

**Ethiopian Lawyers Association  
and  
Ethiopian Young Lawyers Association**



# **Public Defender's Services in Ethiopia:**

**Assessment of Current Gaps and the Way Forward**

**Research Team**

**Chapters 3 to 8**

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**Research Assistants for Chapters 6 and 7**

**Tigist Abera (LL.B)**

**Wondyifraw Girmachew (LL.B, LL.M)**

**Editor, and Chapters 1 and 2:**

**Elias N. Stebek (LL.B, LL.M, PhD)**

December 2015

Addis Ababa, Ethiopia

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The ultimate objective of this assessment is contribution towards enhancing *Access to Justice* and *Good Governance* through the *enhancement of Justice Sector stakeholder's capacity on legal information relating to rights, legal aid and legislative advocacy*. The continued engagement of all stakeholders who were active participants during the research process will indeed facilitate the concerted efforts toward addressing the gaps discovered in the course of the assessment.

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## Foreword

The right of access to justice is enshrined in Article 37 of the FDRE Constitution. This constitutional right envisages factors from three dimensions, namely the law, the bench and the parties to the suit or trial. The *first* factor requires laws, processes and practices which do not deny or restrict the right to bring justiciable matters to courts of law (or other relevant tribunals). The *second* factor relates to independent, competent and impartial courts in the context of integrity against corruption. And *third*, legal services should exist, and in particular, persons who do not afford to hire a lawyer should be provided with free legal service.

If the economically poor and powerless section of the society is not provided with free legal aid, the law will not *equally* apply to the parties in the litigation. In other words, people litigating against the poor and the powerless will become above the law. Hence the research conducted in this book has investigated a very pertinent theme.

The study reveals the setting of public defender service provision in Ethiopia and the gaps thereof. The establishment of public defender offices both at federal and regional levels demonstrates due recognition of the indigent's right of access to justice. However, the institutional gaps, budgetary constraints and human resource shortages raise doubt on the level of attention accorded to this constitutional right. As the findings of this study indicate, a significant number of indigent citizens are not provided with adequate legal services and access to justice. The paradox is that a considerable number of young law graduates do not have jobs.

One of the challenges is to create a mechanism that can utilize the skills and knowledge of unemployed young lawyers to satisfy the legal service needs of the indigent and powerless. The findings of the study can indeed stimulate discussion among legal professionals, government organs and other stakeholders such as the Ethiopian Lawyers' Association. They can also encourage further research on the area and facilitate advocacy toward institutional reform that can significantly enhance legal aid services and access to Justice.

I would like to extend my gratitude and appreciation to the research team, the editor and all persons who contributed to the outcome of the research. I would also like to thank the European Union Civil Society Fund II for financing the study and the Government of Ethiopia for designating the CSF resources as local fund.

Tamirat Kidanemariam  
President of the Ethiopian Lawyers' Association

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## Executive Summary <sup>1</sup>

Ethiopia's legal framework guarantees the provision of state-funded legal representation to defendants who are accused of offences and are unable to hire a lawyer. These legal instruments include the Constitution of the Federal Democratic Republic of Ethiopia, federal and regional court establishment proclamations, ICCPR<sup>2</sup>, UDHR<sup>3</sup>, and others. The constitutional right of an accused person for representation at the state's expense is enshrined in Article 20(5) of the FDRE Constitution. Moreover, Article 16(2)(j) of the Federal Court Proclamation No. 25/1996 provides that the President of the Federal Supreme Court "organizes the public defense office".

There are Public Defender Offices at federal and regional levels. However, the findings of the assessment made in this research revealed that there is no comprehensive legal framework for the establishment of independent and well-functioning public defender's office that can ensure the implementation of the constitutional right enshrined in Article 20(5) of the Constitution. This challenge has inhibited the effective performance of the institution both at the federal and regional levels. The court establishment legislations confer power on the federal and regional supreme courts to organize public defender's offices. However, the findings of the assessment show that there are regions where Public Defender (hereinafter PD) offices have not been established. The assessment further shows that the PD structures that are in place do not have adequate human, material and financial resources commensurate with their functions. Nor do they have administrative and operational independence.

The public defender's offices at federal level and in the regional states are embedded within the court system and they function under the auspices of courts. As a result, proper and clear organizational structure from region to the *woreda* (district) level is lacking. This has caused problems including but not limited to the absence of competitive salary structure and benefit packages for public defenders. It has also caused lack of promotion opportunities for individual professionals who aspire toward advancement in the career ladder within a well-defined institutional framework. The assessment shows that these factors demotivate existing staff, render staff

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<sup>1</sup> Abera Hailemariam Woldeyesus, BA (Philosophy), LLB, Joint MA in Peace and Security Studies, and MA in Development Studies.

<sup>2</sup> The International Covenant on Civil and Political Rights, 1966.

<sup>3</sup> Universal Declaration of Human Rights, 1948.

retention difficult and do not attract competent professionals toward joining the office. As a result, accused persons who cannot afford to pay for representation encounter the challenge of non-representation; and even the ones who are represented by public defenders usually get a considerably lower level of counsel and representation as compared to the level of professional proficiency of the other party, i.e. public prosecutors.

There are two means of accessing public defender's service, i.e., (a) an initiative from courts or (b) request from accused persons. An accused person may not thus access the service, (a) if the court fails to assign a public defender, or (b) if the defendant is ignorant of filing a petition to the court for the assignment of a public defender, or (c) if the PD Office is not established in a location under consideration. In some regions, criminal defendants are required to bring evidence of pauperism, while in others affidavit suffices to access the service. This divergence in procedures and judicial discretion may result in the miscarriage of justice, and it stems from absence of clear regulatory standard that serves as the basis for judicial decisions regarding the procedures of determining eligibility to public defender's services. Moreover, the absence of clearly defined criteria to determine the beneficiaries of public defender's representation is another serious limitation that adversely affects public defender's services.

Indictment of serious crime may not necessarily warrant access to the public defender's representation because the two cumulative conditions embodied in Article 20(5) of the FDRE Constitution should be fulfilled. These conditions are (a) not having sufficient means to pay for representation, and (b) miscarriage of justice in the absence of public defence representation. The assessment shows that there were defendants who were accused of serious crimes, tried and sentenced without being represented by public defenders. Most of these convicts believe that they were punished while they could have been acquitted or the sentence they received could have been mitigated.

One of the challenges in the access to public defence representation relates to the absence of preset criterion for the determination of beneficiaries of the service of public defenders across regions. Gravity of the offence and lack of sufficient means to hire an advocate are the two conditions for accessing public defenders service. However, these criteria are not consistently applied due to variation in the practice of different regions. In some regions, only persons who are accused of serious crime access the public defender's service, while in others defendants accused of crimes entailing lower prison terms such as five years of imprisonment are entitled to get the service. In certain regions courts give much weight to the seriousness of the crime, while in others they give due attention to financial



capability of the accused person. While public defenders represent criminal offences in most regions, there are regional states which entertain both criminal and civil suits involving women and other vulnerable groups.

Most participants of this study rated the service of the public defenders unsatisfactory. A significant number of participants in the study even questioned the usefulness of the office in view of the services it is currently delivering. The incongruity between the lofty ideals of averting miscarriage of justice and the little attention given to the institution which is expected to accomplish this monumental task is, *inter alia*, manifested in understaffing, under-budgeting and lack of facilities that are necessary for the rendition of the service. In addition to these challenges, basic institutional structures are also lacking in some regions. The under-performance of the public defender offices assessed in this study is attributable to these gaps.

There is no uniform and clear standard for service delivery. The service is not cascaded at all tiers of court structures, beginning from the Supreme Court down to *woreda* (district) levels. In most regions, the service is confined exclusively to high courts. In several regional states, public defenders represent the accused only in the first instance jurisdiction leaving out appeal cases. Moreover, the service is not available for all types of criminal offences.

In several regions, public defenders are extremely overstretched as the number of public defenders is disproportionately small *vis-à-vis* their case load. This problem of understaffing stems from the mismatch between the case load and the number of public defenders assigned to various cases, and it exists at the federal and regional levels thereby resulting in inadequate and low quality services. The gaps that need to be addressed to rectify the low quality of service rendered by public defenders include inadequate awareness among public defenders as regards their roles and responsibilities, low levels of knowledge and skills, inadequate diligence in making the necessary preparation to defend the accused, and incidences of non-attendance during court sessions.

## Introduction

### 1.1 Background

The constitutional guarantee for *fair trial* and the need to ensure citizens against *miscarriage of justice* are enshrined in Articles 19- 21 of the 1995 Constitution of the Federal Democratic Republic of Ethiopia, in all constitutions of regional states in Ethiopia and in various international instruments ratified by Ethiopia which, according to Article 9(2) of the FDRE Constitution, are an integral part of Ethiopian laws. According to Article 20(1) of the FDRE Constitution, “[a]ccused persons have the right to a public trial by an ordinary court of law within a reasonable period of time after having been charged.”

This right to trial is also embodied in Article 20(3) of the Constitution which stipulates that “[d]uring proceedings, accused persons have the right to be presumed innocent until proved guilty according to the law and not to be compelled to testify against themselves.” These rights of an accused person and other rights that are elements of the *due process of law* call for fair trial which requires *equality* of the parties before the courts. In criminal cases, the constitutional principle of equality before courts of law refers to the equality of the public prosecutor and the accused person in the course of the trial.

The principle of equality is enshrined in Article 25 of the FDRE Constitution, and it provides that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” The principle of equality before courts “refers to both equal access to the courts and equal treatment before the courts. Perhaps the most easily recognized conception of the right to legal assistance lies in the notion that people should not be discriminated against because of their poverty”.<sup>4</sup>

It is to be noted that the International Covenant on Civil and Political Rights<sup>5</sup> and the International Covenant on Economic, Social and Cultural

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<sup>4</sup> National Legal Aid and Defender Association (2010), *International Legal Aid & Defender System Development Manual: Designing and Implementing Legal Assistance Programs for the Indigent in Developing Countries*, p. 18

<sup>5</sup> U.N. International Covenant on Civil and Political Rights, art. 2.1 & 26, Dec. 16, 1966, <http://www2.ohchr.org/English/law/ccpr/htm>

Rights<sup>6</sup>, for example, prohibit discrimination based on “property . . . or other status,” and “[t]his explicit prohibition against discrimination based on property ownership or status, which certainly includes one’s financial means, provides a conceptual basis for the right to legal assistance in both civil and criminal cases.<sup>7</sup> Article 14(3)(d) of the International Covenant on Civil and Political Rights provides that everyone shall, in full equality, be entitled to “have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.” Ethiopia has acceded to the treaty on June 11, 1993.

The *Principle of Equal Access to the Courts and to Justice* embodies “the broader principle of access to justice” which “includes the rights to access to a court, standing to sue, and access to legal services”.<sup>8</sup> Access to courts and justice embody the Principle of Equal Treatment by the Courts. One of the premises of this principle is the *principle of equality of arms* which requires that “the opposing parties in legal actions will be given an equal opportunity to prepare and present their cases before the court”.<sup>9</sup>

According to the *Principle of Equality of Arms*, “each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent.”<sup>10</sup> This principle applies to both civil and criminal cases. The involvement of the state in criminal cases renders this principle more important in criminal trials because “the very character of the proceedings involves a fundamental inequality of the parties”.<sup>11</sup>

*Equality of arms* is clearly impossible where an accused person does not afford to pay for private legal representation.

In many countries, private attorneys are encouraged to volunteer their services *pro bono* or for a reduced fee, or the legal profession is obligated to provide free legal aid work (for example, for a few days each month) as a condition of continuing practice. Mandatory *pro bono* is disfavored

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<sup>6</sup> International Covenant on Economic, Social, and Cultural Rights, art. 2.2, Dec. 16, 1966, <http://www2.ohchr.org/english/law/cescr.htm> (entry into force Jan. 3, 1976).

<sup>7</sup> National Legal Aid and Defender Association (2010), *supra* note 4.

<sup>8</sup> *Ibid*, citing Carol Harlow, *Access to Justice as a Human Right: The European Convention and the European Union*, in *The EU and Human Rights* 187 (1999).

<sup>9</sup> *Ibid*, National Legal Aid and Defender Association (2010).

<sup>10</sup> *Ibid*, citing *Dombo Beheer B.V. v. The Netherlands*, 274 Eur. Ct. H.R. (ser. A) at 15 (1993), available at < <http://www.echr.coe.int> >

<sup>11</sup> *Ibid*, National Legal Aid and Defender Association (2010).

in criminal cases in jurisdictions where there is a constitutional or statutory guarantee of a right to counsel, since it allows the government to avoid its obligation to pay for counsel and generally results in a lower quality of representation because the lawyer is serving unwillingly and may have no criminal law experience.<sup>12</sup>

The public defender's office which is established and funded by the state is thus considered as the most appropriate means of addressing the challenges that are encountered in the fulfillment of *equality of arms* between the public prosecutor and accused persons who do not afford to pay for private legal representation. In spite of their significance, however, the level of services in the realm of public defence representation has raised much concern owing to the gaps that need to be addressed to avoid the risks of miscarriage of justice.

Article 20(5) of the FDRE Constitution guarantees the right of an accused person for representation at the state's expense. It provides that “[a]ccused persons have the right to be represented by legal counsel of their choice; and if they do not have sufficient means to pay for it, and [if] miscarriage of justice would result, [they have the right] to be provided with legal representation at state expense”.

If the pronoun ‘it’ in the second clause of the provision is regarded as referring to the phrase “*to be represented by legal counsel of their choice*”, it may be interpreted as entitling an accused person to determine the attorney who represents him/her at state expense if the accused does not have sufficient means to pay for the services and if miscarriage of justice would ensue. Such interpretation might also seem to imply *judicare*, i.e. private legal representation of the indigent based on set-fee agreed upon with the government. However, this line of interpretation seems unrealistic in the current Ethiopian context owing to its budgetary implications.

The realistic option can be separately interpreting the two limbs of the provision and to consider the second clause as a stand alone stipulation which expresses the obligation of the state to assure legal representation for the indigent. The Amharic version of the provision which reads “በመረጡት የሕግ ጠበቃ የመወከል ወይም ጠበቃ ለማቆም አቅም በማጣታቸው ፍትሕ ሊጓደል የሚችልበት ሁኔታ ሲያጋጥም ከመንግሥት ጠበቃ የማግኘት መብት አላቸው” does not indicate payment of a set-fee for a lawyer chosen by the indigent defendant. The second clause of the provision thus seems to have envisaged public defender's service which was already at its initial phase of establishment when the Constitution was promulgated.

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<sup>12</sup> Id. p. 132

Needless-to-say, public defender services require adequate and quality representation. In the absence of accessibility, adequacy and quality of public defender's services, there would clearly be double standards between the constitutional guarantees enshrined in the two limbs of Article 20(5) of the Constitution, i.e., a person who affords to pay for a legal counsel of his choice *vis-à-vis* an indigent accused who is provided with nominal representation without due attention to the quality of the professional services offered by a public defender.

Although Article 20(5) of the FDRE Constitution does not expressly state the modality of the representation among the various options such as public defender's services or obtaining legal representation for the indigent by hiring private attorneys by a set-fee, Article 16(2)(j) of the Federal Court Proclamation No. 25/1996 entrusts the President of the Federal Supreme Court with the task of organizing the public defender's office. The joint reading of Articles 20(5) of the Constitution and Article 16(2) of Proclamation No. 25/1966 thus indicates that public defender's representation is envisaged as the main modality of representation for the indigent under Ethiopian law.

## **1.2 Objectives of the Study and Methodology**

One of the core objectives of the study is to highlight the Ethiopian legal and policy framework (addressed in Section 3), which constitutes the primary source of the legal component of this socio-legal study. The comparative experience of USA, Brazil and other countries is highlighted in Section 2 to offer a conceptual framework for the study. Based on the field research methodology and methods stated in the fourth section, the empirical dimension of the study which is covered under Sections 5, 6 and 7 deals with gaps in *institutional set up*, the *accessibility* and *performance* of Public Defender's Offices in Ethiopia, and the *adequacy* and *quality* of the PD services.

