no. 29/1942, the Minister of justice was mandated to appoint other public prosecutors.¹⁹⁷ From this proclamation, one can understand that the advocate general and the minister of justice were established as two different positions assumed by different individuals.

Later on Proclamation no. 118/1951 was also repealed by proclamation No. 123/1952.¹⁹⁸ This proclamation was enacted and transferred the power of appointment of other prosecutor from the Minister of justice to the Emperor.¹⁹⁹ Thus, by virtue of this proclamation, the role of minister of justice was only restricted to recommend the candidate of an advocate whom the Emperor to appoint as advocate general, deputy advocate general and ordinary prosecutors. Despite the appointment of the advocate general and other advocate by the emperor, the office of the advocate general continued to operate under the instruction of the minister of justice.²⁰⁰

With the enactment of the 1961 criminal procedure code (CPC), some of the provision of the proclamation was impliedly repealed. The new criminal procedure code defined and elaborated the powers and duties of the prosecution office. Accordingly, “the Advocate General, the Deputy Advocate General and the other advocates shall be responsible for carrying out the duties imposed on them under this Code.”²⁰¹ Accordingly, Public prosecutors have been the power and responsibility to litigate for proper decision by representing the state except crimes punishable up on complaint, refuse to institute proceedings if he believes so, closure of police investigation file or order further investigations.²⁰²

The Criminal Procedure Code (CPC) further states that “the public prosecution department may in discharge of its duties give the necessary orders and instructions to the police and ensure that the police carry out their duties in accordance with the law.”²⁰³ This provision of the code increased the power of prosecution office to supervise the police officer in under taking investigation function and the overall legality of investigation carried out by the police officer. Thus, the Criminal Procedure Code empowered the office of Attorney general to conduct

¹⁹⁷ Ibid

¹⁹⁸ Proclamation no. 123/1952 the public prosecutors proclamation amendment ,1952

¹⁹⁹ Ibid, at art 2. It states that “up on recommendation of our minister of justice we shall appoint from time to time an advocate general,, deputy advocate general, and all other prosecutors in our empire”.

²⁰⁰ Supra note 190 at art 5

²⁰¹ Art 8(1) of the 1961 criminal procedure of the emperor of Ethiopia

²⁰² Ibid., at art 38,39& 42

²⁰³ Ibid., at art 8 (2)

prosecution when the violation of penal code occurred and further more to supervise the overall legality of the function of police officer in crime investigation. Moreover, the CPC provides that any compliant is entitled to apply to the court for an order that the public prosecutor shall institute proceedings.²⁰⁴

To summarize, prosecution institution under the Regime of Haile Selassie I was organized under the minister of justice, and functioned under the supervision of minister of justice. The laws that define the power and function of prosecution office provide for the criteria to be appointed as a prosecutor, which was the requirement of legal knowledge and extensive training in the judicial process and government office and the experience of police officer were a required qualification for the appointment of prosecutor. As discussed above, advocate general, deputy advocate general and other prosecutors was appointed by the Emperor up on the recommendation of minister of justice. However, the ground for removal and terms of the advocate general, deputy advocate general and even the other advocate was not enumerated under any law during the Emperor era. As a result, one can conclude that prosecution institution during the reign of Emperor Haila Selassie was lead by advocate general and deputy advocate general under the instruction of Minister of Justice and hence there was no appropriate legal and institutional framework safeguarding the independent and autonomous function of prosecution office.

3.1.1.2. Prosecution office during the Dergue Regime

When we assess the organization and structure of prosecution office during the Dergue regime, the regime automatically enacted special military court to deal with war crimes committed by the military force.²⁰⁵ Regarding ordinary or regular prosecutor, the first proclamation enacted by the provisional military administrative council was Proclamation No.53/1975 that put the administration of judges, prosecutors and registrars under the judicial administration commission.²⁰⁶ This proclamation was enacted in cognizant of that, the function and duties of judges, prosecutors and registrars in administration of justice were closely related and hence by

²⁰⁴ Ibid., at art 44 &45

²⁰⁵ Proclamation No 7/1974. This proclamation under its art 16 and 17 declares the powers and duties of the public prosecutors of special military court. They were empowered to open criminal file of military nature and stated that public prosecutor of special court was appointed by the governor of the time.

²⁰⁶ Judicial administration commission re-establishment proclamation no. 53/1975. The preamble of proclamation provides that in the administration of justice the functions and duties of judges, public prosecutors and registrars are closely related and hence it is convenient to place the administration of these institutions under the judicial administration commission.

believing that it was appropriate to place the administration of these bodies under the judicial administration commission.²⁰⁷ As a result, the public prosecutor was made to be part of the judicial organ of the government under the minister of justice.

Three kinds of appointment were identified by the proclamation. Accordingly, the attorney general, the president of the Supreme Court, and the president of the high court were appointed and dismissed from their position by the head of the state up on the recommendation of the minister of justice.²⁰⁸ The appointment of the Supreme Court and high court judges were done by the head of the state up on the recommendation of the judicial administration council and the appointment of all other judges, prosecutors and registrars were carried out by the judicial administration commission.²⁰⁹

The judicial administration commission organized from the minister of justice who was the chair person of the commission, the president of the Supreme Court, the permanent secretary of minister of justice, the president of the high court, the attorney general, the high commissioner of the central personnel agency and three persons appointed by the head of the state.²¹⁰

Furthermore, the proclamation stipulated qualification for the appointment as judge, prosecutor and registrar.²¹¹ Accordingly, in order to be appointed as prosecutor, one should have distinguished himself by his diligence; loyalty, and good moral character, he should possess a sound knowledge of law or should have judicial experience and to be free from offence of a dishonorable nature.²¹²

The most important land mark in the institutional development of prosecution office in Ethiopia came in to picture with the adoption of the 1987 Constitution of the People's Democratic Republic of Ethiopia (PDRE).²¹³ This Constitution for the first time in the history of the country gave constitutional recognition for the office of public prosecutor. Chapter 15 of the constitution

²⁰⁷ The preamble of proclamation No.53/1975, According to this proclamation, prosecutor was clearly defined as prosecutor of the minister of justice and not of the military court.

²⁰⁸ Ibid., at art 8

²⁰⁹ Ibid

²¹⁰ Ibid., at art 4(2)

²¹¹ Ibid., at art 9 (1)&(2)

²¹² Ibid

²¹³ Proclamation of the Constitution of the People's Democratic Republic of Ethiopia, Proclamation No 1 of Sept 12, 1987

established the Office of the Prosecutor General. The former name of “Attorney general” was replaced by “procurator general”.²¹⁴

The Office was responsible for ensuring the uniform application and enforcement of law by all state organs, mass organizations, and other bodies. The Prosecutor General was made to be elected by the National Shengo for a five year term. He was responsible for appointing and supervising prosecutors at all levels. In carrying out their responsibilities, these officials were independent of local government offices. Following the coming into force of the constitution National Shengo, the supreme organ of state power of the regime enacted prosecutors’ office proclamation no.11/1987 so as to define the power, function and organization of prosecution office. Regarding the organization and administration of procuratorial office, the office was headed by the procurator general and shall consist of the office of the procurator general, the office of military procurator, the office of regional procurator, the office of the provincial procurator, and other office to be established by law as may be necessary.²¹⁵ These offices were declared to be unified and centralized leadership of prosecution office and as a result, the accountability of subordinate prosecutors shall be to the prosecutors immediately their superior and not to the regional organ of state power.²¹⁶

According to this proclamation, the primary objective of prosecutor’s office was recognizing the legality of socialist values, respecting the political system of the regime and the rights and freedoms of peoples, ensuring and following the uniform enforcement of laws and administration of justice, to educate organs of the state to ensure the uniform application of the law of the Republic.²¹⁷ The proclamation elaborates the accountability and election of the procurator general. Accordingly, the procurator general shall be elected by the National Shengo up on presentation by the President of the Republic and the accountability of procurator general was made to the National Shango and between the sessions of the National Shengo he shall be accountable to the council of state and to the president.²¹⁸

²¹⁴Many countries following socialist ideology named the head of prosecution office as procurator general which was trace back to the Soviet Union name for the head of prosecution office given in the 18th century by Peter the great and hence as Ethiopia under the dergue regime following socialist ideology she adopted this name in the same manner.

²¹⁵ Art 3 of proclamation no. 11/1987 a proclamation to establish the procuratorial office of the people’s Democratic Republic of Ethiopia

²¹⁶Ibid., at art 22

²¹⁷ Ibid., at art 4

²¹⁸ Ibid., at art 5

The appointment and accountability of other prosecutor was changed from the judicial commission to the procurator general and hence other assistant procurators general and procurators shall be appointed by procurator general and accountable to him.²¹⁹ The new development under this proclamation was that the terms of office of the procurator general and all lower ranking procurators declared to be that of the national shango which was five years terms of office as stated in the constitution.²²⁰

Regarding the qualification for the appointment of the prosecutor, all criteria stipulated under proclamation no 53/1975 was continued to serve as qualification criteria but proclamation no. 11/1987 add Ethiopia citizen as additional criteria.²²¹ The proclamation elaborates extensive power and duties of prosecutor's office. Accordingly, the office was mandated to ensuring the uniform application of laws, supervise criminal investigation, follow up legality of judgments of the court, supervising the legality of any imprisonment or detention, ensuring law and order by prevention of the commission of crime, study the causes of crimes and devise ways and means of crime prevention. Furthermore, the office was empowered to institute criminal charges or intervene at any stage of the proceedings of such suit before the competent courts or other judicial bodies where the rights and interests of the public and of the government so require, represent criminal victims who are unable to institute and pursue their civil suits before the courts, issue search warrants and decides on the petition of the people etc.²²²

As stated above, the criminal procedure code (CPC) provides that any compliant is to be entitled to apply to the court for an order that the public prosecutor shall institute proceedings.²²³ However, this has been changed by Proclamation 11/87 that gives the complainant the right to lodge applications with the superior authority of the public prosecution service (PPS), and hence not directly to the court.²²⁴

Thus, evaluating the legal and institutional framework of prosecution office during the Dergue regime, the office of procurator general was constitutionally established institution where its autonomy was constitutionally safeguarded and accountable the National Shengo. However, the

²¹⁹ Ibid., at art 6(3)& art 7(1)

²²⁰ Supra note 212

²²¹ Id., at art 9

²²² Ibid., at art 10

²²³ Supra note 204

²²⁴ Art 23 of proclamation no. 11/1987

ground for removal of the procurator general was not mentioned either in the constitution or in the ordinary proclamation.