This study is socio-legal. The legal research component of the study uses Ethiopian laws and international instruments ratified by Ethiopia as primary sources. It also uses policy documents and other secondary sources including academic literature on Ethiopia's public defender representation and comparative literature on the themes. The methodology of the empirical part of the research is briefly presented in the fourth section of this study. The study is mainly descriptive and qualitative. The data gathered from the respondents as primary sources of the field research give insight to the gaps in the public defender representation in Ethiopia.

As stated in Section 3, assessment of the gaps in public defender representation was conducted through (a) an input gathering workshop involving representatives of federal and regional state institutions, (b) key informant interviews with the supreme courts presidents, regional high court presidents and high court criminal bench judges, and (c) assessment of the perception of two categories of prisoners (i.e., prisoners who did not get PD representation and prisoners who were represented by public defenders) in five prisons. The prisons were selected based on accessibility and convenience. The views of the prisoners can give insight on the perception of prisoners regarding PD representation in Ethiopia.

## **Overview of Comparative Experience in Public Defender's Services**

Various systems of representation facilitate access to justice to the indigent. The *first* system refers to *pro bono* services by practicing attorneys based on various modalities of assignments. The *second* track is representation of the indigent by private attorneys based on set-fee agreed upon with the government which pays the fee to the lawyers. This comes under the '*judicare*' or the *contracting* model highlighted in Section 2.3. Such agreements can also be made with non-for-profit professional groups<sup>13</sup> that provide legal services for modest cost-coverage fees.

The *third* option is the system which engages the state in the defence of the indigent through various forms of institutional structures. "This model is characteristic of Latin America, where the creation of Public Defender's Offices has been the rule in the last few years".<sup>14</sup> The *fourth* track involves a system known as '*community legal services*' whereby "legal services are provided by bar associations or by independent associations of private attorneys".<sup>15</sup> This option envisages a strong legal profession, relatively modest crime rates, strong private sector, and elevated levels of community-service commitments. Legal regimes may pursue a synthesis of these tracks with one or two of them as the predominant *modus operandi*.

The first option is based on the traditional means of court-appointed representation for the indigent and reliance on this option as the major modality of representation assumes adequate number of private attorneys

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<sup>13</sup> See, for example, Hussein Ahmed Tura, "Indigent's Right to State Funded Legal Aid in Ethiopia". *International Human Rights Law Review*, 2 (2013), pp. 126, 127.

<sup>14</sup> Lígia Mori Madeira (2014), "Institutionalisation, Reform and Independence of the Public Defender's Office in Brazil", *Brazilian Political Science Review*, Volume 8, No. 2, p. 52.

<sup>15</sup> *Ibid*, citing Smulovitz, p. 7. Madeira endorses Smulovitz's classification of the options into three by setting aside the first option of *pro bono* services upon judicial assignment. However, this traditional option deserves recognition as one of the tracks in the legal representation of the indigent, because it can still be viable in mixed systems if the assignment is made with due attention to the level of willingness of practicing attorneys, such as assignment of a practicing attorney for one case per year.

who willfully offer *pro bono* services to indigent persons who need representation. Various factors (rising crime rates and steadily increasing urban population, etc.) have led to the steady decline of this option owing to the number of cases that involve the indigent and the quality of services sought thereof. Harrington & Getty recall the challenges that necessitated the establishment of the Public Defender's Office in USA:

It was early discovered that the time-honored method of appointing lawyers directly from the trial bench, to act without compensation, had produced a chaotic situation in the administration and disposition of cases, especially in great metropolitan areas. The qualified criminal lawyer soon discovered that the drain on his time in representing the indigent was a hardship. The inexperienced lawyer was not welcomed by the defendant, and the courts were concerned about effective representation of the accused. The situation developed a picture of crowded dockets; cases could not be disposed of promptly; the State's Attorney could not bring the defendant to trial if he was not represented ... This condition has been remedied by the use of the Public Defender.<sup>16</sup>

The declining enthusiasm and willingness of court-appointed attorneys in great metropolitan areas in particular, and the disadvantages encountered by defendants upon the assignment of inexperienced attorneys, has led to the emergence and coalescence of the *Public Defender's system* of representation to defendants who do not afford to hire lawyers. The following comparative experiences of USA and Brazil indicate the major features of this system.

## 2.1 US Experience<sup>17</sup>

As Professor Ogletree notes, adequate assistance of counsel should be provided "to anyone accused of a crime who cannot afford his or her own representation" because any person "—even one accused of committing heinous crimes— still has the right to the presumption of innocence and to a fair trial in which he can proffer a defense to the charges leveled against him".<sup>18</sup> Ogletree underlines the risks involved in the absence of access to counsel, because "an innocent individual may be convicted of a crime merely because she happens to be poor"; and he states that "providing competent

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<sup>16</sup> Ibid.

<sup>17</sup> The second, fourth and sixth paragraphs under Section 2.1 'US Experience' are by Abera Hailemariam.

<sup>18</sup> Charles J. Ogletree, Jr. (1995), "Toward a More Effective Right to Assistance of Counsel", *Law and Contemporary Problems*, Vol. 58, No. 1, (Winter, 1995), p. 82.



counsel is the best means of ensuring the proper operation of the constitutional safeguards designed to protect the innocent and the less culpable from unfair punishment, including death”.<sup>19</sup>

In the US, the Public Defender’s Office (PDO) traces its history back to the Clara Shortridge Foltz’s (California’s first female lawyer) groundbreaking speech at the 1893 Chicago World’s Fair. Clara, in her speech, argued that the idea behind the establishment of “a defense office for the public (is to)...counterbalance ...the office of the public prosecutor”.<sup>20</sup> Quarter of a century after Clara’s speech, in 1913, the first public defender’s office in the US was established in Los Angeles to be followed by San Francisco County public defender office in 1921. Similarly, “California, founded its public defender office in 1926, more and more offices began sprouting up all over the state”.<sup>21</sup> Connecticut “had by 1921 established public defender offices in every county in the state (although the public defenders served only part-time).” Mosher remarked that in the late 1940s “a number of state legislatures had authorized local governments to provide defense services by a method of assigning all cases to a single individual who was to be called the public defender.”<sup>22</sup> The New York City non-profit organization which was founded in 1876 predated the introduction of the Public Defender’s Office model, in US in terms of providing legal aid to “the city’s poor who were accused in criminal cases as early as 1910”.<sup>23</sup>

After “an extensive study by The Chicago Bar Association Committee on Defense of Prisoners and the Judicial Advisory Council of Cook County during the years 1927 to 1929, the Public Defender’s Office was created as of October 1, 1930” and this “was later confirmed by statutory enactment”.<sup>24</sup> The following holding in *Powell v. Alabama* (1933), articulates the need for public defence in favour of the indigent:

... Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is ... unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on

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<sup>19</sup> Ibid.

<sup>20</sup> Jon Mosher (2013) Understanding Gideon’s Impact, Part 2: the Birth of the Public Defender Movement [Available at] <http://sixthamendment.org/understanding-gideons-impact-part-2-the-birth-of-the-public-defender-movement/> Accessed on 8//4/15]

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Cornelius J. Harrington and Gerald W. Getty (1956), “The Public Defender: A Progressive Step Towards Justice:”, *American Bar Association Journal*, Vol. 42, No. 12 (December 1956), p. 1141

trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.<sup>25</sup>

It was the Sixth Amendment of the United States Constitution that granted to all persons accused of criminal offence “the right to an attorney.” It guarantees “the right to a speedy and public trial, by an impartial jury” and the right “to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense”.<sup>26</sup> Banking on the Sixth Amendment, the United State Supreme Court in its landmark ruling of the *Gideon v. Wainwright* case stated that “a state had the obligation to provide an attorney for every indigent criminal defendant, a decision that placed an increasingly heavy burden on private attorneys”<sup>27</sup>

In *Gideon v. Wainwright*, Justice Black observed the great emphasis that is accorded to “procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law”. He underlined that “[t]his noble idea cannot be realized *if the poor man charged with crime has to face his accusers without a lawyer to assist him*.”<sup>28</sup> The following part of the decision in *Gideon v. Wainwright* shows the need for qualified lawyers in the representation of defendants who cannot hire lawyers:

...[A]ny person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public’s interest in an orderly society. ... That government hires lawyers to prosecute and defendants who have money hire lawyers to defend are the strongest indications of the

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<sup>25</sup> *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932)

<sup>26</sup> *Sixth Amendment, US Constitution*, Available at <<http://constitution.findlaw.com/amendment6.html>>

<sup>27</sup> *Ibid.*

<sup>28</sup> *Gideon v. Wainwright* , 372 U.S. 335, 344 (1963).

widespread belief that lawyers in criminal courts are necessities, not luxuries.<sup>29</sup>

While the Sixth Amendment recognizes the assistance of counsel for an accused person's defense in all criminal prosecutions, it did not, however, create a Public Defender Office. The first centralized system, the New Jersey's Office of the Public Defender (NJOPD), was established in 1967. The two principal objectives set for NJOPD were: to provide "for an established system by which no innocent person will be convicted because of an inability to afford an attorney and where the guilty will be convicted only after a fair trial";<sup>30</sup> and, "to spare county, and local property-taxpayers the expense of legal representation for indigent defendants"<sup>31</sup>

The establishment of Public Defender's Offices as standing institutions had encountered criticism from persons who were against permanent funding by the state on the ground that the state is not expected to prosecute an accused person and at the same time defend the accused. Yet, proponents of this view share the concerns regarding the need to guarantee legal representation to indigent defendants. Dimock, for example, argued in favour of private sources and a private defense system as the best alternative. He stated that until "sufficient private support to finance defense by the Legal Aid Society or other voluntary defenders everywhere" can be obtained, "Congress should permit government payment of specially assigned counsel", but he objected the "appointment and payment of a standing public defender" by the government.<sup>32</sup>

In spite of such arguments against the establishment of Public Defender's Offices, however, the practice has steadily obtained mainstream support since the 1910s and 1920s. For example, in 1922, Reynolds stated the uniformly favorable comments of "prosecuting attorneys, judges and other intimate observers on the work of the [Public] Defender". He noted that "District attorneys from their position might be expected to be hostile, but in fact have been the warmest endorsers of the work" of public defenders".<sup>33</sup> Reynolds cites an interesting statement made by a public defender regarding

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<sup>29</sup> Id, p. 344.

<sup>30</sup> The History and Role of the Public Defender <http://pd13.state.fl.us/History.aspx>

<sup>31</sup> Ibid.

<sup>32</sup> Edward J. Dimock (1956), "The Public Defender: A Step towards a Police State?" American Bar Association Journal, Vol. 42, No. 3 (MARCH 1956), p. 219-221

<sup>33</sup> James Bronson Reynolds (1922), "The Public Defender", *Journal of the American Institute of Criminal Law and Criminology*, Vol. 12, No. 4 (Feb. 1922), pp. 477.

“the problem of conscience arising where the Public Defender is called upon” to render services to indigent defendants who go to trial for criminal charges. He cited the public defender who said, “Of the twenty-two who were convicted, we had some doubt about the innocence of perhaps ten. Of the twenty-four who were acquitted, we believed in the innocence of all except two or three; ... it was clearly our duty to see that they had a fair trial. ...”<sup>34</sup>

## 2.2 The Experience in Brazil

Nine Latin American countries have embodied Public Defender’s Offices in their constitutions. They are “Brazil, Colombia, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela”.<sup>35</sup> The other options used in other nine Latin American countries are “systems created by infra-constitutional legislations (Argentina, Belize, Bolivia, Chile, El Salvador, Ecuador, Guatemala, the Dominican Republic and Trinidad and Tobago)”.<sup>36</sup>

Article 5 of the 1988 Federal Constitution of Brazil guarantees equality before the law “with no distinction whatsoever, guaranteeing to Brazilians and foreigners residing in the Country the inviolability of the rights to life, liberty, equality, security and property”. One of the guarantees in this regard is the right for state-funded representation to the indigent based on Sub Article LXXIV of Article 5 of the Constitution which provides that “the State shall provide full and gratuitous legal assistance to anyone who proves that he has insufficient funds”.

Moreover, “the Public Defender’s Office is governed by Complementary Law n° 80 of 1994, which establishes rules for how it is organised in the states”.<sup>37</sup> There has been further development in the legal regime by virtue of “Complementary Law n° 132 of 2009, which regulates the alterations resulting from Constitutional Amendment n° 45 of 2004, which guaranteed the independence of the state Public Defender’s Offices”.<sup>38</sup> As Lígia Mori Madeira notes, Art. 5 (LXXIV) of the Federal Constitution of 1988 “prescribes full legal assistance to those in need of it” and it “raises the status of the Public Defender’s Office to that of institution essential to the exercise of the jurisdictional function of the State, which is responsible for legal advice and defence at all levels of need (art. 134)”.<sup>39</sup> She further states that

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<sup>34</sup> Id. p. 479.

<sup>35</sup> Lígia Mori Madeira, *supra* note 14. Footnote 2, page 49.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

the Federal Constitution has, along with Brazil's return to democracy, "assigned to the Public Defender's Office the role of guarantor of access to justice for all the population".<sup>40</sup>

The federal and state Public Defender offices operate within the contexts of federal and state courts, respectively. The federal Chief Public Defender is chosen by the Brazilian President, and "the choice of state Chief Public Defenders must be made by the state governors".<sup>41</sup> These choices of the federal and state Chief Public Defenders "are made from a list of civil servants whose names are chosen by the board of the public defender's office by secret ballot".<sup>42</sup>

With Constitutional Amendment n° 45 of 2004, the federal Public Defender's Office came to have its own council, and councils were also created at state level. These councils are meant to be the highest normative and decision-making bodies of their institutions. Regarding career security, public defenders – like judges and prosecutors – are functionally independent in their roles, including in their terms of office, and there is no possibility of salary reduction. The law that governs the Public Defender's Office provides for competition in the filling of posts, sets out the makeup of the board and established the institution's functional and administrative independence.<sup>43</sup>

With regard to scope of activities, the services of Public Defender's Offices in Brazil involve guaranteeing access to justice to the indigent through "assistance, representation and adequate defence". These services of the PD Offices extend to civil and criminal cases in Brazil, Costa Rica, Mexico, Panama and Uruguay, while the services are limited to criminal cases in Bolivia, Chile and Argentina.<sup>44</sup> Latin American countries that have federal structures (i.e. Brazil, Mexico and Argentina) share similar features "in their differentiation between the federal and state Public Defender's Offices" in spite of their variation in "their degree of independence and the provision of access to services of a non-penal nature".<sup>45</sup>

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<sup>40</sup> Id., p. 50.

<sup>41</sup> Id., p. 52.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Id., p. 53.

## 2.3 Overview of Reports on Models of Legal Aid in Africa

According to a Survey Report (2011) by UNODC (United Nations Office on Drugs and Crime):

“There are broadly five types of legal aid models in operation in Africa:

[FN 13]

- *Public defenders*. The State employs and pays lawyers to provide legal aid services.
- *Judicare*. Private lawyers make an agreement with the Government to represent accused persons for a set fee.
- *Contracting*. The Government contracts a lawyer, a group of lawyers or a nongovernmental organization to provide legal services for a set fee.
- *Mixed delivery*. The State employs a mixture of various service delivery models, for example, public defenders supplemented by private contracts with lawyers and/or non-governmental organizations.
- *Community legal services*. A range of private service providers offer legal advice and assistance to poor people [FN14]”.<sup>46</sup>

The Survey Report states that most African countries that were surveyed “do not appear to pursue any one exclusive model, but ‘mix and match’ from the list above”. It further reads: “Public defenders, in the main, are employed by and operate from the ministry of justice (or its equivalent). However, the responses indicated that they operate under severe constraints”<sup>47</sup> and indicates the level of inadequate legal services and understaffing in Ethiopia, Liberia, Malawi, Mozambique, Nigeria, Sierra Leone, the Sudan and Zambia.<sup>48</sup>

The Report indicates that South Africa pursues a scheme which operates independently under the Legal Aid Board chaired by a judge of the Supreme Court, and “is funded directly by Parliament, to whom it sends reports, through the Ministry of Justice”.