3.1.1.3. Prosecution Office under the EPRDF Regime.

This section explore the institutional and legal framework of prosecution office from the transitional period charter to the current FDRE constitution that usher new era in the history of the country by introducing the federal form of government where the constitution established nine regional states as a self governing entity.²²⁵ Therefore, the following section is devoted to discuss the institutional and legal frame work of prosecution office under the EPRDF regime.

After the downfall of Military rule, the Translational government enacted proclamation No.7/1992 a proclamation that established a National Regional Self government of Ethiopia.²²⁶ This proclamation established self governments of transitional regional states. As a result of such establishment, to realize the status of their self governance, every National/Regional Transitional government was declared to have about seven (7) organs of the government.²²⁷

Public prosecution office was one of such organs of government established both at central and regional government level to perform duties to be specifically assigned to it by law.²²⁸ Despite the establishment of the office, the proclamation did not identify who was the head of prosecution office, and simply stated that the head of prosecution office to direct the prosecution office of the National/Regional Transitional Self government and made the accountability of prosecution office to the national or regional transitional council.²²⁹ At woreda level in the same manner, the woreda prosecution office was established as one of the organs of the government and the selection and appointment of the head of prosecution office was declared to be carried out by the wereda council.²³⁰

²²⁵ Art 47 of FDRE constitution

²²⁶ Proclamation No 7/1992, A Proclamation to Provide for the Establishment of the National/Regional Self-Government

²²⁷ *Ibid.*, at art 8. The seven organs of government established were a National/ regional council, a National/regional Executive committee, a judicial organ, a public prosecution office, an Audit and control office, a police and security office and a service and development committee.

²²⁸ *Ibid.*, at art 8&31.

²²⁹ *Ibid.*, at art 32

²³⁰ Art 39& 43(e) (2) of proclamation No.7/1992 By virtue of this proclamation the unified and centralized chain of prosecution office become decentralized and the appointment and dismissal of prosecutors was declared to be carried out by the then transitional council of respective of the woreda. In this case the appointment and dismissal of other prosecutors was not stated in the proclamation.

The first law enacted by the transitional government that established the office of Attorney general was proclamation No.39/1993 that provides for the establishment of the office of the central Attorney general of the transitional government of Ethiopia.²³¹ The office of this central attorney was specifically established with a view to ensure the observance of the rights and freedoms of individual, nations nationalities and peoples laid down in the transitional period charter and thereby to strengthen the transition to democratic governance in Ethiopia.²³² According to this proclamation, prosecution office is headed by central attorney general and deputy central attorney general.²³³ The proclamation among other things enumerates the organization and administration of the attorney, appointment and accountability of attorney general and other attorney, and the powers and duties of attorney general.

To begin from the organization and administration of central attorney of the transitional period, the office of central attorney general and deputy central attorney general consists of the central office the attorney general, the office central regional attorney, the office of central zonal attorney, and other office of central attorney to be established by law as necessary²³⁴

Regarding the appointment of central attorney general and deputy central attorney general, both were appointed by the transitional council of representative up on presentation by the transitional president.²³⁵ However, there was no required qualification and criteria provided by the proclamation in order to be appointed as attorney general and deputy attorney general. Thus the transitional period president was at liberty to nominate the attorney general and deputy attorney general of the transitional period without any precondition of qualification criteria such as the requirement of legal knowledge and judicial experience which are an important component of prosecutorial competence.

The accountability of the central attorney general was made to the transitional council of representative and to the transitional period president and the accountability of other attorney according to their hierarchy was to superior attorney and not to other organs of state power.²³⁶

This was clearly aimed to ensure the unified and centralized leadership in the organization and

²³¹ Art 3 of proclamation no. 39/1993 provides for the establishment of the office of the central attorney general.

²³² Preamble of proclamation No. 39/1993

²³³ This proclamation renames the previous office of the procurator general as the office of attorney general which was used during the reign of emperor Haila sellase.

²³⁴ Art 4 of proclamation No.39/1993

²³⁵ Ibid., at art 6

²³⁶ Ibid., at art 18.

administration of prosecution office. As a result of such unified and centralized leadership, any person who has a grievance on the decision of subordinate prosecutor shall have the right to make petition to the higher prosecutor or attorney where the higher prosecutor was empowered to revise the decision of subordinate prosecutor which has a binding effect on the subordinate prosecutor.²³⁷

Owing to the powers and duties of attorney general, the attorney general among other things was responsible for the organizational principle of the office, prepare a budget of the office and submit it to the council of representative for its approval, to initiate criminal proceeding in the court of law and to intervene in civil proceeding on behalf of the government when public interest so requires.²³⁸

Subsequently, the transitional governments of Ethiopia were enacted proclamation no. 41/1993 so as to define the powers and duties of the executive organs of the central and regional government of Ethiopia in which the minister of justice was established as one part of executive branch of government.²³⁹ Among the powers and duties of the minister of justice enumerated under this proclamation were; to assist the preparation of draft law and to give advisory opinion on legal matter to the government when so requested, undertake the codification of law and its consolidation, to give legal education to the mass using different mass media, to organize training program for judges and to issue license to advocates.²⁴⁰

Later on the transitional period government enacted proclamation no. 73/1993 so as to amended article 23 of proclamation no. 41/1993 a provision that define the scope of power of the minister of justice. The rational for the amendment was to merge the function of central office of the attorney general/prosecution office with that of the minister of justice with a promise to create strong law enforcement organ compatible with the existing government structure.²⁴¹ As a result of such merger, the minister of justice is mandated to exercise those powers and duties mandated

²³⁷ Ibid., at art 19, 20 and 21

²³⁸ Ibid., at art 16

²³⁹ Art 3(19) of proclamation no. 41/1993 establish minister of justice as one of the executive wing of the government mandated to assist the preparation of draft law, under take codification of law, legal research, give legal education issue license to advocate etc. see art 23 of the proclamation.

²⁴⁰ Ibid., at art 23

²⁴¹ See Preamble of proclamation no. 73/1993

to the office of central attorney general of the transitional period entrusted to it by proclamation no. 39/1993.

Thus, the Minister of Justice since then mandated to exercise both political and judicial function simultaneously as member of the cabinet to play advisory role on legal matters to the government and responsible for the administration and adjudication of criminal matters on criminal cases falling under the jurisdiction of the transitional central government of Ethiopia.²⁴² However, though the Minister of Justice is empowered to exercise prosecution powers which was the power of central attorney general entrusted to it under proclamation no.39/1993, proclamation no.73/1993 that amend the powers and duties of minister of justice did not expressly repealed proclamation no. 39/1993.

Proclamation No. 39/1993 that established the office of central attorney general of the transitional period was expressly repealed by proclamation No.74/1993 a proclamation that was enacted on the same date with proclamation no. 73/1993. Both proclamations were enacted on the same date October 22nd 1993. Proclamation No.74/1993 which is still in operation is the landmark proclamation in the history of prosecution office in Ethiopia in that it expressly merged the office of the attorney general that existed since the time of emperor Haile sellase to the enactment of proclamation No.39/1993 with the minister of justice, and the minister of justice which is one of the executive branch of government established by proclamation No. 41/1993 declared to become the head of the Attorney.²⁴³

As stated above, though the merger of the office of central attorney general with the Minister of Justice was motivated to build strong prosecutor authority compatible with the existing government, the hidden motive of the government is seems to control the administration of criminal justice through politically appointed person. The philosophy of the merger of political function of prosecution office with judicial function is the result of the current state and party merger where government is designed to occupy and control all public office through party channel. Thus, the powers and duties of the office of central attorney general that was already tacitly transferred to the minister of Justice by virtue of proclamation no. 73/1993 was expressly

²⁴² Ibid., at art 2

²⁴³ Supra note 12 at art 3

again transferred to the minister of justice by proclamation no. 74/1993.²⁴⁴ Thus, vesting both political and judicial function on the same person that is the minister of justice would open a room for prosecuting and neutralizing political opponents through the institution of justice which endanger the multi party system that could be a genuine base for rule of law and democratic governance. Some political opponents blamed the ruling party as:

*“Instead of laying the foundation for a just, inclusive, and democratic society, the current government has chosen to use the law and institutions of justice to annihilate the very juridical conditions necessary to cultivate those values. They do this in several high profile trials, ranging from the Red Terror Trials (against members of the military dictatorship) to the recent conviction of journalists and opposition party members of the CUD post 2005 election like Burtukan Midaksa Andualem Arage and Eskinder Nega and the terrorism trials of several Oromo political leaders like Bekele Garba, Olbana Lelisa and Taye Dida as to the member of OLF”*²⁴⁵

In the same fashion, some international human rights activists also accuse the government not to take steps to prosecute or otherwise punish officials who committed abuses of powers.²⁴⁶ In its November 2010 report, the UN Committee against Torture noted that there were “numerous and consistent reports” about the government’s “persistent failure” to investigate allegations of torture and prosecute perpetrators, including Ethiopian National Defense Force (ENDF) or police commanders.²⁴⁷ The Committee moreover noted the absence of information on cases in which soldiers and police or prison officers were prosecuted, sentenced, or subjected to disciplinary sanctions for acts of torture or mistreatment. As things stand now, ministry of justice is not free from political influence and hence not in a position to ensure the observance of the law because of the absence of demarcation between executive and judicial functions of the minister of justice.²⁴⁸ Thus, using criminal prosecution as tool for suppression is the characteristic of

²⁴⁴ Ibid., at art 3

²⁴⁵ Politics of Ethiopia, Critics and analysis Accessed at <http://awolallo.wordpress.com/> on December 28, 2013 at 10:01 AM

²⁴⁶ Country Reports on Human Rights Practices for 2011 United States Department of State • Bureau of Democracy, Human Rights and Labor at p. 2

²⁴⁷ Ibid at p. 5

²⁴⁸ Ethio-Mahedar News paper published in on 22 May 2013 at page 2.

totalitarian states or modern dictatorships which endangers rule of law and democratic governance.

Back to the point, since the enactment of proclamation No 74/1993 the name of attorney general arguably deleted from legal texts because of the absence of clear law as to who is the attorney general under the current legal regime of Ethiopia.²⁴⁹ Proclamation no 74/1993 which is still in force only talks about the appointment of deputy attorney general and other attorneys.²⁵⁰ Thus, nothing is stated in this proclamation about who and the manner of the appointment of attorney general. Despite the absence of clear law as to who is the attorney general, one can argue that the minister of justice can be considered as the attorney general because the minister is declared in the proclamation to be the head of the attorney.²⁵¹

Thus, minister of justice as head of the attorney represent central government in criminal cases falling under the jurisdiction of central courts and any civil or criminal cases concerning the central government.²⁵² As the ultimate superior of all prosecutors, the Minister may thus initiate a specific criminal investigation or stop another. He has also the authority to reverse or to dismiss a pending case or decision of a prosecutor where any person, who is not satisfied with the decision of a subordinate Attorney and made petition to the minister being the ministers, is hierarchically the highest authority.²⁵³ Thus, the minister who is not an expert in criminal law is empowered to take precedence over the decision of prosecutor.

As the minister of justice is appointed by the House of Peoples Representative (HPR) without any criteria as any minister up on presentation by the prime minister, such political appointment allow non lawyer who is not an expert in criminal justice and have no judicial experience could have take precedence over the prosecution office. This is a case in point where Mr. Berhan Hailu who was not an expert in criminal justice and has no judicial experience in the administration of criminal law was appointed as the minister of justice and served from 2008-2013. As his profile shows, he was Zone Administrator; Head of Amhara Region Health Bureau and Amhara Region

²⁴⁹Supra note 17. Professor Tilahun Teshome in his article has argued that because of the merger of the office of attorney with minister of justice, at least legally speaking it is unclear as to who is the attorney general under the organization of prosecution office in Ethiopia.

²⁵⁰Supra note 12., at art 4

²⁵¹ Ibid., at art 3

²⁵² Ibid., at art 8

²⁵³ Ibid., at art 9

Cabinet member; Head of Ethiopia Radio and Television Agency (? – 2005); Minister of Information (2005-2008); and later appointed as Minister of Justice (2008-2013); Member of House of People’s Representatives (2010 – now).²⁵⁴ Thus as can be understood from his profile, he has no judicial experience as well as not an expert in criminal law but lead minister of justice just for about five years.

Owing to the appointment of deputy attorney general, his/her appointment is unilaterally vested on the prime Minister without any legal requirement and restriction and hence it is up to the prime minister to appoint a lawyer or non lawyer as deputy attorney general of the minister of justice. This has an implication that as the minister of justice is mandated by the law to initiate the investigation and prosecution of the crime as well as to continue or discontinue same²⁵⁵, it is tantamount to empowering a non lawyer to dismiss or reverse the decision of the public prosecutors who is appointed based on professional competency where such person is nominated and appointed by the prime minister.

Despite the absence of clear that provides for the qualification criteria for the appointment of deputy attorney general and the ground for dismissal of same that counterbalance the unilateral discretion of the prime minister in the appointment and dismissal of the deputy attorney general, there is no terms of office of the deputy attorney general that safeguard the autonomous and stable function of the deputy attorney general. Thus, from the foregoing discussion one can grasp that for the appointment of both attorney general and deputy attorney general, there is no legislative framework that provides for any criteria like the requirement of legal knowledge and judicial experience which are important components for the competent administration of criminal justice that could be a genuine base for rule of law and good governance. Surprisingly, let alone the prosecution of crime which ultimately demands the competent knowledge of law and extensive experience particularly criminal law and its jurisprudence, even providing advisory opinion as political organ on legal matters to the government requires elevated level of

²⁵⁴ Accessed on January 02 2014 at 3:00 PM <http://danielberhane.com/2010/10/12/whos-who-in-the-new-cabinet>

²⁵⁵ See art 23(4) of proclamation No. 4/1995 and proclamation no. 691/2010 enacted to define and reorganize the executive organ of the Federal government of Ethiopia.

competence of the law and its jurisprudence. Thus, in the absence of appropriate legislative framework in the appointment and dismissal of both attorney general and deputy attorney general coupled with the absence of the guarantee of terms office safeguarded to same is inconsistent with the promise of establishing strong prosecutorial authority and hence such promise remain a mere wish.

Regarding the appointment of other prosecutors, the mandate of appointing other prosecutor is vested on the minister of justice.²⁵⁶ The qualification criteria for the appointment of other prosecutors, the proclamation (proclamation no.74/1993) provides that an Ethiopian who is loyal to the transitional period charter, who is either trained in law or has acquired broad legal skills through experience, has good reputation for his diligence, integrity, sense of justice, and good conduct can be appointed as prosecutors.²⁵⁷ Owing to the qualification for the appointment of prosecutors this proclamation came up with a new idea that to be appointed as prosecutors one has to declare his asset and properties and take an oath before assuming office.²⁵⁸ This declaration is aimed to avoid the corrupt behavior of the prosecutors from enriching themselves using the status of prosecutors.

Owing to the accountability of the attorney, the Minister of justice is declared to be the head of the attorney and hence exercises final authority over prosecution office. As a result of such position, the accountability of attorney was declared to be made to the minister of justice.²⁵⁹ In this case, there is a question as to the accountability of deputy attorney general. Is the deputy attorney general accountable to the prime Minister by whom he is appointed by or to the head of the institution (minister of justice as the minister of justice is empowered by the law as the head of all attorneys)? Can the minister of justice instruct the deputy attorney general to initiate or decline specific case? Therefore, because of the absence of clear law defining the relationship between the ministers of justice who is the presumed attorney general and the deputy attorney general, the accountability of the deputy attorney general is not legally clarified.

²⁵⁶ Art 4 of proclamation No. 74/1993. In this proclamation the name attorney represent prosecutor and litigant in civil cases under the administration of justice as it is put under the definitional part of the proclamation. See art 2(3) of the proclamation.

²⁵⁷ Ibid., at Art 6

²⁵⁸ Ibid., at art 5(2)

²⁵⁹ Art 5(1) of proclamation No.74/1993 made the accountability of the attorney to the minister of justice

Unlike the 1987 constitution of the people's Democratic Republic of Ethiopia (PDRE) that gave constitutional recognition to an independent and autonomous function of the office of the attorney general, the Federal Democratic Republic of Ethiopia (FDRE) constitution that comprehensively guaranteed human and democratic rights²⁶⁰ of the people of Ethiopia deny constitutional recognition to Attorney general which is corollary to the court in the protection and enforcement of human rights.

The absence of constitutional recognition of the attorney general and the office of attorney general from its inception affect the role and function of the institution in that the government or political body is at liberty to change the status and role of the prosecution institution through ordinary legislation as the amendment of the proclamation simply requires the vote of the majority in the parliament.²⁶¹

Since the enactment of the FDRE constitution, the powers and duties of the minister of justice were enumerated under proclamation no.4/1995.²⁶² Among the powers and duties entrusted to the ministry of justice are to be the chief advisor to the Federal government on legal matters, to represent the federal government on criminal matters falling under the jurisdiction of federal court, as the superior authority, direct and supervise, the Federal police force and prison administration. Furthermore, the minister of Justice instruct the police for investigation of crime where it believes that a crime falling under the jurisdiction of the Federal courts has been committed and order the discontinuance of same or instruct for further investigation on good cause and also register in cooperation with other concerned organs, non-profit making foreign organizations and trans Regional associations.²⁶³

The powers and duties of minister of justice as illustrated above combined both political and judicial function in that as member of the cabinet, the minister of justice plays advisory role to the federal government on legal matters and as judicial function order the investigation and prosecution of the crime where it believes that the crime has been committed or discontinue

²⁶⁰ Art 10 of FDRE constitution provides for human and democratic rights.

²⁶¹ The amendment of any constitution follows stringent procedure for its amendment while the amendment proclamation requires the vote of majority in the parliament. See article 105 of the FDRE constitution that provides stringent procedure for its amendment.

²⁶² Proclamation no. 4/1995, a proclamation to define the power and duties of the executive organs of the Federal government of Ethiopia

²⁶³ See art 23 of proclamation no.4/1995

same for good cause respectively. Thus, there is a conflict of interest between the professional responsibility of attorney general as a law officer and the partisan political consideration as members of the cabinet as a primary legal advisor to the ruling government and as a result of such conflict prosecutions may usually be used as pacifying and discouraging political opponents to the regime on power as criticized and blamed by some political opponents and international human rights activists as briefly discussed above.²⁶⁴

Thus, the absence of constitutional recognition of attorney general coupled with the absence of any appropriate qualification criteria for the appointment and removal of the attorney general and deputy attorney general as well as the merger of prosecution office with that of minister of justice which is a political body affect an independent and autonomous function of prosecution office which could be a genuine base for rule of law and democratic governance. Comparing legal and institutional framework of the current prosecution office in Ethiopia in light of the various international and regional instruments and the experience of some selected countries discussed in chapter two of this paper, Ethiopian prosecution office lacks appropriate legal and institutional frameworks for its autonomous and independent function in general and the neutral application of criminal justice in particular.

Thus, in the absence of appropriate legal and institutional framework to prosecution office for its autonomous and independent function, a person in charge of prosecution institution would be inclined to serve the interest of political body in power rather than the interest of justice so as to secure confidence from political body to stay on position or for re-appointment. Such arrangement in the opinion of the writer would affect democratic governance and rule of law which presupposes a strong prosecutorial authority mandated to investigate and prosecute criminal offences with objectivity and impartiality as set out under the UN guidelines on the role of prosecutors.²⁶⁵

As the independence of a prosecution service flows from the independence of the Attorney General to be free, in the decision-making process, from the partisan political pressures of the day, the absence of any criteria for the appointment and removal ground from the position as well as statutory guarantee of security of tenure to the attorney general and deputy attorney under

²⁶⁴ Etannibi E O Alemika(2009): prosecution in Sierra Leone, Tanzania and Zambia at p.2

²⁶⁵ Supra note 6 at guideline 4

the current legal regime of Ethiopia give unfettered discretion in appointing and removing prosecutor general from his position which resulted in politically motivated appointment and removal of the attorney general. Thus, prosecution office in Ethiopia failed to secure appropriate institutional and legal framework for its autonomous and independent function in the democratic era.

CHAPTER FOUR

Prosecution Office in the Oromia National Regional State

4.1. Introduction

This chapter is embarking on a brief discussion of the legal and institutional frameworks for prosecution office in the ONRS. As the criminal justice system plays a key role in safeguarding the rule of law, it is the standard of democratic rule to adopt effective measures to enable prosecution institution in the administration of criminal justice to fulfill their professional duties and responsibilities under adequate legal and organizational conditions and with appropriate means, particularly budgetary means, at their disposal.²⁶⁶

Within the above framework, the chapter aimed to analysis the legal and institutional frameworks in place that have established prosecution office in the ONRS. Accordingly, it investigates whether the normative frameworks in place allow an independent and autonomous function of prosecution office that could be a genuine base for democratic governance and rule of law. As the focus of the study is on legislation and its practice, the study is aimed to evaluate both legislation and its practice. Thus, this chapter is mainly embarking on discussing evolution of prosecution office, legal and institutional frameworks of prosecution office, organizational principle of prosecution office, the appointment and removal of the prosecutor general and the accountability of prosecution office in comparative perspective will be analyzed.