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<sup>46</sup> *Access to Legal Aid in Criminal Justice Systems in Africa*, Survey Report, Criminal Justice Handbook Series, United Nations Office on Drugs and Crime (United Nations, New York: 2011), p. 9; Footnote 13 of the Survey Report reads: “For a clear discussion of the strengths and weaknesses in each, see Penal Reform International and Bluhm Legal Clinic of the Northwestern University School of Law, *Access to Justice in Africa and Beyond: Making the Rule of Law a Reality* (Louisville, Colorado, National Institute for Trial Advocacy, 2007); Footnote 14 makes reference to the same source, page 113.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Id.* pp. 9, 10.

The Legal Aid Board has pioneered “one-stop justice shops”, known as justice centres, throughout South Africa, with satellite offices in rural areas to increase outreach to the poor in remote areas. Lawyers working in the justice centres appear to be paid competitive salaries; employment in the public sector is viewed as an attractive option by lawyers, both in terms of remuneration and in terms of social prestige.<sup>49</sup>

Act 39 of 2014 (i.e., the Legal Aid South Africa Act 2014) is in force since 2014. “The Justice Centres are usually near courts and each centre serves between 10 and 20 courts” and “Legal Aid South Africa provides legal aid to about 736,679 people throughout the country each year” through its Justice Centres. Legal Aid South Africa has moved “towards a system of salaried legal practitioners as the primary means by which legal aid would in future be provided”; and during the last few years, it “has established at least 32 Justice Centres, which provide legal aid throughout the country”.<sup>50</sup>

*Judicare* and *contracting* models operate in most African countries and these models “rely on the goodwill of national law societies and bar associations, as well as individual lawyers” in addition to which there is also emphasis “on the provision of free (or pro bono) services”.<sup>51</sup> However, the responses obtained during the survey “suggest wide dissatisfaction with the operation of these schemes because rates of remuneration are low and payment takes a long time to arrive”.<sup>52</sup>

This explains the need for the state’s involvement in legal aid in Africa. In another study (a handbook), UNODC states the organs that are currently undertaking the responsibility of legal aid in Africa.<sup>53</sup> UNODC’s handbook underlines that the “provision of legal aid services in the criminal justice system is primarily the responsibility of the State” pursuant to “national, regional and international human rights instruments”.<sup>54</sup> It notes the mandate of states “to promote the right of everyone, especially victims of crime and vulnerable groups, to basic legal advice, assistance and education” and their mandate “to establish an independent national legal aid institution accountable to parliament and protected from executive interference; to

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<sup>49</sup> Id. p. 10.

<sup>50</sup> Available at <<http://www.legal-aid.co.za/?p=16>>

<sup>51</sup> Access to Legal Aid in Criminal Justice Systems in Africa, *supra* note 46 ,p. 10

<sup>52</sup> Ibid.

<sup>53</sup> *Handbook on Improving Access to Legal Aid in Criminal Justice Systems in Africa*, Criminal Justice Handbook Series, United Nations Office on Drugs and Crime (United Nations, New York: 2011), pp. 11-14.

<sup>54</sup> Id., p. 11.

ensure the provision of legal aid at all stages of the criminal justice process;  
...”<sup>55</sup>

The Handbook cites the Lilongwe Declaration regarding the role of lawyers as officers of the court with “a duty to see that justice systems operate fairly and equitably” and it states the duty of the legal profession to involve a broad spectrum of private attorneys in the provision of legal aid. However, the Handbook remarks the challenges encountered in this regard:

In practice, however, the number, coverage and range of services provided by lawyers to indigent clients in Africa are extremely limited. Not only is the number of lawyers per head of population one of the lowest in the world, but access to legal aid by criminal justice claimants is further hindered by cost, distance and technicalities.<sup>56</sup>

The complementary role that can be played by non-state actors such as civil society organizations is given emphasis in the Handbook because many African States “lack the necessary resources and capacity to provide legal assistance in criminal cases” thereby requiring them “to recognize the impact of action by civil society organizations in improving access to legal aid in criminal justice” and “to promote the participation of civil society organizations in that endeavour and to cooperate with them”.<sup>57</sup> The Handbook further notes the complementary role of “[n]on-lawyers, including law students, paralegals and legal assistants” in the provision of legal aid.<sup>58</sup>

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<sup>55</sup> Id. pp. 11, 12

<sup>56</sup> Id. p. 12.

<sup>57</sup> Id. p. 13.

<sup>58</sup> Ibid.



## **The Ethiopian Legal and Policy Framework**

Public Defender is an individual or a group of lawyers designated by the state to represent defendants in criminal cases if they cannot afford to hire a private attorney.<sup>59</sup> The philosophical and moral underpinning for the establishment of Public Defender Offices across countries is to ensure the conduct of fair trial with the ultimate goal of avoiding miscarriage of justice. Ethiopia's legal and policy framework shares these objectives.

### **3.1 The Ethiopian Legal Framework**

#### **a) Public Defender's Offices**

In Ethiopia the establishment and operation of public defenders preceded the coming into force of the 1995 FDRE Constitution which dedicated a third of its clauses to the fundamental rights and freedoms of persons including the rights of the accused and convicted persons. The idea of organizing the Public Defenders' Office (PDO) attracted the attention of the Ethiopian government and members of the international community alike in relation with the prosecution of the ousted military government officials who were accused of war crime and genocide. Peter Bach explained some of the compelling reasons for the establishment of PDO in Ethiopia:

By late 1993, it became clear to leaders of the Danish section of the International Commission of Jurists (ICJDS) that the much-anticipated Ethiopian war crimes trials would need to establish a mechanism enabling indigent former Dergue officials, who could not afford to pay for private attorneys, to adequately defend themselves, in order to meet international standard for fair and proper trials. Some members of the TGE [Transitional Government of Ethiopia] also shared this view<sup>60</sup>.

According to Peter Bach, "ICJDS began working to establish a corps of public defenders in Ethiopia" in January 1994, and he noted that "[d]ue to

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<sup>59</sup> See also Black's Law Dictionary, Seventh Edition with defines public defender as "A lawyer or staff of lawyers, usu. publicly appointed, whose duty is to represent indigent criminal defendant."

<sup>60</sup> Peter Bach (1996), "War Crimes Trials and the Establishment of a Public Defender's Office in Ethiopia: Field Report", *The Human Rights Brief*, The Center for Human Rights and Humanitarian Law at Washington College of Law, American University. Available at: <<https://www.wcl.american.edu/hrbrief/>>

the circumstances existing in Ethiopia at the time, the ICJDS had to begin this effort at the ground level”.<sup>61</sup> Bach further pointed out that the PDO which was established in 1994 under the auspices of Federal Supreme Court had no legal basis.

The PDO is organized as an entity under the Central Supreme Court and headed by a Chief Public Defender and a Deputy Public Defender. To date, no legislation has been enacted to establish the legal foundation for the work of the PDO. Consequently, the exact mandate, structure and organization is not instituted by law.<sup>62</sup>

Bach also noted the increase in the number of PDOs in a year. He stated that during the year between February 1994 to February 1995, “the PDO expanded from four or five attorneys to approximately 30 attorneys, and further stated that this was “accomplished through cooperation between the Ethiopian authorities, especially the Central Supreme Court, and the international donor community”.<sup>63</sup> Even if such significant increase (witnessed in 1995) in the number of attorneys at the PDO in Addis Ababa was commendable, the pace did not continue. A sizable number of the population in Ethiopia leads hand-to-mouth existence, which renders it absolutely inconceivable for them to hire attorneys in the event of criminal or civil litigation. Hussein Ahmed (2013), shares this view when he says:

In Ethiopia, the majority of those who live below the poverty line cannot usually afford legal fees in respect of court representation. This makes justice a luxurious commodity which is available to the rich minority, to the exclusion of the poor majority. This creates a situation where, in practice, laws and rights do not exist for the poor and other vulnerable groups.<sup>64</sup>

Cognizant of the import of defense council in the conduct of fair trial, the International Covenant for Civil and Political Rights (ICCPR) embodies a provision that affords safeguards to indigent persons accused of criminal offence. Article 14(3)(d) of the ICCPR requires an accused person “to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”<sup>65</sup>

Likewise, the Convention on the Rights of the Child (CRC) requires states to ensure that every child deprived of his or her liberty shall have the right to

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<sup>61</sup> Ibid

<sup>62</sup> Ibid

<sup>63</sup> Ibid

<sup>64</sup> Hussein Ahmed Tura, 2013, *supra* note 13, p.121

<sup>65</sup> Art 14(3) (d) of ICCPR

prompt access to legal and other appropriate assistance. It further provides for the right to have legal or other appropriate assistance in the preparation and presentation of his or her defense. Although the CRC creates a responsibility on the part of the state to provide a child with legal assistance in the preparation and presentation of his or her case when assistance is not otherwise available, it does not create an automatic right to publicly-funded legal counsel and does not also specify the exact nature of the legal assistance to be provided for children, despite the existence of the right to free interpretation if the child cannot understand or speak the language used.<sup>66</sup>

Brazil's Constitution has established a state agency "with the specific purpose of providing legal assistance and representation to the destitute, free of charge".<sup>67</sup> However, the 1995 FDRE Constitution does not embody such a provision, and it guarantees the right "to be provided with legal representation at state expense" only to accused persons who "do not have sufficient means to pay for it" and if "miscarriage of justice would result".<sup>68</sup> The constitutions of the regional states "incorporate a verbatim copy of this provision".<sup>69</sup>

At the federal level, the Federal Supreme Court is entrusted with the task of creating the public defender's office. The same holds true to the regional supreme courts. Article 16(2)(j) of the Federal Court Proclamation No. 25/1996 states that the President of the Federal Supreme Court "organizes the public defense office."<sup>70</sup> It is this single provision that serves as the legal basis for the establishment and operation of the existing Public Defender's Office at the federal level. Citing the Revised Southern Nations, Nationalities And Peoples Regional Courts Proclamation, No. 43/2002, Article 8(11) and 8(3) *Debub Neg. Gaz.* 7th year, No. 10, Hawassa, Hussein indicates that the Proclamation empowers "the president of the Supreme Court...(to) organize a defense attorney's office and administer the same."<sup>71</sup>

The Human Right Action Plan, while glossing over some of the critical and inherent limitations plaguing the Public Defender Office, indicates other key problems debilitating the office. One of these challenges identified by the Action plan is "the unavailability of Public Defenders in the First

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<sup>66</sup> Husein Ahmed Tura, 2013, *supra* note 13, p.131

<sup>67</sup> *Id.*, p.122

<sup>68</sup> Article 20(5), of the FDRE Constitution

<sup>69</sup> Hussein Ahmed Tura, 2013, *supra* note 13, pp.131-132

<sup>70</sup> Article 16 (2) (j) of the Federal Court Proclamation No. 25/1996

<sup>71</sup> Hussein Ahmed Tura, 2013, *supra* note 13, p.140

Instance Courts of Law”.<sup>72</sup> This indicates that absence of the service “inhibits the provision of necessary legal support to persons accused of serious criminal offences.”<sup>73</sup> The Action Plan further revealed that “the shortage in the number of Public Defenders at both the Federal and Regional levels, and their inadequate expertise makes it difficult to provide services to all accused persons consistently.”<sup>74</sup>

The Action Plan underlined that the weak “legal follow up and enforcement of the *pro bono* obligations of private advocates... coupled with the inadequate number of Public Defenders ... ( posed) ... a challenge to provide services to the public”.<sup>75</sup> It proposes the following remedies to address the problems:

Efforts will be made to make available sufficient numbers of Public Defenders in the Federal and Regional Supreme and High Courts. As regards the first Instance courts, conditions will be devised to provide accused persons with Public Defenders in serious cases. For this purpose, Public Defender’s Offices will be established within First Instance Courts and consecutive training courses will be provided to develop the expertise of relevant personnel.<sup>76</sup>

#### **b) Pro bono services of private attorneys**

In addition to the Public Defender’s system (enshrined in the Federal Court Proclamation No. 25/1996 and other regional proclamations), the Ethiopian legal framework also provides for *pro bono* services of private attorneys. In this regard, Article 49 of the Federal Court Advocates’ Code of Conduct Regulations No. 57/1999 states the *pro bono* obligations of licensed advocates for at least fifty hours per year. It is titled “Rendering Free Legal Services (*Pro Bono Publico* Service)” and reads:

Any advocate shall render at least 50 hours of legal service, in a year, free of charge or upon minimum payment. The service shall be rendered to;

- 1) persons who can not afford to pay,
- 2) charity organizations, civic organizations, community institutions;
- 3) persons to whom court requests legal service;
- 4) committees and institutions that work for improving the law, the legal profession and the justice system.

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<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> Ibid

<sup>75</sup> The Federal Democratic Republic Of Ethiopia National Human Right Action Plan 2013-2015(2013), p.45

<sup>76</sup> Ibid,p.46

The Federal Democratic Republic of Ethiopia National Human Rights Action Plan 2013 – 2015 has incorporated this additional intervention of *pro bono* services. According to the Action Plan: “[t]he legal and working systems will be put in place to enable private advocates at federal and Regional levels to provide *pro bono* services more extensively”.<sup>77</sup> The Action Plan states that,

The Federal and all Regional courts have established offices of Public Defenders. Further, Federal and some Regional bureaus of justice have begun assigning private advocates *pro bono* to litigants in both criminal and civil cases where they demonstrate that they are unable to pay for the service<sup>78</sup>

With regard to the scope of the professional obligations of private attorneys, Article 3 of the Federal Court Advocates’ Code of Conduct Regulations No. 57/1999 stipulates the following:

Any advocate shall have the responsibility to assist the organs of the administration of justice in their effort to promote respect for the law and the attainment of justice. Any advocate shall, in particular, discharge his professional duty to his client, other lawyers and opposing party, the court, his profession and the society in general honestly, faithfully and truthfully.<sup>79</sup>

### **c) Ethiopia Legal and Judicial Sector Assessment Report (2004)**

The Ethiopia Legal and Judicial Sector Assessment Report (2004) indicated that “the Federal Public Defender’s (PD) office was created in 1995 under the Federal Supreme Court”<sup>80</sup>. Citing the Constitution, the Report noted that the Office “provides legal services to criminal defendants ... and primarily defends cases involving genocide, juvenile delinquents, corruption, treason, and other serious criminal allegations”.<sup>81</sup> The Report states that, while in principle “indigent criminal defendants have a constitutional right to legal representation at state expense”,<sup>82</sup> in reality, “this guarantee has not been fulfilled because of limited resources and public awareness”.<sup>83</sup> As regards

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<sup>77</sup> The Federal Democratic Republic of Ethiopia National Human Rights Action Plan 2013-2015(2013), p. 45.

<sup>78</sup> Ibid.

<sup>79</sup> Federal Advocates’ Code of Conduct, Council of Ministers Regulations No. 57/1999, Article 3

<sup>80</sup> The World Bank(2004), The Ethiopia Legal and Judicial Sector Assessment Report, p.30

<sup>81</sup> ibid

<sup>82</sup> ibid

<sup>83</sup> ibid

the quality of service provided by PDs, the report reveals that representation is provided “mainly by non-lawyers, or public defenders with only a few months of legal training.”<sup>84</sup> The report sums up its analysis by underlining that, “[p]ublic defender and legal aid services for the poor are very limited and generally quite weak”.<sup>85</sup>

The Assessment Report also states the body that determines the beneficiaries of the PD service and the procedures thereof: “The President of the High Court determines whether a criminal defendant requires a PD, and then issues a request. The defendant is normally in custody at that time, and eligibility for PD services is determined through prison officials”.<sup>86</sup> The Report further raises “issues of timeliness of representation and compliance with Constitutional timeframes for processing criminal accusations” as a problem which compromises the constitutionally guaranteed right of the accused person. In this regard it notes the fact that “[t]he PD office represents juveniles in Federal First Instance courts, as well, which have 10-11 benches” and states “Addis Ababa has two federal PD offices, and regional offices are contemplated but [these plans] are not yet implemented in states where federal courts have been established.”<sup>87</sup>

### **3.2 Ethiopia’s Criminal Justice Policy**

The Ethiopian Federal Democratic Republic Criminal Justice Policy (2012) sets the policy direction towards indigent criminal defendants. The objective of the Policy is to, *inter alia*, “ensure the effectiveness, expeditiousness, accessibility, and fairness of the criminal justice administration for persons accused of crime”. To this end, it states that “it is incumbent mainly on the investigative body, the prosecutor, and judiciary to make certain that accused persons are adequately represented by a lawyer to the extent that they can defend themselves from the alleged offence”.<sup>88</sup>

The Policy unambiguously states that, “If persons accused of crime have no sufficient means to hire advocates and miscarriage of justice would result, he/she [shall] be provided with legal representation at state expense”<sup>89</sup> The Policy further guarantees representation in a lawsuit involving compensation

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<sup>84</sup> *ibid*

<sup>85</sup> *ibid*

<sup>86</sup> *Id.*, p.31

<sup>87</sup> *ibid*

<sup>88</sup> Ministry of Justice (2012), The Ethiopia Federal Democratic Republic Criminal Justice Policy, p.35

<sup>89</sup> *ibid*

for damage incurred by indigent persons who are victims of human right abuse and serious crimes. It reads:

Persons who sustained injury as a result of serious crime or human rights violation involved in a lawsuit for compensation and if they do not have sufficient means to hire advocates and miscarriage of justice would result, [shall] be provided with legal representation at state expense.<sup>90</sup>

The Policy envisions the establishment of an independent and impartial body that represents indigent criminal defendants. It states that “[i]n order to enforce and ensure that [an indigent] defendant is adequately represented in the criminal justice system, there should be independent and impartial public defender institution”.<sup>91</sup>

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<sup>90</sup> Ministry of Justice(2012)The Ethiopia Federal Democratic Republic Criminal Justice Policy, p.35

<sup>91</sup> *ibid*

## **Methodology of Assessing Current Gaps in Public Defence Services**

The preceding section of the study (i.e., Section 3) mainly aimed at examining the Ethiopian legal and policy framework on Public Defender's Offices. The empirical part of the study in the following sections assesses the performance of PDOs in the realms of institutional set up, accessibility, adequacy and quality of the service provision. The assessment in selected locations in Ethiopia gives insight to the prevailing gaps. The field research focused on variety of assessment tools that were employed to collect data on the status of public defender's office at the federal and regional states. In addition to desk review, input gathering workshop, key Informant Interview (KII) and case study in five prisons were used to elicit information for the assessment.

### **4.1 Input Gathering Workshop**

Input gathering workshop was one of the techniques employed to gather data for the assessment. A day-long workshop was conducted on August 8, 2014 at Global Hotel Addis Ababa, involving representatives of federal and regional state institutions. 29 (Twenty Nine) participants were invited from Afar, Amhara, Benishangul-Gumuz, Gambella, Harari, Oromia, SNNPR, Somali and Tigray regional states courts, public defender's structures, police and prison administrations. Moreover, two representatives from the Public Defender's Office and one representative from each of the following, i.e. (a) the House of Peoples Representatives Legal and Administration Committee, (b) Federal Police, (c) Federal Prison Administration, and (d) Ministry of Justice were invited to partake in the day-long input gathering workshop. Out of 35 participants expected to take part in the workshop, 29 (28 male and 1 female) attended the workshop.

### **4.2 Key Informant Interviews**

Two types of interview guides were developed to undertake Key Informant Interviews (KII). One of the interview guides is specifically tailored to draw information from the high courts and regional supreme courts presidents while the second one is designed to elicit information from high court criminal bench judges. Accordingly, a total of 16 respondents drawn from Amhara (3), Benshangul-Gumuz (5), Oromia (3), Southern Nations,



Nationalities and Peoples Region (3), and Tigray Regional states (2) Supreme courts, Zonal/ High Courts, and City/municipal court judges participated in the Key Informant Interviews.<sup>92</sup>

The objectives of the interviews with judges from these regional state courts was to deepen the assessment because it is believed that involving judges would help grasp a comprehensive view of the status of public defender's offices from the courts' perspectives as well as ensure the participation of courts across the country.

### **4.3 Case Study in Five Prisons**

Two types of questionnaires were developed and administered to assess the experience of two categories of prisoners, i.e., prisoners who had access to public defender's representation service during trial, and prisoners who were convicted in the absence of public defender's service during the trial. The case studies were conducted in Amhara (Bahir Dar), Benishangul-Gumuz (Assosa), Oromia (Adama), Southern Nations, Nationalities and Peoples Region (Hawassa), and Tigray (Mekelle) Regional states prisons.<sup>93</sup>

A total of 39 prison inmates drawn from Adama (10), Assosa (8), Bahir Dar (9), Hawassa (5), and Mekelle (7) and who got the public defender's representation service participated in the assessment. 54 prison inmates who were unable to access public defenders representation service constituted the second category of prison respondents. They were drawn from Adama (10), Assosa (14) Bahir Dar (9), Hawassa (13), and Mekelle (8).

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<sup>92</sup> Interview (judges) and administrating questionnaires for prisoners (Assosa):  
March-10-12, 2015

Interviews (judges) and administering questionnaires for prisoners'(Bahir Dar):  
March 10-13, 2015

Interview (Judges) )and administering questionnaire for prisoners (Mekelle):  
March 17-20, 2015

Interview (judges) March 27 and administering questionnaires for prisoners  
(Adama): March 24, 2015

Interviews (judges) and administering questionnaires for prisoners (Hawassa):  
March 24-26, 2015

Interview with the Oromia Supreme Court President (Addis Ababa): April 3,  
2015

<sup>93</sup> Ibid, for the dates of case study in five prisons

#### **4.4 Selection of Study Participants**

The public defender's offices interact with variety of actors, most notably, actors operating within the criminal justice administrations. The major factor taken into account in the selection and involvement of study participants is their relative position/place with respect to the public defender's office. Courts and service recipients are key in this regard. The actual and potential role in terms of inhibiting or facilitating the effective performance of public defenders is considered in the selection and involvement of study participants.

Attempt has been made to involve state actors that are related with the institution of public defenders, notably, representatives of the federal and regional states public defenders, courts, the Legal and Administration Committee in the House of Peoples Representatives, Federal Police, Federal Prison Administration, and the Ministry of Justice. The involvement of these institutions was made during the input gathering workshop held on August 8<sup>th</sup> 2014 and key informant interviews (KII) conducted from March 10<sup>th</sup> 2015 to April 3<sup>rd</sup> 2015 while the onsite study during the same period involved the beneficiaries of the public defender's offices, i.e. prison inmates drawn from Adama, Assosa, Bahir Dar, Hawassa and Mekelle,

#### **4.5 Data Capture and Analysis**

Relevant information gathered from the workshop proceedings was documented and transcribed from Amharic into English. The data gathered from the key informant Interviews were organized along different themes and transcribed from Amharic into English as well. The close ended questionnaires were checked for their completeness after which the data were listed and tabulated. Data clearing for errors was done after which they were analysed.

## **Gaps in the Institutional and Normative Framework: Analysis, Findings and Discussion**

The gaps in Ethiopia's normative and institutional framework for public defender's services that have been highlighted in Section 3 involve various dimensions. These gaps were also indicated by participants of the input gathering workshop and key informant interviews.

### **5.1 Gaps in the Institutional setup of Public Defender's Offices**

#### **a) Input gathering workshop**

During the Input Gathering Workshop (stated above in Section 4.1) the participants indicated that the legal basis for the public defender includes international agreements such as ICCPR, UDHR, and national laws notably the FDRE Constitution and the Criminal Procedure Code. In particular, the participants invoked Article 20(5) of the FDRE Constitution that lays the ground for the representation of an accused person at the state's expense under the conditions stated in the provision. The workshop noted the constitutional provision which provides that 'accused persons have the right to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense.'

The findings further indicated that almost all constitutions of the regional states incorporate a verbatim copy of this provision. Participants of the workshop also identified legislations that confer power to the federal and regional supreme courts to organize public defender's office. They further noted, Article 16 (2) (j) of the Federal Court Proclamation No. 25/1996 which stipulates that the President of the Federal Supreme Court "organizes the public defense office." The Revised Southern Nations, Nationalities and Peoples Regional Courts Proclamation No. 43/2002 was mentioned as an example regarding the powers of the president of the region's Supreme Court to organize a defense attorney's office and administer the same. Participants also mentioned the Oromia National regional State Proclamation No. 141/2000 as another instance in terms of providing provision for representing to the indigent defendants accused of crime entailing 15 or more years of imprisonment. Moreover, it was indicated that the Public Defender

in Tigray neither has the legal basis for its establishment nor office of its own.

Participants of the workshop underlined the inadequacies of the existing legal framework and suggested that a separate legislation that ensures independent establishment and operation of the office should be enacted. They pointed out a host of problems plaguing the service of most regional and federal public defender offices. These problems include the absence of detailed law that regulates the establishment and operation of public defender's office and lack of proper and clear organizational structure from the region to the *woreda*.

With regard to facilities and resources, the workshop noted that public defender's offices do not have adequate office premises, are understaffed and underfunded. The workshop found that the offices lack benefit packages to professionals, do not have detailed job description to the public defenders, lack incentives that motivate staff and reduce staff turnover.

Having identified the problems, participants of the workshop suggested a number of policy measures. The participants gave emphasis to the need to "put in place and implement a separate legal framework that also takes into account the mandate of regional states." The participants suggested policy measures by underlining that "[t]he office should be properly organized; detailed directives governing public defenders should be in place, continuous capacity building training should be given to public defenders, and their accountability should also be ensured." The participants noted that these measures "require commitment on the part of the government." The workshop participants also suggested that "the service of the public defenders should begin from *woreda* and "continue up to the cassation bench in order to prevent miscarriage of justice."

#### **b) Key informant interview (KII) results**

The key informant interviews with 16 judges (stated in Section 4.2) were conducted to further inquire into the themes discussed during the input gathering workshop and assess other issues. President of the Oromia Supreme Court highlighted the legal basis for criminal defendant's right to access to the public defenders representation and stated the gaps and the efforts that are underway:

The legal basis for the assignment of public defenders to represent a person accused of serious crimes is the Constitution which obliges the state to assign public defenders for the indigent defendants. So the assignment of public defenders to represent an accused is a question of responding to the human rights of a criminal defendant. Although the

public defender is not organized as an office we have assigned them in courts at zonal level. We have now public defenders at the high court and supreme court levels. At the high court level, the number of public defenders is not that many. The Human Rights Action Plan stipulates that accused persons should have legal counsel. With the view to translating this plan into practice, we have prepared a structure that comprises a group of three public defenders and one public defender at the *woreda* level.<sup>94</sup>

According to Ato Demoze, public defenders are being assigned at the high court/ zonal level although it is not adequate. He mentioned structure as the major challenge and he noted lack of career development opportunities through ladders for promotion thereby resulting in lack of motivation among public defenders and rendering the task unattractive to other potential applicants. He further stated that “the organizational set up of the public defenders raises serious challenges” and noted the difficulty in relation with organizational structure and budget if public defenders are to be assigned in 269 *woredas* (districts) in Oromia regional state.<sup>95</sup>

The Criminal Bench Work Process Owner of Adama Special Zone High Court<sup>96</sup> indicated that existing structure has not only marginalized public defenders but also stated the need to revisit of the existing structure. He expressed the significance of the service of public defenders and stated that “they deserve equal recognition like judges within the court system”. Recalling that they are currently working under the auspices of courts, he suggested that this should be revised. He further remarked that “they are not given the opportunity to enroll in the judicial training center to receive on job training” and noted the need to create training and staff development opportunities for them. Ato Bedri suggested that the current lack of hierarchical and clearly defined structure within the public defenders office should be addressed.

The Amhara Regional State Supreme Court President on his part opined that “there is no well-established and independent public defender’s office. Rather, the public defenders are considered as part of the court administration”.<sup>97</sup> Explaining the relationship between the court and public

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<sup>94</sup> Interview with Demoze Mame, the Oromia Supreme Court President, April 3, 2015.

<sup>95</sup> Ibid.

<sup>96</sup> Interview with BedriTemam, Criminal Bench Work Process Owner at the Adama Special Zone High Court, March 24, 2015.

<sup>97</sup> Yeneneh Semegn, Amhara Regional State Supreme Court President, March 10, 2015.

defenders, Ato Yeneneh stated that public defenders are embedded in the court system and “they are not seen separately from the court system”.<sup>98</sup>

Similarly, respondent from SNNP Regional State indicated that the public defender’s office is embedded within the court structure. According to Ato Melkamu Abreham, the Court has made efforts to ensure access to persons accused of criminal offence and who cannot afford to hire defense lawyer. He further pointed out that “SNNPR Supreme Court decided to establish public defender’s offices in all tiers of courts” and stated that “although the structure for public defenders is put in place in each court, their salary scale has not yet been approved thereby creating administrative problem on courts”.<sup>99</sup> He suggested that “there should be separate structure for public defenders and their salary needs to be determined accordingly in the context of a coherent and standardized service provision”.<sup>100</sup>

Other judges from SNNPR also shared their views regarding the structure of the public defender’s office. President of the SNNPR High Court said that the public defender’s office is operating under the auspices of the high court and “public defenders are considered as employees of the court” and noted that as things stand now “the court and the public defenders are not separate institutions”.<sup>101</sup> He suggested that “the office should be established separately from the court and it should be fully staffed with the required human resource and should be equipped with the necessary material resources”.<sup>102</sup>

The Bahir Dar and its Surrounding High Court President on his part remarked that “public defenders are considered as part of the court structure. Their major task is receiving and executing orders given by the court”.<sup>103</sup> He pointed out that it is “very important for the public defender’s office to be independent without being affiliated to any institution. If the office is affiliated with the court, the issue of neutrality will be raised and many are suspicious whether the institution is independent of the court”.<sup>104</sup>

Likewise, respondents from the Benshangul-Gumuz Regional State Supreme Court indicated that there is no structure of the public defender’s office in the region except individuals who are working in the capacity of

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<sup>98</sup> Ibid.

<sup>99</sup> Melkamu Abreham, Hawassa Municipal Court Vice President, March 24, 2015.

<sup>100</sup> Ibid.

<sup>101</sup> Mate Magane, SNNP High Court President, March 24, 2015.

<sup>102</sup> Ibid.

<sup>103</sup> Markos Bekele, Bahir Dar and its surrounding High Court President, March 10, 2015.

<sup>104</sup> Ibid.

public defender. Ato Asrat Bayabil confirmed the foregoing by saying that “public defenders’ office does not exist at the Supreme Court level.” He added that “strictly speaking there is no public defender office at all save individual public defenders assigned at zonal level and there is one public defender in Assosa Zone High Court”.<sup>105</sup> As another respondent from the region’s Supreme Court remarked, “the Public Defenders’ Office is not under the supervision of Benishangul Gumuz Supreme Court”, and he stated that “Public defenders are found at zone level (High court). There are three public defenders in the region one of whom is in Assosa.”<sup>106</sup> The respondent noted, “Strictly speaking, PDO is not an office by itself; there are only individual public defenders in the region”.<sup>107</sup>

The observation of another respondent from the Mekele City High Court indicated the absence of public defender’s office or structure in the Tigray region. The respondent opined that “the PDO should be established at the office level comparable to public prosecutors’ office having all the necessary facilities”.<sup>108</sup> He suggested that “The public defenders’ office should also be established ... as an independent structure having adequate budget, human resource and other facilities. The PDO should be strong enough in assisting those who do not afford to hire advocate and lacks knowledge of the law”.

## 5.2 Discussion

The legal framework for the public defender office comprises the FDRE Constitution, different legislations, ICCPR, UDHR and other instruments. Article 20(5) of the FDRE Constitution guarantees representation of indigent defendants in criminal cases at the state’s expense. Federal and regional legislations also confer power on the federal and regional supreme courts to organize public defender’s office. However it is not properly established in all regions. Findings of the assessment revealed the inadequacies of the existing legal framework and the pressing needs for the enactment of separate legislation that ensures the administrative and operational independence of the public defender’s office.