4.2. Back ground of Oromia National Regional state.

Before I delve in to the evaluation of prosecution office in the ONRS, first it is better to have background information about the ONRS. Accordingly, the establishment of the Oromia National Regional State is traced back to the adoption of the Transitional Period Charter which affirmed the right of Nations, Nationalities and Peoples of Ethiopia to self determination.²⁶⁷ As a result of the adoption of the Transitional Period Charter, each Nation, Nationality and Peoples in Ethiopia was granted the right to administer its own affairs within its own defined territories and

²⁶⁶ Antonio Mura(2013):18th IAP Conference - Plenary 4: “Essential ethical standards for prosecutors – How to assure integrity” Council of Europe Standards on Public Prosecutors Moscow (Russia), 12th September 2013

²⁶⁷ Art 2 of the transitional period charter of Ethiopia.

to participate in the central government on the basis of fair and proper representation.²⁶⁸ In order to ensure the self governing status of Nation's Nationalities and Peoples of Ethiopia, the Transitional Government enacted proclamation no.7/1992, a proclamation to provide for the establishment of National/Regional self government and hence the Transitional government of the Oromia national regional state was emerged.²⁶⁹ Currently, among the nine regional governments established pursuant to the FDRE Constitution,²⁷⁰ the ONRS is one of the largest states that constitute around 34.3% of the country's total area.²⁷¹

The ONRS enacted its interim constitution as a self government entity in 1993²⁷² and adopted its first Regional State Constitution in 1995 which was later amended in 2001.²⁷³ Currently, the Regional state structures are organized hierarchically into four tiers of administrations, namely the regional government, zonal, wereda and kebele administration.²⁷⁴ The region is divided into 18 zones and 265 rural districts, 39 Municipality administrations and over 6432 rural and 482 urban kebele administrations.²⁷⁵

4.3. The legal frameworks of prosecution office ONRS.

The Transitional period proclamation no.7/1992 that established the Transitional self government region/ states of Ethiopia declared that every National/Regional Transitional self government as a self government entity was declared to have about seven (7) organs of government of which a public prosecution office was declared to be one of such organs of government.²⁷⁶ In the same fashion, the evolution of prosecution office in the ONRS is traced back to the constitution of transitional self government period of Oromia.²⁷⁷ Accordingly, the transitional period constitution provides for the establishment of an independent prosecution office with a single chain of command from the region to the woreda administration level.²⁷⁸ This Transitional period

²⁶⁸ Ibid, at art 2(b)

²⁶⁹ Art 3(9) of proclamation no.7/1992 a proclamation to provide for the establishment of National/Regional self government

²⁷⁰ Art 47(1) of FDRE constitution

²⁷¹ 2007 Population and Housing Census of Ethiopia

²⁷² Proclamation no.2/1993 Oromiya National/ Regional Transitional self government Constitution

²⁷³ The 2001 revised constitution of Oromia National Regional state constitution

²⁷⁴ Ibid., at art 45

²⁷⁵ Oromia National Regional state profile accessed at <http://www.pcdp.gov.et/oromiyaregionalprofile.pdf> p.2 accessed on January 15, 2014 at 3:00 PM

²⁷⁶ Supra note 226 at art 8(1)(d) .

²⁷⁷ Supra note 271 at Art 54 ,

²⁷⁸ Ibid

constitutions interestingly not only provide for the establishment of public prosecution but also guaranteed complete independence to the public prosecutors in carrying out their function.²⁷⁹

Consequently, the Transitional self government of Oromia enacted proclamation no 5/1994 to establish the executive organs of the National Transitional self government of Oromia.²⁸⁰ Under this proclamation, Justice Bureau was to be merged with the office of the attorney of Oromia which was an independent office and the Supreme Court and the powers and duties of the justice bureau to be exercised by the office of the attorney or the supreme court of Oromia as may be necessary.²⁸¹ Thus, the mandate of the justice bureau during this time was at cross road either to be exercised by the office of attorney general or the supreme court of Oromia. Despite such stipulation, the powers and duties of the justice Bureau at that time was not clarified by any legislation that is either to be exercised by the office of the attorney or the supreme court of Oromia.

To maintain the full independence of the office of central attorneys general of the Transitional period, the Transitional self government of Oromia enacted the first proclamation to provide for the establishment of the office of the attorney of Oromia.²⁸² The office of the attorney, according to the proclamation was headed by the attorney general and organized as the office of attorney general at the region, the office of zonal attorney, the office of woreda attorney and other office of attorney to be established as may be necessary.²⁸³

The proclamation, furthermore, provides for the appointment and accountability of the office of attorney general.²⁸⁴ Accordingly, attorney general and deputy attorney general was declared to be appointed by the Transitional period council up on nomination by the president of the council.²⁸⁵ However, there are no qualifications criteria for the appointment and dismissal of both attorney general and deputy attorney general as well as no security of tenure was granted to the same. Regarding the accountability of the office of attorney general, attorney general was declared to be accountable to the council of representative and between session, to executive committee and

²⁷⁹ Ibid

²⁸⁰ Proclamation no.5/1994 a proclamation to establish the executive organs of the transitional self government of Oromia

²⁸¹ Ibid., at Art 5

²⁸² Art 3 of proclamation no. 6/1994 provides for the establishment of the office of the attorney of Oromia

²⁸³ Ibid., at art 5

²⁸⁴ Ibid., at art 6

²⁸⁵ Ibid

the president of the council.²⁸⁶ The accountability of deputy attorney general was made to the attorney general.

Owing to the appointment and accountability of other attorneys, they were appointed by the council of representative at various levels up on presentation by the attorney general.²⁸⁷ Thus, there was no prosecutor council established for the appointment of the other attorneys. All attorneys were made accountable to the attorney general, to his immediate superior and to the council at each level and hence there was both horizontal and vertical accountability of the attorney which means to their immediate boss and to the state and woreda council.²⁸⁸ Furthermore, the proclamation enumerates a qualification criterion for one has to be appointed as an attorney. Accordingly, any person who is to be appointed as an attorney is either to be trained in law or gained broad legal skill through experience, good reputation, diligent, has not been convicted with criminal offence, is an Ethiopian, has knowledge of working language of the self government (Afaan Oromo) and should attain 21 years of age.²⁸⁹

The most important development undertaken by the proclamation was that the proclamation clearly granted complete independence to the attorney and shall made to be guided by no other authority than that of the law.²⁹⁰ The office was organized as unified and centralized leadership from the region to the woreda level. Moreover, it provides for immunity of the attorney which provides that no attorney shall be arrested without the permission of attorney general and the council of self government saves in case when caught committing flagrante delicto.²⁹¹

The office of attorney general was entrusted with both quasi-judicial and political function that ranges from supervision over investigation organ and prison administration to prosecution and withdrawal of criminal case to advise the council of the region, executive committee and president of the region on legal matters.²⁹² However, the participation of attorney general in the meeting of the council was as non voting members as may be necessary. As the 1993 interim constitution of the self government of Oromia was a base for the enactment of the 1995 constitution of the regional state of Oromia, the latter Constitution has denied Constitutional

²⁸⁶ Ibid., at art 6(2)

²⁸⁷ Ibid., at art 7(1)

²⁸⁸ Ibid., at art 7(2)

²⁸⁹ Ibid., at art 8

²⁹⁰ Ibid., at art 9

²⁹¹ Ibid., at Art 9(3)

²⁹² Ibid., at Art 11, 12, and 18

recognition to the office of attorney general. Accordingly, the 1995 Constitution of Oromia National Regional State established three organs of government namely, the legislative, executive and judicial branch of government.²⁹³ As a result of the merger with the executive organ of the government, the office of attorney general was denied constitutional recognition.

The UN Office on Drug and crime in collaboration with international association of prosecutor argued that, the Constitution should contain provisions describing the general frameworks of who is responsible for the prosecution of criminal cases, in what branch of government that authority resides and the prosecutorial function as well as the allocation of prosecutorial resources.²⁹⁴ Having constitutional background protects the institution from changing the role and status prosecution institution by the government through the promulgation of ordinary proclamation. Having the above discussion in mind, the following discussion will present the practical challenges faced prosecution institution through ordinary act of the parliament in the ONRS.

A proclamation no. 7/1995 was enacted based on the 1995 Constitution so as to define the powers and duties of the executive organ of the regional state of Oromia.²⁹⁵ Pursuant to this proclamation, the office of central attorney general was dissolved and became merged with one of the executive organs of the regional government that is under the administration of justice Affairs Bureau²⁹⁶ The Justice Affairs Bureau was established as one of the executive organs of government which consists of three departments under it namely, prosecution department, the police commission and the prison administration of the region.²⁹⁷ As a result of such merger, an independent prosecution office which was constitutional officer during the transitional period is merged with the executive organs of the government and automatically reduced to departmental status under strong arm of the executive body. This was the beginning of merging the political and quasi-judicial function of prosecution office in the Oromia National Regional state where a politically appointed person takes superiority over prosecution office.

²⁹³ Art 46 of the 1995 constitution of Oromia

²⁹⁴ United Nations Office On Drugs And Crime Vienna(2006): Access To Justice The Prosecution Service Criminal Justice Assessment Toolkit

²⁹⁵ Proclamation no. 7/1995, a proclamation enacted to define the powers and duties of the Oromia Regional state executive organ

²⁹⁶ Ibid., at art 5(e).

²⁹⁷ Ibid.

The rationale for merging the office of central attorney with the police and prison administration was the assumption that the nature and the volume of work of some executive organs are the same and for the proper utilization of manpower and material resource.²⁹⁸ Unlike its Federal counterpart that merge the office of central attorney general with the minister of justice with the promise to establish and build strong prosecutorial authority, the Oromia Regional state merged the office of central attorney of the region with the executive organ for the proper utilization of man power and material resource. However, before the enactment of proclamation no.7/1995, there was no law defining the office of attorney general as part executive organ of the region. And hence before the enactment of proclamation no.7/1995, the office of central attorney of the region was an independent organ established by proclamation no.6/1994. Anyway, the rights and obligation of the office of attorney general under proclamation no. 6/1994 was transferred to the Justice Affairs Bureau which was one of the new executive organs established pursuant to proclamation no. 7/1995.²⁹⁹ Since then, prosecution office has been put under strong arm of the executive organs of the government.

Because of such merger, all heads and deputy heads of the regional executive organs to be appointed by the executive committee of the regional government up on nomination by the regional state president and made accountable to the executive committee and the president of the region.³⁰⁰ However, proclamation no. 7/1995 did not clearly repeal proclamation no.6/1995 a proclamation that established an independent office of central attorney, but blindly transferred the powers and duties of central attorney general of the region to the justice affairs Bureau. Paradoxically, despite such merger, regulation no. 31/1995 which was enacted so as to regulate the rights and duties of the prosecutor of the region was enacted based on proclamation no. 6/1994 after the powers and duties of the central attorney general had been transferred to Justice Affairs Bureau. The regulation has been working until it was repealed by regulation no. 161/2005(Ethiopia calendar).

Later on proclamation no. 50/2002 was enacted and repealed proclamation no.7/1995 and established Justice Bureau as one of the executive organs of the regional government of

²⁹⁸Ibid., at Paragraph 3

²⁹⁹Ibid., at art 3(n)

³⁰⁰ Ibid., at art 8

Oromia.³⁰¹ Despite the establishment of Justice Bureau as a separate executive organ of the regional state, the accountability of the Bureau was made to the administration and Justice Affairs' supreme office which was a new coequal executive organ of the regional government.³⁰²

Meanwhile, proclamation no. 50/2002 was amended by proclamation no. 87/2004. This later proclamation dissolved Justice Bureau and merged it with security Bureau and renamed it as Justice and security Bureau as one of the executive organ of the regional government.³⁰³ Justice and security Bureau was established as one of the members of administrative council of the region from the region to the woreda level.³⁰⁴ As members of executive and regional administrative council, the head of Justice and security office were made to be appointed by Caffee(council of representative) up on presentation by the president of the region and the vice heads were to be appointed by the regional administrative council up on presentation by the president of the region.³⁰⁵

The head of Justice and Security Bureau at zone and woreda level was made to be appointed by the zone administrator and woreda administrator respectively.³⁰⁶ As a result of such merger, the head of security bureau from the region to the woreda level exercise and lead prosecution institution without any professional qualification and empowered to instruct and lead prosecutors. However, the appointment of the head of the woreda and zone Justice office was the mandate of the council of prosecutor of the region by virtue of regulation no.31/1995.³⁰⁷ As stated above, this regulation was enacted based on proclamation 6/1994 a proclamation that established an independent office of the central attorney general of the transitional period of Oromia. According to this regulation, the appointment of all attorneys including the head of the attorneys both at woreda and Zone level is the mandate of the council of prosecutors. Thus, against this regulation, the appointment of the head of the woreda and zone justice office was carried out by the administrator at both levels from outside the member of the prosecutor.

³⁰¹ Art 12 (5) and (12) of proclamation no. 50/2002 a proclamation to provide for the reorganization and Redefinition of powers and duties of the executive Organs of the Regional State of Oromia

³⁰² Art 14(5) (a) of proclamation no 50/2002 By virtue of this proclamation Justice Bureau, public administration and zonal affairs coordinating office, Neighboring states affairs office, office of the Militia, police commission, and prison administration made accountable to administration and justice affairs supreme office.

³⁰³ Art 13(2) of proclamation no.87/2004 a proclamation to provide for the reorganization and Redefinition of powers and duties of the executive Organs of the Regional State of Oromia

³⁰⁴ Ibid., at art 8(1)(d)

³⁰⁵ Ibid., at art 5

³⁰⁶ Ibid., art 40(7) and 41(5)

³⁰⁷ Art 10(3) of Regulation No.31/1995, Regulation of the Oromia regional state prosecutors

Proclamation no. 105/2005 soon enacted and repealed proclamation no.87/2004 and detached the Oromia Justice Bureau from the administration and security bureau.³⁰⁸ Since then, Justice Bureau becomes re-established as one of the independent executive organ of government. As a result of such separation, the powers and duty of the Bureau was enumerated under proclamation no.105/2005 mandated among other things to give legal advice to the council of the region on legal matters, ensure uniform application of law in the region, to prosecute offences falling under the jurisdiction of the regional government, cause criminal investigation when it has a reason to believe that a crime has been committed and to order discontinues of such investigation up on good cause and direct the police to bring witness.

Moreover, the Bureau was mandated to supervise the conduct of crime investigation and follow up the legality of prison administration and where necessary give appropriate direction in case of unlawful detention or imprisonment and to investigate petitions and suggestions brought against the decision of subordinate public prosecutors.³⁰⁹ Again, as a result of such separation, the Bureau became regained the power to appoint the head of both Zone and Woreda Justice Office which was previously appointed by zone and woreda administrator on prosecution office from zonal and woreda justice and security office.³¹⁰

Two years later, this proclamation was also amended by proclamation no. 132/2007, a proclamation to provide for the Reorganization and Redefinition of the powers and duties of the executive organs of the ONRS. One of the rational for such amendment was to provide efficient services for the public and to ensure transparency and accountability and to comply with Business Process Re engineering undertaken in the region.³¹¹

As a result of such amendment, the powers and duties of the justice Bureau was amended particularly with respect to criminal investigation. Accordingly, Justice Bureau was mandated to investigate criminal matters falling under the jurisdiction of state court in collaboration with the police, to institute criminal charge on behave of the government, to withdraw charges where

³⁰⁸ Proclamation no. 105/2005 a proclamation provide for the reorganization of the executive organ of the Oromia National regional state under its art 2 provides for the separate establishment of Justice Bureau as one of the executive organ of the regional government.

³⁰⁹ Ibid., at art 5

³¹⁰ Ibid., at art 2

³¹¹ Preamble of proclamation no.132/2007 a proclamation provide for the reorganization of the executive organ of the Oromia National regional state

necessary and to cause the appearance of witness in collaboration with the police.³¹² A new controversy begun between Justice Bureau and the police commission on the ambit of the word “collaboration with the police” in investigation of crime and the appearance of witness to the court of law. The police started to claim the presence of prosecutor for the investigation of all crimes ranges from petty offence to serious crimes (such as homicide crime) to bring witness and the suspected person to the court of law.³¹³ Thus, Justice Bureau for the first time legally mandated to participate in the investigation of those crimes falling under the jurisdiction of the regional court in collaboration with the police so as to comply with Business Re-engineering undertaken in the region.

Finally proclamation no.162/2011³¹⁴ was enacted and automatically repealed by proclamation no. 163/2011 a proclamation that provides for the reorganization and Redefinition of the powers and duties of the executive organs of the ONRS. As members of executive organ of the regional government, the head of Justice Bureau and Deputy Justice Bureau is appointed by Caffee and by regional administrative council up on presentation by the president of the region respectively without any qualification criteria.³¹⁵ The justice Bureau continued to be one of the executive wings of the government mandated to exercise both political and judicial function of the office which ranges from advisory role on legal matters to the regional government as member of the cabinet and representing the government both on criminal and civil cases falling under the jurisdiction of state courts.³¹⁶

As attempted to assess the legal framework of prosecution office in the ONRS in the above discussion, it lacks constitutional recognition and hence characterized by continuous instability between the tendencies to create independent and moderate prosecution system at one hand during the transitional period, and counter pressure from rulers attempting to impose political hegemony over prosecution institutions at another hand after the adoption of the new constitution since 1995. This is evidenced by the establishment of an independent of office of attorney general that was accountable to the council of representative during the transitional period, and

³¹² Art 16 of proclamation no.132/2007

³¹³ This was a case in point in west Hararge zone where the prosecutor was obliged to bring the suspected person to the high court without professional capacity to handle the suspected person in 2003 Ethiopian calendar.

³¹⁴ Proclamation No.162/2011 automatically repealed without implemented in the region.

³¹⁵ Art 5 of proclamation no.163/2011

³¹⁶ Art 12(8) of proclamation no. 163/2011

later on against this independence, merging of prosecution office with the executive organ of the government which leads to denying constitutional recognition of the office of the attorney which is quite unusual in comparative prospective that indicates the counter pressure from political organ attempting to impose political hegemony over prosecution office which blurred the role of prosecution institution within the executive organ of the government.

4.4. Institutional frameworks of prosecution office.

4.4.1. Organization of public prosecutor office

Currently, the ONRS Justice Bureau is hierarchically organized as justice Bureau at the head office at Finfinne and three head branches office namely, for western Oromia centre at Nekemte, southern Oromia centre at Shashamane and for Eastern Oromia centre at Adama and 19 Zone Justice Office, and 304 woreda Justice Office which are active at all three tier of court namely, State Supreme Court, State High Courts and State First Instance Courts respectively. Recently, there are about 1793 appointed prosecutors in the entire region from the head office to the woreda level.³¹⁷ Thus, the office is hierarchically organized from the Bureau to the woreda level.

The organization of the prosecutors in Oromia is hierarchical where the accountability of the prosecutors is made to their immediate boss.³¹⁸ As discussed above, one of the mandate of justice bureau entrusted to it under proclamation no.163/2011 is to investigate petitions and suggestions brought against the decision of prosecutors given at different levels and to take necessary legal measures so that the prosecutor/attorney general of justice Bureau who is politically appointed based on partisan political consideration rather than his judicial merits and competency hierarchically overrule the decision of the prosecutor on individual case decided from woreda to regional level.³¹⁹ From the experience of the writer of this paper, the attorney general is entertaining individual cases where an application is made to him on the decision of the prosecutor. As the ultimate superior of all attorneys, the attorney general over rules all the decision of prosecutors. As discussed above on the selection and appointment criteria of the attorney general, there are no legislative frameworks that counterbalance the discretionary power of the president in nominating the attorney general of Justice Bureau a person who is lawyer and

³¹⁷ An interview conducted with Mr. Megersa Adunya process owner of human resource management of the justice Bureau on January 24/2014 at 2:00 pm

³¹⁸ Art 8 of proclamation no. 161/2013

³¹⁹ Art 22(22) of proclamation no. 163/2011

judicial experience which enables the attorney general effectively manage the prosecution process in the region. Thus, the current legislative frameworks of prosecution office of the region allows a person who is politically appointed and most probably not an expert in the administration of criminal justice and have no necessary relevant experience in the judiciary to take precedence over the decision of the public prosecutors.

4.4.2. Selection, Appointment and Removal of prosecutor general and public prosecutors

4.4.2.1. Selection, Appointment, and Removal of prosecutor General

This section attempted to assess the appointment and removal of the attorney general of the justice Bureau of the Oromia National Regional state since 2005, the time when justice Bureau was established as a separate independent executive organ of the regional government. The method in which the attorney General is appointed and dismissed from his position plays an important role in safeguarding the correct functioning of the prosecutor's office.³²⁰ As the independence and autonomy of prosecution office begins from the independence of the attorney general, one cannot find any legislative framework providing for the criteria for the appointment and dismissal of attorney general in the ONRS. As any cabinet member, the attorney general is unilaterally nominated by the president of the region and appointed by the council of the region.³²¹

There is no provision of law for some form of technical vetting as to the suitability of candidates for appointment to the post of the Prosecutor General, which was already noted as being the subject of a recommendation of the Venice Commission.³²² In nominating the attorney general, the president is not abide by any criteria such as the requirement of any legal profession and judicial experience of the candidate nominated to be appointed as prosecutor general. As attorney general is responsible for both prosecution service and legal advisor to the government and cabinet members, let alone the prosecution service, advisory opinion on legal matters itself demands elevated levels of competence.³²³ Despite the requirement of such competency, there is no law imposing specific minimum legal and other qualifications like judicial experience for the

³²⁰ Supra note at paragraph 34

³²¹ Supra note 317

³²² Ibid

³²³ Godfrey M MUSILA(2008): The Office of the Attorney General in East Africa: Protecting Public Interest through independent prosecution and Quality Legal Advice

appointment of attorney general. In the same fashion, there is no legal provision stipulating tenure and condition of service of the attorney general and hence the security of tenure of the attorney general is based on the political will of the president of the region which exposes prosecution system vulnerable to political influence and instable leadership. In the absence of security of tenure, the attorney general on power inclined to serve the will of political organ so as to secure confidence from the ruling political party so as to stay on power. Thus, there is no legislative mechanism in place that would ensure the greater stability of the prosecutor general and make him or her independent of current political change.