As can be inferred from the findings of the input gathering workshop, and interviews conducted with key informants highlighted above, there are various problems which constitute challenges in the structure and performance of public defenders. Absence of a separate legal framework is

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<sup>105</sup> Asrat Bayabil, Benishangul-Gumuz Acting Supreme Court President, March 12, 2015.

<sup>106</sup> Girma Jemal, Regional Supreme Court Criminal bench judge, March 12, 2015.

<sup>107</sup> Ibid.

<sup>108</sup> Yemane G/Egzeabher, Mekele City High Court President, March 17, 2015.

one of the problems that inhibit the proper functioning of public defenders. This gap has also made it difficult to define the relationship between public defender's offices and other actors within the justice system.

The findings from the interviews with various regional court judges show that public defender's offices do not have clear organizational structure at various levels from region to the *woreda* (district). What we see in practice is that the public defender's offices at the federal and regional states are embedded within the court system and they operate under the auspices of courts. There is no mechanism that ensures the independence of public defender's office from the influence of courts.

In some regions, there is no structure at all except individual public defenders who are assigned to provide service. While the service should have been provided to the accused at all levels, i.e., from the *woreda* all the way to cassation bench; in most regions the service is confined exclusively to high courts.

Absence of clear organizational structure in public defender's office has caused a number of problems. There is no competitive salary structure (except in the Oromia regional state) as well as benefit package. As a result, attracting competent professionals, retaining staff and mitigating the problem of staff turnover have remained formidable challenges. Another major downside of the absence of clear organizational structure is blockage in the aspiration of individual professionals toward promotions in the career ladder. This demotivates current staff and does not attract competent professionals to join the office. This has indeed resulted in low professional competence levels of public defenders in the delivery of services as compared with the public prosecutors and practicing lawyers.



## **Accessibility and Performance of Public Defender's Offices: Analysis, Findings and Discussion**

The accessibility and quality of the public defender's services depends, among other things, on the rules set to determine beneficiaries who qualify for the service, the number of professionals required for the service, the case load as well as how frequently public defenders visit an accused person and obtain the defendant's views and concerns. The issues that were assessed during the input gathering workshop, key informant interviews and the case studies on the experience of prisoners included (a) accessibility of the service of the public defenders and the mechanism in place to ensure it, and (b) the performance of the service providers. The findings are presented below.

### **6.1 Access to Public Defender's Services: Key Informant Interviews**

#### **a) Oromia Regional State courts**

As the President of Oromia Supreme Court remarked, there are two ways for defendants to access the service of public defenders. "If the case presented before the court is believed to be complex, the public defender will be summoned by the court and will be given order to represent the accused".<sup>109</sup> The second ground for access is "when an accused person who has the awareness that the state has an obligation to assign public defender requests the court based on which the court will assign public defenders".<sup>110</sup> The President of the Supreme Court, however, noted that "the approach should be much more systematic than the existing practice" because "it should not be left to the free will of the judge". He noted the need to "be guided by clear criteria to be developed and implemented".<sup>111</sup> According to Ato Demoze, the criteria for accessibility are "the inability of the accused to hire an advocate, and secondly the gravity of the criminal charge. He stated the need to "focus on homicide, robbery, particularly, offences that entail rigorous imprisonment".<sup>112</sup>

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<sup>109</sup> Demoze Mame, Oromia Supreme Court President, *supra* note 94.

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

Ato Bedri Temam, from Adama Special Zone High Court remarked that “if a person accused of crime entailing 5 or more years of imprisonment cannot afford to hire advocate, the law obliges the court to assign public defender”.<sup>113</sup> With regard to the procedures of access to the public defender’s services, he stated that “when an accused person is formally charged, the court asks him whether he will hire an advocate. If he notifies the court that he cannot afford to hire advocate, then the court refers the case to public defender”.<sup>114</sup> He further stated that discussion is underway at the Zone High Court regarding the possibility of availing public defender’s services to defendants accused of crime even if the offences are punishable with imprisonment of less than five years.<sup>115</sup>

Accessibility of the service, *inter alia*, depends on the availability of the service and the criteria set for the determination of beneficiaries. With regard to the beneficiaries of the public defender’s services, Bedri Temam stated that “the proclamation prescribes the assignment of public defender if the accused person is charged with offence entailing 5 or more years of imprisonment”. He remarked that the court may assign public defender if it “feels that a trial entailing 5 or more years of imprisonment in the absence of legal counsel would result in miscarriage of justice”. He pointed out the discussion which is underway on “the possibility of handling appeal cases through public defenders”.<sup>116</sup>

Likewise, Ato Chala Diro stated that “the court assigns public defenders if the defendant is accused of offence entailing five or more years of imprisonment. Even if the penalty is less than five years, the court may assign public defenders to accused persons who cannot properly express themselves, as well as vulnerable groups such as women, and children”.<sup>117</sup> When asked why a considerable number of convicts who were accused of rape and who were sentenced with 15 or more years of imprisonment went through trials without having access to public defenders, Ato Chala remarked the following:

Under the 1957 Penal Code *woreda* Courts had jurisdiction over the offence of rape owing to the range of penalty that was imposed upon conviction for the offence. While the penalty for rape case has been changed under the 2004 Revised Criminal Code, the Criminal Procedure

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<sup>113</sup> Bedri Temam, *supra* note 96.

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*

<sup>117</sup> Chala Dirothe. Adama Special Zone High Court Acting President), March 24, 2015.

Code has not been revised accordingly. On the other hand, public defenders are found at zonal and higher levels, and there are no public defenders at *woreda* level. An offence which entails imprisonment of 10 or more years is tried by three judges. However a court at the *woreda* level which handles the case of rape is empowered to render a sentence up to 25 years of imprisonment, and it is now presided by a single judge. Persons accused of rape are tried at *woreda* level without being represented by public defenders since the latter are not available at the *woreda* level. Starting from 2008 Ethiopian calendar [i.e., September 2015-August 2016.], there is a plan to assign one public defender in each wereda.<sup>118</sup>

President of Oromia Supreme Court shares the concerns regarding the gaps in the inability to avail public defender's services in grave offences such as rape and he further states the need to widen the scope of legal aid services provided by public defenders. He noted the need for public defender's services in the offence of rape owing to "pressures from various actors including the media" and because judges might incline to pass penalties exceeding what is envisaged under the law due to the "horrible nature of the crimes and the behaviors of perpetrators". He further remarked that "rape accusation may, in rare cases, serve as vendetta" and such risks "render the assignment of public defenders important, because the involvement of public defenders in rape cases, can address the problem of false accusation".<sup>119</sup> Ato Demoze further raised the need to widen the limited practice of public defenders which is confined to criminal cases, and he stated that the jurisdiction of public defenders should in the long run include services for the indigent in domains other than criminal cases as well.<sup>120</sup>

#### **b) Amhara Regional State courts**

The President of the Amhara Regional State Supreme Court stated that "the number of public defenders is limited", and "the service is suspended when the public defenders travel along with the circuit court".<sup>121</sup> With regard to the problem of accessibility, he said that "currently the public defender's service does not cover appeal cases and it is not available to defendants who appeal to the appellate court." He suggested that "the service should start from police interrogation" and also "extend to appellate courts". He further suggested that the service should not only cover criminal matters, but should also be extended to civil cases."

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<sup>118</sup> Ibid.

<sup>119</sup> Demoze Mame, *supra* note 94.

<sup>120</sup> Ibid.

<sup>121</sup> Yeneneh Semegn, *supra* note 97.

Ato Banteamlak Alemneh, Amhara Region Supreme Court Judge, stated that generally “the court assigns public defender for those who are accused of serious criminal acts entailing 15 or more years of imprisonment”.<sup>122</sup> He added that if a public defender does not show up, “the court will adjourn the case until he/she reappears with the accused person”. With regard to the criteria for eligibility for the public defender’s services, he remarked that “the court gives much weight to the seriousness of the crime” and stated that “if the crime which the person is accused of is serious crime entailing 15 or more years of imprisonment and if the accused is not in a position to hire defense lawyer then the court will assign him public defender”.<sup>123</sup> He noted that public defenders “assist accused persons toward release on bail or acquittal” and suggested that accessing the service “should start at the police investigation stage and should go up to the cassation bench”.<sup>124</sup>

### **c) Hawassa Municipal Court**

In contrast to the experiences in Oromia and Amhara regional states highlighted above, the practice in Hawassa Municipal courts is worth to note because of certain unique practices. Ato Melkamu Abreham stated that in addition to the representation of indigent defendants in criminal cases based on court order “where an accused person proves that he has no means to pay for a lawyer”, the court “will order the intervention of the public prosecutors (Akabe Hig) ... in civil cases which involve issues of women and children” who need representation as plaintiff or defendant.<sup>125</sup> As the theme of the assessment focuses on public defender’s services, the scope of this study does not allow us to discuss the issue of the extending legal mandate of public prosecutors to enable them be engaged in such services.

### **d) Benshangul-Gumuz Regional State courts**

Respondents from the Benshangul-Gumuz Regional State Courts shared their experience regarding the accessibility of the public defender’s services. Ato Asrat Bayabil, Acting President of the Benshangul-Gumuz Supreme Court said, “there are three public defenders at the High Court level ..., the service is available only for robbery and aggravated homicide and is given only at the Zonal High Court”.<sup>126</sup> He suggested that “in principle the service should start from investigation stage, because prior to police confession, a suspect

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<sup>122</sup> Banteamlak Alemneh, Amhara Regional State Supreme Court Judge, March 10, 2015.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Melkamu Abreham, Hawassa Municipal Court Vice President, March 24, 2015.

<sup>126</sup> Asrat Bayabil, *supra* note 105.

should consult a lawyer”.<sup>127</sup> But considering the situation, he noted that “this is impractical, and it is not even possible to reach all suspects of criminal offences”.<sup>128</sup> Girma Jemal, a judge at the Benshangul-Gumuz Supreme Court stated that “public defenders represent an accused person at the high court provided that he is accused of serious crime”, and he pointed out that “when justice so requires the accused who was not represented by public defenders at the high court will be represented in the Supreme Court”.<sup>129</sup>

Likewise, two respondents, i.e., the president of Assosa Zone High Court and a Criminal bench judge on their part said that persons entitled to access public defender’s services are those who are accused of crimes such as “robbery and aggravated homicide but who do not afford to hire advocate”.<sup>130</sup> The means of verification of economic status is based on evidence obtained from prison administration.<sup>131</sup> According to these respondents, “public defender’s services start after the suspect is charged and only when the charge is brought to High court”. The respondents further noted the shortage of public defenders, as a result of which “the court will look into another option i.e. the provision of the service by private attorneys”.<sup>132</sup>

#### **e) Tigray Regional State courts**

Tigray Regional High Court President and criminal bench judge remarked that “the public defender’s service starts after the suspect is formally charged at the high court and the court orders public defenders to represent the accused for cases that involve robbery and serious crimes”.<sup>133</sup> With regard to the procedure, the respondent remarked the following:

The court asks the suspect whether he/she would like to be represented by public defender and if the latter responds in the affirmative then the court will give order to prison administration to ascertain whether the person can afford to hire advocate. The prison administration verifies the claim through affidavit. The court thereupon orders the public defender to represent the accused provided that these requirements are satisfied”.<sup>134</sup>

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<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

<sup>129</sup> Girma Jema, *supra* note 106.

<sup>130</sup> Mohammed Alhassen, Assosa zone High Court President and Mesele G/Hiwot, Criminal bench judge, March 12, 2015.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid

<sup>133</sup> Elizabeth Atikilti, Tigray High Court President and criminal bench judge, March 17, 2015.

<sup>134</sup> Ibid.

The respondent indicated the problems in the representation of indigent defendants in *woreda* (district) courts. He stated that “the punishment for the offence of rape is 5 to 25 years of rigorous imprisonment, this offence falls under the jurisdiction of *woreda* courts” where “the public defender’s service is not available”.<sup>135</sup> He noted that “a person accused of rape may be punished 25 years of rigorous imprisonment without being represented by public defender or private attorney”.<sup>136</sup>

Likewise, the Mekelle City High Court President remarked that the service of the public defenders is available only for “serious crimes when justice so requires and if the economic status of the suspect is ascertained through affidavit”.<sup>137</sup> The respondent also noted that the public defender’s service is accessible “after formal charge is instituted at court, while the service should have been provided starting from the arrest of the suspect”.<sup>138</sup> He pointed out that in collaboration with the regional Supreme Court, a public defender will be assigned or the case would be referred to the Tigray Bar Association, “if the suspect is accused of crime punishable with more than 12 years”.<sup>139</sup>

## **6.2 Access to Public Defender’s Services: the Experience in Selected Prisons**

### **a) Adverse consequences of lack of access: Response from prisoners who did not access public defender’s services**

Prisoners drawn from Adama, Assosa, Bahir Dar Hawassa, and Mekelle, who were tried and sentenced without being represented by public defenders were asked whether they have sustained damage owing to lack of access to public defender’s representation. All respondents (10 from Adama answered that they have sustained damage because they were not represented. While five out of nine informants) from Hawasa replied that they encountered practical problem because they were not represented by the public defenders, two informants responded that they did not encounter problem and the remaining two informants said they do not believe in the importance of the service.

All respondents from Mekelle (i.e. eight respondents) who were asked whether their rights are prejudiced because they did not get the service of

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<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> Yemane G/Egzeabher, Mekelle City High Court President, March 17, 2015.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

public defenders replied that their rights are prejudiced. On the other hand, among 14 respondents drawn from the Assosa prison who were asked similar question 8 of them said their rights are prejudiced, while the remaining 6 said their right is not prejudiced. In response to the same question, informants from Bahir Dar (9) who were asked whether they sustained damage because they were not represented by the public defender, 6 respondents said they faced problem during the court proceedings, while one informant said he did not face any difficulty due to lack of access to the service of public defenders and two informants skipped the question.

The following table shows the summary of the responses from prisoners who were sentenced without representation by public defenders:

<b>Whether prisoners have sustained damage owing to lack of access to public defender's representation</b>	<b>No of Respondents</b>	<b>Yes</b>	<b>No</b>	<b>Others</b>
Adama	10	10	-	-
Assosa	14	8	6	-
Bahir Dar	9	6	1	2
Hawassa	13	9	2	2
Mekelle	8	8	-	-
<b>Total</b>	<b>54</b>	<b>41</b>	<b>9</b>	<b>4</b>

The respondents were also asked the type of damage they sustained. three out of 10 respondents from the Adama correctional center replied that they did not get reduction of sentence, five of them said they were punished while they could have been acquitted simply because public defenders did not represent them during trial, and one informant said that he was scared during the trial and he did not, as a result, respond to the questions he was asked and the court did not grasp whatever he said. One informant said either the sentence could have been mitigated or he would have been acquitted.

Out of eight informants drawn from Mekelle who were asked similar questions, three of them said they were punished while they could have been acquitted, and the remaining five informants said the punishment could have been mitigated. Likewise, of the 13 informants drawn from the Hawassa correctional center, eight of them said they would have probably been acquitted, two respondents said the sentence would have been mitigated, and the remaining three respondents skipped this question.

As stated above, eight out of 14 prisoners from Assosa believed that they have sustained damage due to lack of access to public defender's services. Out of these eight respondents four prisoners said they were imprisoned while they could have been acquitted, three respondents said the punishment could have been reduced, and one respondent said he was denied bail.

Three out of nine informants from Bahir Dar who were involved in the survey said since they were not represented by public defenders, the sentences imposed on them are not mitigated, and five respondents said they would have probably been acquitted if they were represented by public defenders.

**b) Offences that deserve public defender's services: Response from prisoners who did not access PD services**

Various views were obtained (from prisoners who were not provided access to public defender's services) concerning the types of criminal offences that should be covered. Informants from Adama unanimously said that the service should be given to all types of criminal offence. Ten out of 13 respondents drawn from Hawassa replied that the public defenders should represent suspects of all types of crime provided that they are unable to pay for lawyer, and two informants said it should be given to persons accused of serious crimes such as terrorism, and one informant said the service should cover petty offences.