As the experience Justice Bureau of ONRS shows, because of the absence of any criteria for the appointment and a ground for the removal of the attorney general and the absence of legally guaranteed security of tenure, the institution is not only suffering institutional instability but also leadership instability as evidenced by having four leaders since 2005. Mr. Dawano Kadir relatively the longest appointed lead the institution from (2005-2011) followed by Mr. Yohanis Mitiku appointed for a few months who was a former administrator of West shoa zone become the head of the institution from (October 2011-February 2012) and then Mr. Damoze Mame came from anti corruption commission of the region appointed from (March 2012-October 2013) and the current Mr. Fikadu Seboka who came from the head of administration and security Bureau (from October 2013-). This is a symptom of the intense political battles that have played out in the arena of the public prosecution office.

The record of the four heads of justice Bureau since 2005 alone illustrates how the governments in power appointing and dismissing the head of prosecution office at its best will which often creating the perception of a compromised independence. Independence is manifested by the guarantee of a secure tenure for the head of the prosecution institution and by the maintenance of a qualified and well-trained workforce. This all were done because of the absence of any legislation in place that limit the power of the president to dismiss the Prosecutor General only for specific grounds and that the Prosecutor General should benefit from a fair hearing as provided under the Venice commission recommendation. The rational for changing attorney general from time to time is not known as it is done through party politics. As the independence of the prosecutor is inseparable from the rule of law,³²⁴ the appearance of a lack of independence

³²⁴ Supra note 104 at par. 34

or bias by the head of Justice Bureau, who holds the final say over all prosecutions, is perhaps just as damaging to the office and to criminal justice process in the Region.

4.4.2.2 Selection, Appointment and removal of public prosecutor

Presently, it is the standard of democratic rule that the selection and appointment process of prosecutor is to be free from partiality and prejudice of any kind (race, color, sex, language, religion, political outlook or other opinion, national, social or ethnic origin, property, birth, economic or other status). The selection and appointment process of prosecutors in ONRS is regulated by Regulation.NO.161/2005 (Ethiopian calendar) that repealed Regulation No.31/1995. This regulation introduced a new selection process and criterion for the appointment of the prosecutor of the Region. Accordingly, to be appointed as a prosecutor, one shall have to take pre-training service that is given at justice organs of professional training and legal research institute.³²⁵

The Oromia Regional government established Institute of Justice Organs of professional training and legal research institute at Adama by Regulation no77/99.³²⁶Based on this regulation, the institute enacted directive no.3/2001 so as to provide for the selection criteria for the trainee of professionals of justice organs.³²⁷In order to take pre service training for candidate of judges and prosecutors, one has to be loyal to the constitution, first degree holder in law (LL.B), known by good ethics and conduct, not be convicted of crime at the court of law, knowing the working language of the region (Afaan Oromo), age between 21 and 40, voluntary to work in the entire region after appointed as prosecutor or judge and not yet appointed and working as judge or prosecutor or their assistant.³²⁸.

Before the inauguration of the training centre, the selection process of prosecutors was based on party membership scrutinized at the university level, and after graduation, those who are the member of the ruling political party were automatically appointed as prosecutors and those who

³²⁵ Art 7 of Regulation No. 161/2005.

³²⁶ Regulation no.77/2007

³²⁷ Art 1 of directives no. 3/2001 justice organs refers to judges, prosecutors and other justice sector as may be necessary.

³²⁸ Art 5 of directives No 3/2000 a directives issued to provide for the execution of selection of trainee of the institute of justice organs and professional training and legal research institute

are not party members were excluded from joining the staff of prosecution.³²⁹ The practice was against UN guidelines principles on the role of prosecutors that strictly prohibits discrimination of any kind during the selection and appointment process of the prosecutors including the political outlook of an individual.

However, after the establishment of the institute, the candidates joining the pre service training institute based on selection process conducted at zonal level through the scrutiny of the selection committee established at zone level in the entire region.³³⁰ Accordingly, the selection committee has a duty to post invitation notice transparently at each woreda under their zone. The members of selection committee are the president of high court, the head of zone Justice Office, the head of zone capacity building office, the head of zone administration and security office and the head of zone police office.³³¹

The selection committee is mandated among other things to evaluate language fluency and good ethics of the candidate and select the candidate according to their point and send those who passed the screening process to the institute for entrance examination. Then the candidate who passed the entrance examination given by the institute joined the institute so as to take extensive training for two years. Thus, after the accomplishment of the training, the trainee is identified as either judge or prosecutor by chance and based on such chance, a candidate who join the court is appointed as a judge by the council of the region up on presentation by the Supreme Court and those candidate who joined Justice Bureau as a prosecutor is appointed by the prosecutor council of the region.³³² Though the selection process of judges and prosecutor ONRS is similar and on competitive basis, they are subject to different incentive and institutional treatment after such appoint (this will be discussed below).

³²⁹This was particularly practiced during the new graduate university in the year 2008/2009 where those who are party members were automatically appointed as prosecutors and others who were not members to the parties are segregated from the appointment.

³³⁰ Ibid., at art 4

³³¹ Ibid., at art 11

³³² Art 65 of the constitution of ONRS and art 10 of Regulation no. 161/2005 of regulation of prosecutors.

4.4.3. Independence and Accountability of prosecutor

4.4.3.1. Personal Independence

The UN Guidelines on the role of prosecutors recognize the crucial role played by prosecutors in ensuring the Universal Declaration of Human Rights principles such as equality before the law, the presumption of innocence, and the right to a fair and public hearing by an independent and impartial tribunal are upheld, and urge states to ensure that prosecutors ‘are able to carry out their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.’³³³

Thus, the independence of public prosecutors is crucial for enabling them to carry out such mission. Moreover, it strengthens their role in the enforcement of law and in society and it is also a guarantee that the justice system will operate fairly and effectively and that the full benefits of judicial independence will be realized.³³⁴ Thus, akin to the independence secured to judges, the independence of public prosecutors is not a prerogative or privilege conferred in the interest of the prosecutors, but a guarantee in the interest of a fair, impartial and effective justice that protects both public and private interests of the persons concerned.³³⁵

Geoffrey Flatman argued that, there is a tradition of independence in public prosecution function because of the fact that public interest is best served where prosecution function is free from social or political influence.³³⁶ In the same fashion, Jean Redpath argued that “If justice is to be served, the critical role of the prosecution in the criminal justice system requires a prosecution service to give neutral, non-political, non arbitrary decision making about the application of criminal law.”³³⁷ As the independence of prosecution office begins from the independence of attorney general from political influence of the day, in those countries selected as a comparative study in this paper, the office of attorney general are constitutional officer responsible for the administration of criminal justice through the establishment of an independent director of public prosecution.

³³³ Supra note 6 at guideline 4

³³⁴ Supra note 104 at par. 3 and 8

³³⁵ Supra note 107

³³⁶ Geoffrey Flatman(1996): Independence of prosecutor at p.1

³³⁷ Jean Redpath(2012): Failing to prosecute? Assessing the state of the national prosecuting Authority in south Africa at p.1

In the case of the ONRS, there is no legislation in place that guaranteed professional independence of the prosecutor. Because of the absence of legislative framework safeguarding professional independence of the prosecutor, the independence of prosecutor is often exposed to interference from political organs. This is evidenced by the 2012 evaluation maneuvered by administration and security Bureau on prosecutors from woreda Justice Office to the regional Justice Bureau.

As Justice Bureau is accountable to the president of the region, the evaluation was conducted through the informal instruction of the president of the region to the administration and security Bureau to evaluate each prosecutor from region to the woreda level. The evaluation was very devastating where prosecutors were harassed and intimidated particularly by Zone security office.³³⁸ One of my confidential interviewee who was a zone prosecutor in 2012 and currently serving at regional office, expressing his grievance of the time as: “As I am a long servant of the justice Bureau, I never come across such boring and devastating evaluation under taken through harassment and intimidation. The prosecutors were summarily insulted as theft, blood suckers and corrupted and hence demoralized and every prosecutor within their team were condemned themselves as being a prosecutor”³³⁹

Another confidential interviewee who used to be the director to one of the zone Justice Office in the region in 2012, the scenario of the evaluation was amazing in that each prosecutor were evaluated through party discipline and graded as A,B and C by Zone administration and security Bureau. Even they decided at that time that those prosecutors who have got C according to their parameter were to be brought to the discipline and get punished. Despite such evaluation and interference, what was the worrying issue was that prosecutors was not allowed even to defend themselves and the evaluation was undertaken through suppression. Even if they were allowed to speak, the extent of speech allowed to prosecutor was determined by a man from the administration and security bureau.³⁴⁰

A result of such evaluation and interference in the work of prosecutors by parallel and coequal executive organ, a prosecutor were forced to transfer from one zone to another and from woreda

³³⁸ An interview conducted with confidential prosecutor on January 23, 2014 at 3:00 pm

³³⁹ Ibid

³⁴⁰ An interview conducted with confidential prosecutor on January 25, 2014 On January 24, 2014 at 2: 30 pm

to woreda was undertaken.³⁴¹ Moreover, summary disciplinary proceeding without appropriate hearing procedure was undertaken. For example three senior prosecutors at regional level were summarily disciplined without appropriate hearing procedure a fine from their salary up to two month for two prosecutors and one is reduced from his position to one step down. This measure was taken through the pseudo council of prosecutor under informal instruction of the then head of administration and security Bureau.³⁴²

As a result of such interferences, the number of prosecutor resigned from the position of prosecutor in 2004/2012 was relatively high. As the researcher attempted to collect data on the number of prosecutor resigned from their position in the entire region, there is no accurate date showing the exact number of prosecutors resigns from the office each year. However, there is some data that shows the number of prosecutor resign from zone and woreda Justice Office from 2003-2005 Ethiopian calendars. Currently, the number of prosecutors at woreda level is on the course of declining and even there is a situation where some woreda justice office is left with two prosecutors (the head and individual prosecutors) particularly in Jimma Zone (Tiro Afeta, Nono Benja, Chora Botor, and Satama woreda Justice offie) and Ilu Abba Bora zone(Chora, Suphe, Sallee, Makko, Didu, Nono and Sachi Woreda Justice office) as evidenced from the current assessments done by the Justice Bureau in the month of February 2014.