Seven out of eight informants from Mekelle said the service should be given to all types of criminal offences, while one respondent said the service should only be given for crimes punishable with short prison terms. Eleven out of 14 study participants drawn from Assosa said that the service should cover all types of crimes, while two informants said it should be limited to serious crimes, and one informant said the service should only be given to persons accused of crimes with lower prison terms. Six out of nine participants drawn from Bahir Dar said that the service should be given to all types of criminal offences, and one respondent said it should be given only to persons accused of serious crimes, and the one informant said the service should be given only to people accused of crimes with lower prison terms.

**c) Offences that deserve public defender's services: Response from prisoners who had access to PD services**

When asked the types of offences that deserve the service of the public defender, all informants from Mekelle who had access to public defender's services said the service should be given to all types of criminal offences. In the same way, eight out of 10 informants from Adama said the service should be given to all kinds of offences while two said it should be given to persons accused of simple offence. Eight out of nine informants from Bahir Dar said that the service should be given for all types' criminal offences, while one respondent replied that the service should be given to those who are suspected of serious crimes such as murder, terrorism, and aggravated robbery. Four out of five respondents from Hawassa replied that the service



should cover all types of crimes, and one informant skipped the question. While five of the eight respondents from Assosa said that the service should be given for all types of crimes, the remaining three respondents said the service should be given only for serious crimes like aggravated homicide, aggravated robbery, terrorism and the like.

**d) Starting point of public defender's services: Response from prisoners who did not access PD services**

When asked to suggest at what stage the service should begin, nine out of 10 respondents drawn from Adama said the service should be given right from the investigation stage, while one respondent said it should be given after the prosecutor's evidence is presented. Four out of nine respondents from Bahir Dar who were asked a similar question responded that the service should begin after arrest by the police; one informant said the service should start during police investigation while two respondents said the service should start when trial begins, and one respondent said the service should start at the stage of evidence and witnesses. One respondent skipped the question.

Four out of eight respondents drawn from Mekelle who were asked the same question said the delivery of the service should begin at the time of arrest, while three informants said it should start at the time of arrest; one informant said when the public prosecutor formally institutes the charge at court of law. Three out of fourteen respondents drawn from Assosa said the delivery of the public defender's service should start at the investigation stage, while nine of them said that the delivery of the service should start at the time of arrest. The remaining two informants suggested that the public defender's services begin when the public prosecutor institutes the charge in court.

Six of the respondents from Hawassa who were asked as to the stage for starting the delivery of the public defender's services said it should start during trial, five respondents said at the stage of police investigation, one said immediately after the police arrest, and one respondent said after the public prosecutor presented his evidences to the court of law and witnesses are heard. four out of nine respondents from Bahir Dar who were asked similar questions responded that the service should be given after arrest by the police, and 1 informant said the service should start during police investigation while two respondents said the service should start when trial begins, and one respondent said the service should be provided after the public prosecutor presented evidence.

**e) Starting point of public defender's services: Response from prisoners who had access to PD services**

Respondents drawn from Adama, Mekelle, Assosa, Hawassa, and Bahir Dar who accessed public defenders' service were also asked at what stage in criminal proceeding the service of the public defender should start. Six out of ten informants from Adama replied that the service should be given at the time of arrest, two informants said the service should be given at the investigation stage, one informant said it should be given after the defendant formally charged, and one informant said after the prosecutor's evidence is presented.

One out of the seven informants drawn from Mekele said the service should start when the public prosecutor institutes the charge in court, while two respondents said the service of the public defender should start at the investigation stage, and another respondent said the provision of the service should start at the trial stage and one more informant said it should start at the time of arrest and two informants skipped the question. Out of nine informants from Bahir Dar, six said the provision of the public defenders service should start immediately after the suspect is arrested by police and before investigation commences, while 1 respondent said during investigation, and 1 respondent said the service should be given during trial and another respondent said the service should start immediately after the public prosecutor presents his/her evidences or witnesses are heard.

Three out of five informants drawn from Hawasa said the service should start at the time of arrest of the suspect by the police, one informant said after the public prosecutor presents evidence to the court, and one respondent skipped the question. Eight respondents from Assosa also replied to the question by saying that the service should start after the public prosecutor instituted the charge in court (five respondents), at the investigation stage (two respondents), and at the time of arrest (one respondent).

**f) Means of access to public defender's services**

Prisoners drawn from Adama, Mekelle, Assosa, Hawasa, and Bahir Dar who accessed the service of the public defender were asked how they came about to access the service of public defender's service. Accordingly, while five respondents out of seven from Mekelle said they got the service by requesting the court, one replied that the court on its own initiative assigned a public defender to him, and one skipped the question. Similarly, eight out of 10 informants from Adama said that the court on its own initiative assigned them PDO, while two informants said they got the PDO service after filing petition to the court. Six out of nine respondents from Bahir Dar

said they accessed the public defender's representation upon filing petition to the court while the remaining three respondents said that the court on its own initiative assigned public defender to them.

Out of five informants drawn from Hawassa, three said that they accessed public defender's services assigned by court on its own initiative, while one respondent said he got the service upon filing petition to the court, and one informant skipped the question. Of the eight respondents from Assosa, five of them said they got the service of representation upon requesting the court, while the remaining five said that the court assigned public defender on its own initiative.

#### **g) Means of awareness about public defender's services**

In response to the question as to how they got the information about the availability of the public defender's office, respondents who accessed public defender's services mentioned various sources. Four out of seven respondents from Mekelle said they got the information from other persons, while one respondent said she had prior knowledge about public defender's services. Four out of nine respondents from Bahir Dar who were asked the same question said that they got the information about the existence of the public defender's office from their fellow inmates, while two of them said they had prior knowledge about the existence of the office; one informant said he got the information incidentally from an individual at the court, and one respondent skipped the question.

Of the five respondents from Hawassa, three of them skipped the question, one respondent replied that he got the information incidentally from individuals, and another respondent said he had a prior knowledge about the existence of the public defender's office. Of the eight respondents from Assosa, two said they got the information from other persons, one respondent said he got it from other prison inmates, and two of them said they had a prior knowledge about the existence of the public defenders, while the remaining three skipped the question.

## **6.3 Performance of Public Defender’s Offices**

### **a) Key informant interviews**

The assessment has looked into the performance of public defenders based on the views of key informant interview and the observations of prisoners who were participants in the case study. In line with this, interviewees who were asked to assess the performance of public defenders opined that it is not laudable.

Oromia Supreme Court President attributes poor performance of public defenders to three interrelated factors. He stated that the “the institution did not get the attention it deserves, and the service is viewed as supplemental work but not as a mainstream task.” The second reason according to Ato Demoze is, the low salary scale paid to professionals working as public defenders “and this does not attract competent professionals to join the office.” The third factor he mentioned is that “the public defenders themselves do not regard the occupation as a profession. So, the job is not performed with due diligence comparable with the level at which the prosecutor or private practitioners do their job”.<sup>140</sup>

In the context of the Adama Special Zone High court, Ato Bedri Temam, the Criminal Bench Work Process Owner at the Adama Special Zone High Court, stated that, “only limited numbers of cases from among the files lodged in the court are referred to public defenders. According to Ato Bedri the problem of performance cannot be mainly attributable to case load as such, but to other factors:

In the majority of cases, public defenders do not go where the accused are incarcerated. The usual practice is that they meet a defendant when he/she appears in court. They should have empathized the accused and done whatever they could within their own reach. For instance, when the prison administration fails to bring the defendant to court on the date of appointment, the public defender has to challenge the prison administration. Likewise, the court should also ask explanation from prison administration. Although there is no much problem in this regard at present, we are concerned about this.

### **b) Views of prisoners regarding the performance of public defenders**

Prisoners who accessed the public defender’s service were asked to assess the performance of public defenders based on how the service was useful to them. When asked to assess the usefulness of the public defender’s service,

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<sup>140</sup> Demoze Mame, *supra* note 94.

considerable number of them replied in the negative based on the level of services they had received. For instance, Four out of seven respondents from Mekelle said that in some way the sentence has been mitigated because of the public defenders' intervention while one respondent said there is no change. One respondent from Adama said the sentence has been increased, while another respondent said the sentence has been reduced through appeal but noted that this was not the result of the public defender's effort. Another respondent said the sentence has been relatively reduced. However, six out of ten respondents from Adama said they did not get any change as a result of the intervention of public defenders.

Four out of the nine informants from Bahir Dar said that due to the involvement of the public defender the sentence has been mitigated, while slightly over half of the informants (i.e. five) said they do not believe that the public defenders' service did any good to them. Likewise, three out of five respondents from Hawassa said that they did not get any tangible benefit out of the public defenders service, while one respondent said his sentence has been mitigated with the assistance of the public defender and one respondent skipped the question. Among eight study participants drawn from Assosa, five them stated that there was no change on the punishment, while three respondents said that the sentence has been mitigated due to the intervention of public defenders.

The same participants in the five prisons who had access to public defender's services were asked to rate the performance of public defenders. Accordingly, all informants (10) drawn from Adama rated the service of public defenders very weak. Two out of nine respondents from Bahir Dar said the service is excellent, two informants rated the service very good, one informant rated the service as average, and the remaining four informants rated the service very poor.

Three informants from Assosa rated the service of public defenders as very good while five respondents considered the service as very poor. Out of seven respondents from Mekelle, two respondents said the service is poor, one said fair, two said it is very good and one said excellent. Out of 5 respondents drawn from Hawassa who accessed public defender's service, two respondents said the service is excellent, one rated the service as an average, one ranked the service very poor, and one respondent skipped the question.

## 6.4 Discussion

Findings of the assessment show that public defenders are not accessible to all indigent defendants who qualify for the service. In certain conditions, being accused of serious crime may not necessarily warrant access to the public defender's representation. For instance, a considerable number of defendants who were accused of rape and sentenced to 15 or more years of rigorous imprisonment stood trial without being represented by public defenders. Even if rape entails rigorous imprisonment of higher thresholds, it is under the jurisdiction of the *woreda* courts. There are no public defenders at the *woreda* (district) level in most regions. Consequently, an indigent defendant accused of rape may be sentenced 15 or more years of rigorous imprisonment without being represented by a public defender.

In Adama, for example, there are prisoners who were sentenced to 15 years of rigorous imprisonment without being represented by public defenders. The findings show that the majority of the respondents in this assessment think that they could have been acquitted or could have benefited from mitigation of prison terms had they been represented by public defenders. Criminal trial without defense lawyer can indeed have an adverse effect on court proceedings and can likely bring about miscarriage of justice.

The overall practice indicates that, in principle, the type of offence, most notably, its gravity and the inability of the accused person to hire a lawyer are the two conditions for accessing public defender's services. In reality, however, the practice varies among regions, and there is no clear and uniform standard of service provision, as the foregoing criteria are neither binding nor consistently applied. In some regions, those who are accused of serious crime access the public defender's service, while in others defendants accused of crimes entailing lower imprisonment such as five years are entitled to the service.

In some regions courts give much weight to the seriousness of the crime, while in others the financial capability of the accused person is given more attention. An equally important variation is that in most regions, public defenders represent criminal offences, while in one regional state they are, in addition to criminal cases, assigned to handle civil suits involving women and other vulnerable groups. Findings of the assessment also show that in some regions the accused is required to bring evidence of pauperism, while in others an affidavit suffices for accessing the service.

This indicates the absence of clearly defined criteria for eligibility and procedures of access that are consistently applicable across regions in the determination of the beneficiaries of the service of public defenders. Findings of the assessment show that considerable number of prisoners who

were represented by the public defenders or otherwise believe that the representation should be given to all types of criminal offences irrespective of the gravity /seriousness of the offences and the service should start at the time of arrest or police investigation.

The assessment shows that the means of accessing public defender's services is through the initiative of courts or request from the accused. An accused person may not thus access the service, if the court fails to assign a public defender or if the defendant is unaware of his/her right to file petition to the court so that a public defender be assigned to him. Findings of the assessment show that a considerable number of the respondents drawn from different regions accessed public defenders' service upon filing petition to the court. However, access to public defender's representation should not be left to the free will of the judge or the accused person's request for the service because their absence could likely open the room for miscarriage of justice.

The findings show that most respondents consider the service of the public defenders as unsatisfactory. The respondents of key informant interviews who were asked to assess the performance of public defenders opined that there are gaps in the avenues of institutional structure, motivation and professional skills. There are prisoners who even questioned the significance of the office in light of the services it is currently offering. The majority of the survey participants rated the service as very poor or poor.

In most regions, public defender's offices are understaffed, under budgeted and they encounter severe shortages of the facilities that are necessary for the rendition of their services. The office is not given the attention it deserves, and is poorly organized. In some regions even the semblance of office structure is lacking. This study thus reveals the incongruity between the lofty ideals of safeguarding indigent defendants from the miscarriage of justice and the little attention given to public defender's offices which play significant roles toward the attainment of this objective.

## **Adequacy and Quality of Public Defender's Services: Analysis, Findings and Discussion**

### **7.1 Adequacy and quality of the service provision**

#### **a) Input gathering workshop**

Participants of the input gathering workshop conducted on August 8, 2014 indicated that the public defender's offices at the federal and regional levels are highly burdened with caseloads. The following caseload estimates of public defenders per annum were stated by participants of the workshop:

- Oromia: 700 cases ;
- Somali region: 200 cases;
- Federal Public Defender: 200 cases;
- Benshangul-Gumuz: 50 cases; and
- Harari region: over 37 cases

A public defender from the Afar Regional State who took part in the workshop indicated that “there is only one public defender for the entire region. The office is not organized. The Court assigns defense lawyer when an indigent person is accused of offence entailing 15 or more years of imprisonment. Since a public defender is assigned to the accused at the region supreme court after everything has been exhausted, it serves little purpose”.<sup>141</sup>

Participant of the workshop from the Oromia Regional Public Defender's Office stated that there are no public defenders at the *woreda* level, and notes the following with regard to the gaps in the adequacy of the services:

There are 18 zones in the region and at least two to three public defenders are assigned in each zone. We provide service only for cases with original jurisdiction and we do not entertain appeal cases which is tantamount to unfinished job. There is no uniformity in the service provision because there is no rule that regulates the services. It is imperative to clearly lay down the types of cases that deserve representation of the public defenders.<sup>142</sup>

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<sup>141</sup> Mulu Girmay, workshop participant from Afar Region.

<sup>142</sup> Jemal Hassesn, Public Defender at the Oromia Regional State Supreme Court



Participant from Mekelle who attended the input gathering workshop revealed how the public defenders in the region are extremely burdened with enormous caseload that could likely result in compromising the quality of the service they provide. The participant remarked the following with regard to the inadequacy of the services:

There are two public defenders at the regional level. Although, approval is obtained to have one public defender for each zone, so far there are no public defendants in all the seven zones of the region. In order to fill this gap, practicing lawyers are encumbered with many more cases than they are required to handle by law. Even if there is no legal basis for it, we represent defendants accused of offences entailing imprisonment of 15 or more years. Public defenders are also required to handle cases involving women that entail fine. For instance, in 2014, the two public defenders alone had handled 400 cases with original jurisdiction, not to mention appeal cases.<sup>143</sup>

Similarly, participant from the Benshangul-Gumuz noted that the service is given to persons accused of offences entailing 15 or more years of imprisonment. He stated that “the service of the public defender should start from the investigation phase” while the current practice is representation after charge. Even this representation was made only in 50 cases during the year. According to this participant, the service precludes criminal defendants who are prosecuted at the Woreda level thereby indicating the inadequacy of the services. He added:

The public defender’s office operates under the auspices of the region judicial administration council. There is one public defender in each of the region’s three zones. The public defenders represent persons accused of homicide, robbery and offences entailing imprisonment of 15 years or above, including appeal cases. We also represent children involved in criminal offences and civil matters. Currently, we are considering expanding our service to Woredas, based on the needs assessment that has been conducted.<sup>144</sup>

A participant, who represented the Public Defenders of the SNNPR Regional state, stated the level of the services rendered to criminal defendants through the region’s public defender’s office:

In our region, the position of public defenders is attained through appointment. There are 6 public defenders at the regional level. In each zone, there is one public defender. Public defenders who are assigned at Zonal level also provide service to woredas. So, in all the six zones we

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<sup>143</sup> Hailu Kebed G/Selasie, Public defender from Tigray Regional State.

<sup>144</sup> Rahel Habtamu, Representative from Benshangul-Gumuz Regional state

provide services to indigent persons accused of criminal matters and civil cases. We provide the service if the case is referred to us by court. An accused person seeking the public defender's service is required to produce evidence of pauperism from the social courts. Accused persons can lodge their pleadings from prison without appearing before the court. We jointly work with Hawassa University in representing defendants at court of law.<sup>145</sup>

Representative from the Somali National Regional State remarked that the public Defender's Office "has been providing service in the past two years" and added, public defenders are assigned "across all zones of the region." He stated that public defenders "provide service for indigent defendants who are accused of offences entailing imprisonment of 5 years and above. The public defenders in the region mostly represent persons accused of homicide."

With regard to the experience in the Harari regional State, the region's representative in the input gathering workshop stated that "there are three public defenders in the region." He pointed out that the services of the public defenders include the provision of services "to children under 18 regardless of the nature of the offence they are involved in". This service is provided in addition to the service of representation provided to indigent persons at the court of law. He added that the public defender's office has handled 36 cases in a year, and the region's civil service oversees the office.

Representative from the Amhara National Regional State on her part noted that, "the public defender represents indigent defendant accused of homicide, robbery, and other offences entailing 15 and above years of imprisonment". She added that huge support is provided by public defenders because they "visit correctional centers and give advice to accused persons as well as represent them during trial". She further pointed out that public defenders "represent accused indigent persons from first instance all the way to appeal to federal cassation bench using Plasma".

The following was the experience stated by the Head of the Federal Public Defender's Office regarding the level of the office's performance:

We handle cases brought to court of original jurisdiction (court where action are initiated and heard), appeal cases, as well as cases filed/lodged to cassation bench. While the office provides service to defendants accused of crime entailing 15 or more years of imprisonment, in practice, it also offers service to defendants accused of crime entailing imprisonment of less than 15 years. In consultation with courts, the office provides service to persons accused of crimes entailing sentence more

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<sup>145</sup> Tadesse Dagne, Representative from the SNNP Regional State

than five years as well. However, we do not give particular attention to women and children. Corruption charges, offence entailing capital punishment, money laundering and terrorism are some of the types of cases that are often referred to the public defender's office. Our service includes advising clients in prison, preparing statement of defense, and representing defendants at courts of law. The ultimate goal of the public defender's office is to protect an indigent defendant from being sentenced without getting legal support thereby preventing miscarriage of justice. So far, the Public Defender's Office has handled 1975 cases which involve 2000 defendants.<sup>146</sup>

### **b) key informant interviews**

Interviewees espoused views which indicated that the number of public defenders is disproportionately small *vis-à-vis* the case load.

In the Adama Special Zone High court there were two public defenders, and one of them has resigned. The number is inadequate when compared the case referred to them. At times a public defender was asked to represent an indigent defendant on the spot in court hearing soon after he got order of representation from court. Because of the case load and lack of due diligence, public defenders appear in court without adequate preparation and this makes the service inadequate.<sup>147</sup>

Concerning the question on the problems affecting the adequacy and quality of the service of public defenders, the Amhara Regional State Supreme Court stated that “public defenders have a problem of not clearly knowing their duties and responsibilities” and this is “creating a problem on the service delivery”.<sup>148</sup> The respondent also mentioned that shortage of public defenders is another problem that inhibits the delivery of adequate and quality service to beneficiaries. In his view, “the high courts and the Supreme Court have two public defenders each. Overall, the number of public defenders in the region is disproportionately small when compared with the demand on the ground. Due to this mismatch public defenders are unable to fully satisfy the needs of the public”.<sup>149</sup>

He pointed out that in addition to the challenges with regard to the inadequate number of public defenders, they “are not well equipped with the

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<sup>146</sup> Abate Dejene, Head of the Federal Public Defender's Office

<sup>147</sup> Chala Dirothe. Adama Special Zone High Court Acting President, *supra* note 117

<sup>148</sup> Yeneneh Semegn Amhara Regional States Supreme Court President, *supra* note 97.

<sup>149</sup> *Ibid.*

necessary knowledge and skills, and this in turn has compromised the quality of the service they provide”.<sup>150</sup> Ato Yenehun futher observed that “the service currently provided is at a rudimentary level” and “it is inadequate both in terms of quality and coverage”.<sup>151</sup> He thus underlined the need for the provision of adequate and quality services and suggested the need to significantly raise the number of public defenders and the need for the enhancement of their knowledge and skills.<sup>152</sup>

Ato Banteamlak Alemneh Judge at the Supreme Court of the Amhara Regional State noted that resort is made by courts “to assign lawyers *pro-bono* to indigent defendants who are not competent to defend their cases properly and who are not represented by public defenders.” He also indicated that “in some instances, the court even urges practicing lawyers at the court to give on the spot assistance to an indigent”.<sup>153</sup>

With regard to the adequacy of the service, a judge from the Bahir Dar and its surrounding High Court Criminal Bench suggested that the beneficiaries of the service are persons who are accused of homicide. He noted that “there are other cases that fall under grave robbery and attempted murder which can be punishable more than certain cases of homicide.” In criminal cases where the public defenders are not assigned, the court asks practicing lawyers to assist the defendant if the accused cannot properly defend his/her case”.<sup>154</sup> The inadequacy of the public defender’s services is also noted by the President of Bahir Dar and its surrounding High Court who indicated that “public defenders are not placed at the *woreda* level”.<sup>155</sup> He suggested that persons accused of criminal offences other than homicide should benefit from the service of public defenders”. With regard to the quality of the service, he remarked that “the service rendered by public defenders is more or less comparable to that of the service being provided by practicing lawyers”.<sup>156</sup>

A Supreme Court Judge at the Southern Nation Nationalities and Peoples Regional State on his part remarked that although he is not in the right “position to evaluate the exact impact of the public defenders role at courts

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<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Banteamlak Alemneh, Judge at the Supreme Court of the Amhara Regional State, *supra* note 122

<sup>154</sup> Habtamu Alamerew, Bahir Dar and its surrounding High Court Criminal Bench judge, March 10, 2015.

<sup>155</sup> Markos Bekele, Bahir Dar and its surrounding High Court President, *supra* note 103.

<sup>156</sup> Ibid.

which has first instance jurisdiction over criminal matters”, he knows very well that “public defender’s office at the Supreme Court is providing excellent services”.<sup>157</sup> The High Court President at SNNPR on his part observed, “previously the public defenders have been available only at the regional high courts with the view to representing only indigent persons accused of serious crime but now they work at all layers of courts”.<sup>158</sup> On the other hand, SNNPR Supreme Court Judge suggested that “public defenders have to widen their scope of operation to the extent of representing civil cases and for petty offences as well” and he further noted the need for the services starting from police investigation.<sup>159</sup>

Respondents from the Benshangul-Gumuz and Tigray Regional states also shared their experience on the adequacy and quality of the service rendered by the public defenders. The High Court President from Tigray regional state indicated that public defenders are not placed in the high court and if the court comes across with indigent defendant it has two options: Either it refers (mostly) the case to Tigray Bar Association looking for private attorneys or refer it to the regional Supreme Court so that the Supreme Court assigns public defenders”.<sup>160</sup> Indicating the inadequacy of the service given by the public defender, Ato Yemane said, “The public defender’s service is very much limited. There are only five public defenders in the region. The number of service providers is not proportionate to the number of beneficiaries”.<sup>161</sup>

Mohammed Alhassen President of the Benshangul-Gumuz High Court and Mesele G/Hiwot, Criminal bench judge also stated the inadequacy of the public defender’s service because it is limited to High Court and not available at the Supreme Court, and *woreda* courts. They noted the need to institutionalize the services rather than mere employment of individuals for the task. They also suggested that the service is not available for all types of criminal offences.<sup>162</sup> Asrat Bayabil, Benshangul-Gumuz Supreme Court Acting President agrees with the view that “the service is not adequate because it is given only to persons accused of two types of criminal offences i.e. Robbery and aggravated homicide” and because “there is only one public defender in Assosa Zone in spite of the case load in the region.” He pointed out that the court adjourns the trial when public defender is absent, thereby

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<sup>157</sup> Ano Abedela, Supreme Court Judge at Southern Nations, Nationalities, and Peoples Regional State, March 24, 2015.

<sup>158</sup> Mate Magane- SNNP High Court President, *supra* note 101.

<sup>159</sup> *Ibid.*

<sup>160</sup> Yemane G/Egzeabher Mekele City High Court President, *supra* note 108.

<sup>161</sup> *Ibid.*

<sup>162</sup> Mohammed Alhassen and Mesele G/Hiwot, *supra* note 130.

causing undue delay even if private attorneys are sometimes assigned to handle cases.<sup>163</sup>

In addition to the limited number of public defenders in the region, Ato Asrat underlined that they are not on equal footing with public prosecutors in terms of resources and facilities. Such inconvenience and the case load have significant impact on quality of service as well as delay in the dispensation of justice”.<sup>164</sup> He suggested that “the public defender office should be established at the office level and should be strengthened in terms of human resource, materials and trainings”. He further noted the need to extend public defender’s services beyond the zonal level so that indigent defendants at all layers of courts can be provided with the services.<sup>165</sup>

Girma Jemal, judge at the Benshangul-Gumuz Supreme Court Criminal Bench holds a similar view regarding the inadequacy of the public defender services. He appreciated the legal aid service provided by private attorneys in the course of discharging their professional obligation.<sup>166</sup>

### **c) Views from prisoners**

Prisoners from Adama, Mekele, Assosa, Hawasa, and Bhair Dar who accessed the public defender’s service were asked whether they believe that they received adequate service from the Public Defenders. Four out of seven respondents from Mekelle said that the public defender’s service is inadequate, while the remaining two said the service is adequate and one respondent skipped the question. When asked the reason why they did not believe that they received adequate service, four respondents from Mekelle stated that the public defenders are not competent enough when compared with public prosecutor, they are not well prepared, and there are times when they do not appear during court sessions.

All of the ten informants from Adama replied that they do not believe that they got adequate service. Three respondents from Adama mentioned the same reason invoked by the respondents from Mekelle, while one respondent mentioned that public defenders do not make adequate preparation; another informant said that the court did not give the public defender a chance to make his case; one respondent said he met the public defender only once; another informant replied that the public defender did not give due attention

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<sup>163</sup> Asrat Bayabil, *supra* note 105.

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

<sup>165</sup> *Ibid.*

<sup>166</sup> Girma Jemal, *supra* note 106.

to the case; one informant said the prosecutor prevented the public defender from speaking; and one informant said the public defender did not properly communicate what he told him to the court.

Out of nine respondents from Bahir Dar, six of them said the service they got from the public defender is adequate and they believed that they got sufficient assistance from the public defenders, while the remaining three respondents considered the service inadequate. With regard to the reasons why the prisoners regarded the services as inadequate, five respondents believed that the inadequacy stems from lack of sufficient preparation on the part of public defender.

Two out of five respondents from Hawassa said that the service is inadequate stating that the public defenders are incompetent when compared with the public prosecutor. Two respondents replied that it is adequate, while one informant skipped the question.

Among eight respondents from Assosa, five respondents said the public defender's service is inadequate and the remaining three regarded the service as adequate. Three out of five of the respondents from Assosa who considered the services as inadequate stated that public defenders have the lower level of competence when compared with public prosecutors.

## **7.2 Discussion**

The findings of the assessment revealed that in most of the regions the service of public defenders is not cascaded at all tiers of courts structure, from the Supreme Court to *woreda* (district) levels. In most regions the public defenders are not assigned at the *woreda* level. In others such as Oromia, public defenders represent criminal defendants only in the first instance jurisdiction leaving out appeal cases. In some regions even rudimentary structures are not in place. Moreover, the service is not available for all types of criminal offences. There are also regions where the service is not institutionalized and is provided by individuals.

Findings of the assessment indicate that public defenders in many regional states are extremely overstretched. For instance, in 2014 two public defenders in Tigray national regional state alone handled 400 cases with original jurisdiction, not to mention appeal cases. The findings also showed that public defenders in Oromia regional state annually entertain about 700 cases. In Afar regional state only one public defender is assigned for the entire region. Generally the number of public defenders in many regions is disproportionately small *vis-à-vis* the case load. A simple comparison

between the public defenders and public prosecutor's office indicates the enormous work load per public defender and how they operate in the absence the necessary facilities that are crucial to their activities.

The prosecutor office uses the police to serve summons to the suspect, while the public defender himself is duty bound to serve summons for witnesses, and in the event of appeal to the public prosecutor as well. Individual public defenders bear such burdens personally with little or no facilities including vehicles and photocopy machines. The findings of the assessment show that there is understaffing of public defenders in view of the mismatch between the case load and the number of public defenders. This adversely affects the availability and quality of the public defender's services at the federal and regional levels.

Professionals who work as public defenders in the regional states and at the federal level are underpaid and this is a disincentive for staff retention and for the attraction of competent professionals toward the office. Furthermore, the findings of the assessment indicate that a considerable number of public defenders do not regard their occupation in the context of long-lasting career. They rather see it as a transit point for other careers such as being a judge, prosecutor, or an advocate. The job is not thus usually performed with due diligence as compared to the performance of prosecutors or private attorneys at law.

The findings of the assessment show that inability to clearly understand duties and responsibilities, inadequate professional competence and diligence in making the necessary preparation to defend the accused, and nonattendance at the court sessions are among the factors that affect the quality of public defender's services. Findings of the assessment also indicated that refresher courses and skill oriented on the job trainings are not organized to improve the performance of public defenders.



## Conclusions and Recommendations

### 8.1 Conclusions

This assessment has examined the legal basis for the establishment of public defender's office, its mandate, structure, as well as accessibility, performance, adequacy and quality of the service it renders. The conclusions and recommendations of the assessment are presented below.

The Findings of the assessment indicate that, in addition to the international legal framework embodied in the ICCPR and UDHR, the FDRE Constitution, federal and regional court establishment proclamations, and other laws constitute the legal regime under which the public defender office is operating. It is also indicated that Article 20 (5) of the FDRE Constitution lays down the legal basis for the representation of an accused person at the state's expense. Yet the following gaps have been observed.

Although the legislations in place confer power to the federal and regional supreme courts to organize public defender's office, the institution is not put in place in all regions; and where these structures are in place they hardly enjoy administrative and operational independence

There is no comprehensive legal framework for the establishment of independent well-functioning public defender's office that clearly defines its powers and responsibilities as well as its relationship with other actors within the justice system. This has inhibited the proper functioning of the public defender office both at the federal and regional levels.

The public defender office at the federal level and regional states is embedded within the court system and functions under the auspices of courts. As a result, there is no proper and clear organizational structure that extends from region down to the *woreda* (district) levels. Absence of clear organizational structure has caused a number of problems. In most regional states (except in the Oromia regional state which has a relatively better payment structure in comparison with the others) there is no competitive salary structure and benefit package. Both in regions and at the federal level, professionals working as public defenders are underpaid and this is a disincentive for competent professionals to join the office and prepare themselves for the profession. Public defenders are not thus motivated to embrace their jobs as a long-lasting career. This adversely affects the level of commitment to the task and retention of competent staff.

Absence of clear organization structure not only fails to motivate staff toward career development through promotion and job content enrichment, but it has also made it difficult to attract competent professionals. Findings of the assessment also indicated that refresher courses and skill oriented on job training are not organized to improve the performance of public defenders. As a result, the level of services rendered by public defenders is not comparable with the standard of services offered by public prosecutors and practicing lawyers.

There is no uniform and clear standard of service provision. Ideally, the service of public defenders should have been provided to the accused at all levels beginning from the *woreda* (district) all the way to cassation bench. However, in most regions, the service is confined exclusively to high courts.