As the researcher attempted to investigate the data collected from each zone, only those date collected from four zones is found to be accurate in registering the data when prosecutors resign in their zone. Comparing the three years, that is from 2003-2005 Ethiopian calendars, the number of prosecutor resigned in 2004(the year of interference) is more or less three times than in 2003 and two times in 2005 which is evidenced by the data taken from four zones alone. The following table shows the number of prosecutors resigned from 2003-2005 Ethiopian calendars in four zones in comparative perspective.

³⁴¹ Ibid

³⁴² Those prosecutors who were summarily punished were even informed to negotiate with the then head of administration and security Bureau to whom the Justice Bureau has no legal accountable to it. Despite such attempt, as unanimous victim of such measure gave an interview to the writer, the decision remains confirmed.

Item	Zone	Year			
		2003	2004	2005	
1	Jimmaa	2	7	2	9
2	West Shoa		6	4	10
3	S/West Shoa	4	7	6	17
4	North Shoa	2	6		8
	Total	8	26	12	46

Source: data collected from the administration of human resource work process of the Oromia Justice Bureau.

4.4.3.2. Functional independence

Functional independent of prosecution institution is considered as a fundamental requirement for a proper and effective administration of criminal justice system. One method of ensuring functional independence to prosecutors is to allocate appropriate budget at their disposal. Adequate funding of a body is of crucial importance. While full financial independence cannot be achieved (at minimum the budget will be approved by the Parliament and in many cases prepared by the Government), sustainable funding needs to be secured and legal regulations should prevent unfettered discretion of the executive over the level of funding.

The budget for prosecution should be independent of and an unrelated to revenues resulting from law enforcement executive organ. Independent budget enables the institution to build its own office and to fulfill the necessary material for the service delivery. It also enables the institution for the assignment of the human resource and generally minimizes the risk of interference of the executive under the banner of the allocation of budget at the compromised independence of the institution. The institution's independence is also called to question by the source of its funds. Independence also depends on the degree to which the budgetary allocation of the body is insulated from political interference and ability to ensure the provision of resources required for the body to carry out its day to day functions effectively.

In terms of budget, unlike the state court of Oromia National Regional state whose budget is approved by the council of the state “chaffee”, the Justice Bureau budget at regional level is determined by the cabinet member and allocated by the Bureau to zone justice office and those of woreda justice office is determined by the woreda executive organ. Because of the budget dependence of the Bureau on the free will of the executive organ of the region, the budget allocated to the Bureau is not more than the salary of the prosecutor and for the execution of other activities like daily allowance for the field work.³⁴³ Thus no capital budget was ever granted to the Justice Bureau since its establishment.

As Justice Bureau in ONRS is executive organ of the government, the budget of the bureau is allocated by the executive organ of the government. From this it is obvious that this could be an avenue for reining in the institution if it gets too aggressive, especially against government interests. Particularly, this is a case in point at woreda level where the woreda administrator granted the budget based on the positive approach of the woreda head of prosecution.³⁴⁴ In the assignment of human resource particularly, when a new prosecutor is appointed by the council of prosecutors and assigned at woreda level, from the experience of the writer of this paper the consent of the woreda administrator should first be secured through negotiation of the woreda head of justice office. In the same manner, the prosecutors must negotiate with the executive organ so as to solicit budget for the construction of their office. Such type of negotiation is at most done at the compromised independence of the prosecution office.

The worrying issue about the budget of Justice Bureau is that the Bureau has no capital budget for the construction of its own building particularly at Zone level. This is evidenced by number of those zones justice office having newly moderate constructed office and those zones which do not have moderate building of their own.

Among the nineteen (19) Zone Justice offices in the entire region, only five of them have their own newly constructed building by a fund solicited from the public and different NGOs through the effort of prosecutor (these are West shoa zone, North shoa Zone, Jimma and Adama Special Zone Justice office) and the rest fourteen are dwelling in the very backward, old and narrow

³⁴³ An interview conducted with Mr. Duguma Nemerra, a process owner of administration and Finance at Justice Bureau of Oromia on January 24, 2014 at 4:00 pm

³⁴⁴ From the experience of the writer of this paper, at woreda level most of the time attractive budget is allocated based on the relationship between the administrator and the head of prosecution office.

institutions uncomfortable for service delivery.³⁴⁵ The case of South west shoa Zone Justice Office is currently the worst of all where it has no even old office of its own and hence working in the building rented from Hotel at the cost of same high court.³⁴⁶

As interview conducted with the director of Zone Justice office, he stated that “currently, we are working in the building rented by the same high court, now the high court is planned to finish its own building constructed at the cost of capital budget granted from the Supreme Court. When the courts has its own building and leave the rented building, the fate of our institution is at risk as there is no capital budget allocated to the institution.”³⁴⁷ Thus, prosecution institution also lack appropriate functional independence as it depend on executive organ free will to carry out its function autonomously and affect the strength of existing prosecution institutions.

Like for judges, remuneration in line with the importance of the tasks performed by prosecutors is essential for an efficient and just criminal justice system.³⁴⁸ A sufficient remuneration is also necessary to reduce the danger of corruption of prosecutors. The independence of the judge and of the prosecutor is inseparable from the rule of law so that they act in the common interest, in the name of the society and its citizens who want their rights and freedoms guaranteed in all their aspects.

Thus, such proximity and complementary nature of the missions of judges and prosecutors create similar requirements and guarantees in terms of their status and conditions of service, namely regarding recruitment, training, career development, discipline, transfer, remuneration, termination of functions and freedom to create professional associations.³⁴⁹ Contrary to this, the budget of judges and prosecutors in Oromia is derived from different source which creates inequality of incentives among the judge and prosecutors. In the above discussion, judges and prosecutors in Oromia are equally selected on competitive basis and joined and trained at the same institution and randomly selected and appointed as judges and prosecutors. But the

³⁴⁵ An interview with Mr. Megersa Adunya process owner of human resource management at Oromia Justice on January 24, 2014

³⁴⁶ This is due to the fact that previously the office was working in the same building with the high court and currently the high court is undertaking the new construction by its own budget on the same sight plane given to the high court. when the high court is back to its own newly constructed building, the fate of zone justice office is at risk as there is no capital budget for the construction of office allocated to the justice Bureau from the regional government.

³⁴⁷ An interview conducted with Mr. Amare Iticha head of south west shoa zone Justice office on January 26,2014

³⁴⁸ Supra note 107 at par.67

³⁴⁹ Paragraph 34 of Bordeaux declaration

payment of allowance particularly house and daily allowance paid for the judge are quite greater than that is paid for the prosecutor. Moreover, while judges are guaranteed health insurance, prosecutors have no guarantee of health insurance. The following table will show such disparity.

Benefits of judges in the Oromia National Regional state³⁵⁰

	House allowance	Daily allowance	Health insurance
Supreme court judges	3150	410-595	4500
High court judges	1000	250-350	4500
Woreda court judges	500	250-350	4500

Note: Daily allowance is payable based on the type of city/town within the above range
Benefits of prosecutors in the Oromia National Regional state.

	House allowance	Daily allowance	Healthy insurance
Regional prosecutor	2100	193-210	No
Zone prosecutor	675	193-210	No
Woreda prosecutor	150	159-210	No

Note: Daily allowance payable to the prosecutor is based on the scale determined by the CPA within the above range based on the type of city.

Thus, despite judges and prosecutors in the ONRS selected and trained at the same institution on competitive basis and randomly selected as judges and prosecutors after the accomplishment of such training, prosecutors are subject to inferior incentives to the judges which inevitably made the justice Bureau unattractive in addition to the institutions' lack appropriate legislative framework for its autonomous and independent function in the administration of criminal justice.

³⁵⁰ Directive no.10/2006 a directives enacted to determine incentives of the heads and appointees of the Oromia courts

Despite lack of institutional autonomy of prosecution office, such type of diversity of incentives among these justice organs made the institution of prosecution unattractive and boring.

The lack of appropriate legislative framework for institutional autonomy and professional independence coupled with unattractive working environment particularly in terms of incentives and allowance would be a potential for creating institutional crisis especially the resignation of competent professional prosecutors from the institution. In the absence of competent professionals in the prosecution office (weak institution of justice) which is one of the pillars in the administration of criminal justice, it is unimaginable for the independent judiciary to deliver speedy and fair justice for the society which in the whole questions the full benefits of judicial independence.

4.4.4. Accountability of Prosecutor

Like any state authority, including judges, the prosecutor's office needs to be accountable to the public. In many systems prosecution institution is accountable to Parliament. This is carried out through the submitting of public reports by the Prosecutor General. In the case of the Justice Bureau of ONRS, justice Bureau is accountable to the president of the Region. As a result, there is no mechanism of scrutinizing the work of the public prosecutor through democratically constituted member of the house of people's representative or the council of state. This does not fit in to the standard of democratic rule which demands the conduct of the government is transparent and accountable to the public.³⁵¹ Prosecution institutions need to be integrated in the system of checks and balances essential for democratic governance. Independence should not amount to a lack of accountability. In the discharge of its duties and powers, prosecution services should strictly adhere to the principles of the rule of law and internationally recognized human rights. Accountability and independence reinforce each other. Accountability to the council state ensure transparency of the institution which in turn is conditioned by the integrity of the prosecution institution, is crucial in times when the body comes under politically motivated attacks, the challenges which prosecution office in ONRS facing.

³⁵¹ Art 12 of the FDRE and the 2001 Revised constitution of ONRS

4.4.5. Council of Prosecutor

As self governing entity, Prosecutorial Council is becoming increasingly widespread in the political systems of individual states. A number of countries have established prosecutorial councils but there is no uniform standard to the composition of the council of prosecutors. However, it is the standard of democratic rule where the council of prosecutor are composed in a balanced way which is inclusive of prosecutors, lawyers and civil society, which have the advantage of being able to provide valuable expert input in the appointment and disciplinary process and thus to shield them at least to some extent from political influence.³⁵²

Moreover, the diversity of composition of a council of prosecutors from all levels of prosecutors and other actors such as lawyers or legal academics or composed from elected parliament can provide democratic legitimacy for the prosecution system. If members of such a council were elected by Parliament, preferably this should be done by qualified majority so as to reduce the risk of politicization of the council. The council of prosecutors of Oromia in this case composed of Attorney general who is presiding and a vote power in council, deputy attorney general, process owner of crime investigation and justice delivery work process, the head of human resource management, the head of legal research and drafting work process and two prosecutors elected from the region and zone level based on their competency.³⁵³ Thus, there are no other actors in the composition of the prosecutor council. Despite the absence of other actors outside the staff of the prosecutors, this council of prosecutor are nominated and selected by the attorney general of the Justice Bureau at Bureau level. The council of prosecutor does have the power to appoint the prosecutor and under take other career developments. Moreover, it undertakes disciplinary proceeding against the prosecutor which is not reviewable by an independent review body like the court.³⁵⁴

In the same manner there are also council of prosecutors at zone level responsible for the assignment and transfer of prosecutors at woreda levels. In addition to the transfer and assignment prosecutors at woreda level, it is also mandated to minor/simple disciplinary offence committed both at zone and woreda level prosecutors. The selection and composition of council

³⁵² Supra note 4 at par 64

³⁵³ Supra note 324 at art 94

³⁵⁴ Ibid., at art 95

of prosecutors at zone level is carried out by zone director of justice office from among prosecutors both at woreda and zone level in which he/ she has veto power in the decision of the council.

Thus, the council of prosecutors in ONRS is only composed of members of the prosecutors and hence lacks other actors outside the prosecutors such as legal academics, civil society, members of the parliament or even the chief justice which have the advantage of being able to provide valuable expert input in the appointment and disciplinary process and thus to shield them at least to some extent from political influence from the executive organ which is inherent problem of the justice Bureau of the ONRS and can provide democratic legitimacy for the prosecution system in the region.

CHAPTER FIVE

Conclusion and Recommendation

5.1. Conclusion

This study has attempted to analyze the legal and institutional frame work of prosecution office both at federal level in general and the Oromia National Regional state in particular. The study discloses that prosecution office both at federal and state level has failed to secure an appropriate institutional and legal framework for its independent and autonomous function. During the Transitional Period, an independent office of the central attorney general that was accountable to the council of representative was established with a view to strengthen the democratization process and the rule of law in the in Ethiopia in general and the Oromia National Region State in particular. However, with the adoption of the new constitution in 1995, the office of central attorney general was denied constitutional recognition and made to be part of the executive organ of the government where prosecution institution was to the extent reduced to sector or department level under the leadship of executive organ. Because of such merger as discussed in the chapter four of this paper, the position, status and accountability of prosecution office is merged within the executive organ and hence subject to constant institutional and leadership instability.

Putting the office of prosecution under the arm of executive branch of government has obviously affected the independence and decision making power of professional prosecutor as the ultimate role of prosecuting or not to prosecuting is at the mercy of the political organ or in the hands of the head of the institution. Moreover, despite the absence of appropriate constitutional/legislative framework for the autonomous and independent function of prosecution office, there are also no criteria set by law for the appointment and dismissal of qualified and competent professional attorney general. In the same fashion, there is no security of tenure to the attorney general to carry out prosecutorial function without fear or favor and without the influence of the politics of the day. However, nowadays it is the standard of democratic rule to enumerate the qualification criteria for the appointment and dismissal of attorney general as well as terms and condition of service in the constitution itself. Such constitutional safeguard enables the attorney general to

carry out its prosecutorial role objectively and impartially as set out under the UN guidelines on the role prosecutors in the 1990.

The UN Office on Drug and crime in collaboration with International association of prosecutor argued that, the Constitution should contain provisions describing the general frameworks of who is responsible for the prosecution of criminal cases, in what branch of government that authority resides and the prosecutorial function as well as the allocation of prosecutorial resources. Having constitutional background protects the institution from changing the role and status of prosecution institution through the ordinary act of the parliament.

The framers of the FDRE Constitution in general and the Oromia National Regional state in particular in this regard appear to have envisaged prosecution institution as part of the executive organ of the government and deny constitutional recognition. As prosecution office is an indispensable corollary to the independence of the judiciary and prevalence of the rule of law, contrary to what has been promised during the transitional period, the government denied constitutional recognition to the office of attorney general and dissolved and merged it with the Federal minister of Justice and the Justice Bureau so as to take the administration of criminal justice under its arm through politically appointed minister and head of Justice Bureau without the guarantee of any professional requirement and judicial experience respectively.

Particularly, such merger with executive organ in ONRS as inferred from the above discussion reduced the status of the office to the departmental level within the executive branch which is quite unusual in comparative perspective. Thus, because of the absence of constitutional recognition, the government now and then changes the status, role and position of the institution which affect an independent and autonomous function of prosecutors.

Because of the absence of any safeguarding mechanism for the professional independence of prosecutor, the government through its administration and security agents interferes in the work of the prosecutors where it has resulted in the resignation of prosecutors in the Region. The independent operation of a prosecuting authority is increasingly seen as crucial to the just operation of criminal justice systems internationally. The UN guidelines on the role of prosecutor recognize the crucial role played by prosecutors in ensuring those fundamental rights and freedoms enshrined in the Universal Declaration of Human Rights like the principles of equality

before the law, the presumption of innocence, and the right to a fair and public hearing by an independent and impartial tribunal are upheld, and exhort states to ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

The degrees to which the prosecution institution is independent and to whom, and in what way it should be accountable are questions of both legal and practical importance. The record of the four heads of justice Bureau since 2005 alone illustrates how the governments in power appointing and dismissing the head of prosecution office at its best will which often creates the perception of a compromised independence. This is a symptom of the intense political battles that have played out in the arena of the public prosecution office in the region. Because of the merger of prosecution office with the executive organ, the institutions not only suffer from institutional instability but also leadership instability as evidenced by experiencing four heads of the institution since 2005 from the date where Justice Bureau is re-established as an independent executive organ divorced from another co-equal executive wings of the government (administration and security bureau).

Despite such separation, the Bureau is still accountable to the president of the region rather than to a democratic institution which is the council of the state. Because of the merger with the executive organ, it lacks an appropriate budget to carry out its function. Offering competitive packages would not only serve to enhance competence in this office but also discourage badly remunerated functionaries from corrupt ways. Furthermore, lack of incentives, in particular the lack of career advancement and opportunity in an environment of patronage does affect the morale of the prosecutors.

Constitutionally, all the three countries discussed in this paper as comparative analyses comply with the requirement for independence, generally providing in their constitution that prosecutorial authority under the Director of Public Prosecution (DPP) is not under the control or direction of any authority. In view of this, the independence of the prosecution office both at federal and regional level thus does not appear adequately to have been secured appropriate institutional and legal framework in the democratic era in Ethiopia in general and the Oromia National Regional State in particular.

To conclude the legal and institutional framework of prosecution office both at federal level in general and state level in particular, denying constitutional recognition is quite unusual in comparative perspective and a missed opportunity for the office of the prosecutor general to have an independent and autonomous status of constitutional officer during the adoption of the FDRE and State Constitutions respectively. This was partly owing to the government's lack of political will to establish an autonomous constitutional officer of the office of prosecutor general for the administration of criminal justice. Conduct of prosecutions must reflect the fact that the prosecutor general is the public guarantor together with other relevant organs of human rights like the court.

Proper constitutional and legal frameworks of prosecution office favorable to human rights are necessary. For a society that seeks to advance good governance and constitutionalism, it is unacceptable to deny legislative safeguard for the autonomous function of prosecution office in the protection of public interest. To act in public interest requires independence. The independent operation of a prosecuting authority is increasingly seen as crucial to the just operation of criminal justice systems internationally.

Thus, in order to have strong prosecutorial authority that is independent and accountable and capable of strengthening the democratization process and rule of law in this country, the study recommends to the government to revisit the current institutional and legal frameworks of prosecution office in accordance with the following recommendations.

5.2. Recommendation

1. An autonomous office of Attorney general that is accountable to the House of peoples Representative at Federal Level in general and to the council of state in the Oromia National Regional State in level in particular is recommended to be established as an independent and autonomous constitutional officer. The implications of these principles for the constitutional establishment of the prosecution institution is that, the provisions that form part of the Constitution can only be changed by the amendment of the constitution, unlike provisions in other legislation, which can be changed by an ordinary majority of Parliament. Thus, the establishment of an autonomous constitutional officer of prosecution office strengthens the rule of law and democratic governance and hence it

is a guarantee that the criminal justice system will operate fairly and effectively and that the full benefits of judicial independence will be realized.

2. A prosecution service is better to be independent, impartial, fair and effective, and be accountable for its actions and decisions. The idea behind this requirement of independence is that, it is the only way the public will have confidence in such a body and will contribute with information and support to its success. The independence of the public prosecution service constitutes an indispensable corollary to the independence of the judiciary so that autonomous status of prosecution office enables them to carry out their functions fairly, objectively and impartially. The prosecutor's political independence within the framework of legal rules is guaranteeing the legality and impartiality of the criminal prosecution.
3. It is better to have a law in place that provides for comprehensive criteria and procedures for the qualified appointment and the ground for the dismissal of the Attorney General from his position so as to limit unregulated discretion of the political organ in appointing and dismissing the Attorney general.
4. Terms of office and condition of service of the attorney general should be enumerated in order to protect persons appointed as Prosecutor General from political influence. Certainty of tenure and adequate protection against political influence in the appointment and renewal of tenure is as important in ensuring the effectiveness of prosecution institutions. Tenure which exceed or overlap between successive administrations in this regard will provide greater security of tenure which thereby would ensure the greater stability of the prosecution leadership and make him or her independent of current political change.
5. The current composition of the council of prosecutor in the Oromia National Regional State better to be modified so as to include other individuals outside the prosecutors such as the chief justice and individuals from members of the council of state or legal academician who can strength democratic legitimacy of the council. This composition would minimize the risk of unnecessary transfer and discipline of the prosecutor and improper political influence on the council of prosecutors through the Attorney general by political organ.

6. Benefits of prosecutor is better to be appropriately safeguarded so as to made the institution attractive (house and daily allowance, transportation facility and healthy insurance is recommended to be granted in away analogous to the judge). This is because of the fact that, the proximity and complementary nature of the role of judges and prosecutors creates similar requirements and guarantees in terms of their status and conditions of service, namely regarding recruitment, remuneration training, career development and discipline.
7. Adequate funding is critical for the success of the office of the Attorney general and hence the budgets of the office of Attorney general should be allocated from the state budget to the local government level so as to safeguard the autonomous function of prosecution office.

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Interview

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An interview conducted with anonymous prosecutor on January 25, 2014 On January 24, 2014 at 2: 30 pm

An interview conducted with Mr. Duguma Nemerra, a process owner of administration and Finance work process at Justice on January 24, 2013 at 2:00 pm

An interview conducted with Mr. Amare Iticha head of south west shoa zone Justice Office on January 26, 2014