Findings of the assessment show that in some regions, the accused is required to bring evidence of pauperism, while in others affidavit suffices for accessing the service. Moreover, the assessment indicates that the means of accessing public defender's services is either an initiative from courts or request from the accused persons, in the absence of which an accused person may not access the services. These means of access are unavailable if the court fails to assign a public defender or if the defendant is unaware of his/her right to request the court to assign him/her a public defender. Findings of the assessment show that a considerable number of the respondents drawn from different regions accessed public defenders' services upon filing petition to the court. Access to public defender's representation should not be left to the discretion of the judge or the accused person's request for the service. This necessitates clear guidelines with regard to the means of accessing the public defender's services.

It is not only the means but also the *grounds* for the eligibility to public defender's services that needs clarity because there is lack of clearly defined criteria applicable across regions for the determination of beneficiaries of public defender's services. In practice, the type of offence, most notably, its gravity and insufficient means to hire a lawyer are the two conditions to be satisfied for accessing public defenders service. But, these criteria are neither binding nor uniformly applied as the practice varies from region to region. In some regions, public defenders represent only persons accused of serious crimes, while in others they represent cases that may entail imprisonment of 5 or more years. In some regions courts give much weight to the seriousness of the crime, while in others financial capability of the accused person is given more attention. In some regions, the service is strictly limited to criminal offence, while in others the service covers civil suits involving women and other vulnerable groups.

At times, being accused of serious crime may not necessarily warrant access to the public defender's representation. A considerable number of convicts who were accused of rape were sentenced to 15 years of rigorous imprisonment or above without access to public defender's representation. Such prisoners feel that they were punished while they could have been acquitted or while the sentence they received could have been mitigated. Trial without defense lawyer is highly likely to be susceptible to miscarriage of justice.

The majority of study participants rated the service of the public defenders unsatisfactory. Many of them even questioned the usefulness of the office in light of the services it currently provides. The reasons for this under-performance include factors such as the incongruity between the ideals of averting miscarriage of justice enshrined in various laws *vis-à-vis* the little attention given to the institution which is assigned to accomplish the task. In most regions the office is understaffed, under budgeted and does not have the facilities that are necessary for the provision of its services. Owing to the inadequate attention giving to the office, it is poorly organized, while in some regions even a rudimentary office structure is lacking.

As stated above, the service of public defenders is not available at all tiers of courts structures. In several regions, the public defenders represent criminal defendants only in the first instance jurisdiction leaving out appeal cases. Nor is the service available for all types of criminal offences.

In many regions, public defenders are extremely overstretched as the number of public defenders is disproportionately small *vis-à-vis* the case load. This problem of understaffing is clearly evident from the mismatch between the case load and the number of public defenders.

These problems of case overload along with the problems identified in the study with regard to the low level of professional competence, motivation and diligence adversely affect the levels of performance and quality of the services at all stages. The gaps in inadequate preparation to defend the accused and nonattendance at the court sessions are among the manifestations of the serious limitations that adversely affect the quality of the services rendered by public defenders.

## **8.2 Recommendations**

- a) The existing legal framework is inadequate, and there is the need for a separate legislation that establishes an autonomous public defender office and which can ensure its administrative and operational independence.
- b) The existing service is encumbered by a number of problems including absence of clear and, uniform criteria for the determination of

beneficiaries of the service, ambiguity as to the stage where the service begins in the process of criminal proceedings, and absence of clear guideline for courts to determine beneficiaries of the service, etc. Accordingly, public defender's representation service should:

- i. be available for all types of criminal offences irrespective of the gravity /seriousness of the offences;
  - ii. start at the time of arrest or police investigation ;
  - iii. not be limited to the original jurisdictions, but should also cover appeal cases; and
  - iv. put in place a clear guideline which determines who should access the service of public defenders so that arbitrary practices that may lead to the miscarriage of justice can be avoided.
- c) The following measures should be taken in order to motivate public defenders, address the enormous caseload and ensure the quality and adequacy of public defender's services:
- i. put in place an organizational structure with a clear career promotion ladder that ensures upward mobility;
  - ii. adequately staff the structure to mitigate the enormous workload and address the problems that hinder accessibility that facilitate the provision of quality service to the beneficiaries;
  - iii. salary structure comparable with that of the prosecutors to attract and retain competent professionals; and
  - iv. Organize periodic on job training to steadily enhance the knowledge and skills of public defenders.
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## **List of Laws and Instruments**

Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995

Federal Courts Proclamation No. 25/1996

Federal Court Advocates' Code of Conduct Council of Ministers Regulations No. 57/1999."

Southern Nations, Nationalities And Peoples Regional Courts Proclamation, No. 43/2002, Debub Neg. Gaz.7th year, No. 10, Awassa

Oromia National regional State Proclamation No. 141/2000

Federal Advocates' Code of Conduct, Council of Ministers Regulations No. 57/1999, Article 3

UN International Covenant on Civil and Political Rights, 1966.

Universal Declaration of Human Rights, 1948.

International Covenant on Economic, Social, and Cultural Rights,

### **Comparative laws and cases**

The 1988 Federal Constitution of Brazil

*Sixth Amendment, US Constitution*

Cases

*Powell v. Alabama*, 287 U.S. 45, 68-69 (1932)

*Gideon v. Wainwright* , 372 U.S. 335, 344 (1963).

### **Policy and Action Plan**

Ministry of Justice (2012), The Ethiopia Federal Democratic Republic Criminal Justice Policy.

The Federal Democratic Republic Of Ethiopia National Human Rights Action Plan 2013-2015(2013)

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## References

- Dimock, Edward J. (1956), "The Public Defender: A Step towards a Police State?" *American Bar Association Journal*, Vol. 42, No. 3 (March 1956).
- Harlow, Carol (1999), "Access to Justice as a Human Right: The European Convention and the European Union", in *The EU and Human Rights* 187.
- Harrington, C. J. & Getty, G.W. (1956), "The Public Defender: A Progressive Step Towards Justice:", *American Bar Association Journal*, Vol. 42, No. 12 (December 1956).
- Hussein Ahmed Tura (2013), "Indigent's Right to State Funded Legal Aid in Ethiopia". *International Human Rights Law Review*, 2
- James Bronson Reynolds (1922), "The Public Defender", *Journal of the American Institute of Criminal Law and Criminology*, Vol. 12, No. 4 (Feb. 1922).
- Jon Mosher (2013) Understanding Gideon's Impact, Part 2: the Birth of the Public Defender Movement
- Madeira, LÍgia Mori (2014), "Institutionalisation, Reform and Independence of the Public Defender's Office in Brazil", *Brazilian Political Science Review*, Volume 8, No. 2.
- National Legal Aid and Defender Association (2010), *International Legal Aid & Defender System Development Manual: Designing and Implementing Legal Assistance Programs for the Indigent in Developing Countries*, p. 18
- Ogletree Jr., Charles J. (1995), "Toward a More Effective Right to Assistance of Counsel", *Law and Contemporary Problems*, Vol. 58, No. 1, (Winter, 1995)
- Penal Reform International and Bluhm Legal Clinic of the Northwestern University School of Law, *Access to Justice in Africa and Beyond: Making the Rule of Law a Reality* (Louisville, Colorado, National Institute for Trial Advocacy, 2007).
- Peter Bach (1996), "War Crimes Trials and the Establishment of a Public Defender's Office in Ethiopia: Field Report", *The Human Rights Brief*, The Center for Human Rights and Humanitarian Law at Washington College of Law, American University.
- The World Bank (2004), *The Ethiopia Legal and Judicial Sector Assessment Report*.
- United Nations Office on Drugs and Crime, *Access to Legal Aid in Criminal Justice Systems in Africa*, Survey Report, Criminal Justice Handbook Series, (United Nations, New York: 2011).
- United Nations Office on Drugs and Crime, *Handbook on Improving Access to Legal Aid in Criminal Justice Systems in Africa*, Criminal Justice Handbook Series, (United Nations, New York: 2011).

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## Annex I

### **Key Informant Interviews**

Ano Abedela, Supreme Court Judge at Southern Nations, Nationalities, and Peoples Regional State

Asrat Bayabil, Benshangul-Gumuz Acting Supreme Court President.

Banteamlak Alemneh, Amhara Regional State Supreme Court Judge.

Bedri Temam, Criminal Bench Work Process Owner at the Adama Special Zone High Court.

Chala Dirothe. Adama Special Zone High Court Acting President.

Demoze Mame, the Oromia Supreme Court President

Elizabeth Atikilti, Tigray High Court President and criminal bench judge

Girma Jemal, Regional Supreme Court president and Criminal bench judge,

Habtamu Alamerew, Bahir Dar and its surrounding High Court Criminal Bench judge.

Markos Bekele, Bahir Dar and its surrounding High Court President.

Mate Magane, SNNP High Court President

Melkamu Abreham, Hawassa Municipal Court Vice President.

Mesele G/Hiwot, Criminal bench judge.

Mohammed Alhassen, Assosa zone High Court President

Yemane G/Egzeabher, Mekele City High Court President.

Yeneneh Semegn, Amhara Regional State Supreme Court President.

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## Annex II

### **Participants of Input Gathering Workshop**

1. Abate Dejene, Head of Federal Public Defender's Office, Federal Supreme Court
2. Abdulawali Jama- Somali Regional State--Public Defender Office
3. Abula Oman Oukumu- Gambela- High Court
4. Ahmed Mohammed (Chief Inspector) - Ethio-Somali Police Commission
5. Alebachew Reda- Benshangul Gumuz Regional State Supreme Court
6. Alemayehu Lemmesa- Afar Regional State Prison Administration
7. Atalee Doseгна- North Shoa High (DebdreBrehan ) Court- judge
8. Atumo Gebremariam- Ministry of Justice
9. Eleni Khasahun- Amhara regional State Supreme Court(Public defender)
10. Gadbil Tung (Chief Inspector) -Gambella Police Commission
11. Gereme Ourgi (Commander) - Gambella Prison Administration
12. GetachewGeremew- Harari Regional State-Public defender
13. Habtamu Geremew –Benshangul Gumuz Regional State Prison Administration
14. Hailu Kebede G/Selase- Tigray Regional State-Public defender
15. Jemal Husein- Public defender, Oromia Regional State Supreme Court
16. KahisayAtsbeha- Afar Regional State
17. Kasa Gugesa-House of People Representatives.
18. Melaku Meta- Harari Regional State Police Commission
19. Mohamed Abdi- Somali Region (Supreme Court)
20. Mohamed Mahmud (Assistant Inspector) –Somali Regional State Prison Administration Police Commission
21. Mulu Girmay -Afar Regional State Supreme Court(Public Defender)
22. MulugetaTassew-EU Delegation
23. Rahel Habtamu- BenshangulGumuz
24. Reshed Said- Addis Ababa-EYLA



25. Tadesse Abera, Federal Supreme Court(public defender)
26. Tadesse Gebisa (Deputy Sergeant)- Federal Prison Administration
27. Tadesse Dagne- SNNPR –Public Defender
28. Wase Kasa (Chief Inspector) - Harari Prison Administration
29. WetetuTegnge- Federal Police Commission-Attorney
30. Yemisrach Benalfew- EU-CSSP-II
31. Zebene Fikre –ELA

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## Annex III

### **Validation Workshop on Public Defender’s Services in Ethiopia: Assessment of Current Gaps and the Way Forward**

Venue: Jupiter Intercontinental Hotel

Date: 16 November 2015; Time: Morning 8:30 AM

Chairperson:

Ato Tamirat Kidanemariam,  
President of Ethiopian Lawyers’ Association

Legal Experts involved in the research

Ato Abera Hailemariam

W/o Tigist Abera

Ato Wondyefraw Girmachew

- The chairperson made opening remarks before the presentation.
- Profile of the research coordinator and the researchers were stated by Ato Tamirat Kidanemariam, President of Ethiopian Lawyers’ Association

Presentation (45 minutes)

#### **Participants who forwarded feedback and comments on the research report were the following:**

- AtoTsehay Wada (Associate Professor)–Addis Ababa University School of law and Governance
- Ato NuruSeid, Practicing lawyer
- AtoHasen Assehab, Afar Region Supreme Court
- AtoTechane Merga, Oromia Regional State Supreme Court
- Ato Fitsum Abayneh, Ministry of Justice
- W/o Kebebush Worku, Benshangul-Gumuz Regional State Supreme Court
- Ato Jemal Husein, Oromia Regional State Supreme Court (public defender)
- AtoWendimagegn Abera, The Ethiopian Institution of the Ombudsman
- Ato Jemal Abdela, Southern Nations, Nationalities and People Regional State Supreme Court (public defender)

## Feedback Received from Participants

### The feedback was offered after tea break

Discussion on the themes presented was made and positive words of appreciation and feedback were expressed by the participants. The workshop participants have validated the research report. The comments and points of feedback that were forwarded for consideration were the following:

- a) There are cases where defendants have not been represented by public defenders. It would have been better to review the case to show if miscarriage of justice has happened merely because defendants were not represented by public defenders during their trial.
- b) The study should not be shelved. It should reach policy makers so as to translate the recommendations into practice. Ethiopian Lawyers Association should work toward ensuring that the study reaches the concerned policy makers that could make a difference.
- c) The study seems to be looking outward. It could have addressed the problems within the public defender's office in further detail. The performance of some public defenders is below the standard. Their rebuttal is, at times, much weaker than the lay defendant they represent.
- d) The service of public defenders should be available indiscriminately to all types of criminal offences and public defenders should be assigned to suspects of criminal offence at the police stations.
- e) It is essential to devise mechanisms whereby the public defender's office can collaborate and align its work with other actors involved in the provision of legal aid service such as the clinical legal aid centers of law schools, professional associations like ELA and practicing lawyers who are legally obliged to provide *pro bono* service of fifty hours per year.
- f) The public defender's office is plagued by problems of staff shortage, poor service quality, and deficiency on structure. These problems have to be addressed. It would be good if this problem is given emphasis in the recommendations of the study. Lawyers associations should strongly demand that the government take reform measures to address the problems that are detrimentally affecting the public defender's service.
- g) The issue whether the public defender's office is relevant was raised in view of the current trend towards planning nearly 100% conviction rates. The participants of the validation workshop reflected upon the issue and agreed that an institution for public defender services is indeed necessary, and what should rather be corrected is the trend in planning nearly 100%

conviction rates by the public prosecutor. The experiences of other countries were raised to justify the existence of public defender's office. It was underlined that the performance of a public prosecutor should not be evaluated on rates of conviction out of the files he or she handles, because the prosecutor is equally expected to be sympathetic toward the release of innocent persons.

- h) In the comparative study it is worthwhile to look into South Africa's experience. Legal aid in South Africa enjoys constitutional recognition. The institution in charge is also answerable to the law makers. Similarly, the experience of European Court of Human Rights is another experience worth for consideration.
- i) The Federal Supreme Court Cassation bench has remanded a case where the defendant had never been represented by public defender during the trial thereby setting precedence for cases tried in the absence of public defender could be remanded.
- j) The Federal Courts Establishment Proclamation empowers the Federal Supreme Court president to organize, but not to establish public defender's office. There is no independent institution as such in charge of public defenders services, what we have is an arm of the Federal Supreme Court or other courts where the offices are established.
- k) International human rights instruments, the Constitution and the Criminal Procedure Code mention public defense at different stages of the trial starting from the instigation of suit. If the representation does not start at upon arrest, anything could go wrong and it would be impossible to rectify the errors and miscarriage of justice at the early stage of the criminal justice proces.
- l) The issue whether it is practical to expect representation in civil suits as well was also raised. It is necessary to draw lessons from the good practices of other countries.
- m) The perception of some defendants that public defenders incline towards the government (in criminal charges) rather than being sympathetic to the defendant (or at least being objective) was raised by a participant. The need to address such issues of awareness was noted. The issue whether the word 'yemengist' (የመንግሥት) is necessary as a prefix was also raised.
- n) There are budgetary constraints for transportation to prison so that public defenders can meet defendants. Public defenders who encounter such problems can meet the defendants only when the latter are brought to court.

Following the feedback, it was indicated that the half day validation workshop was intended to gather comments which can be considered before the submission of the final research report. Explanations were given for some of the queries raised by participants. The researcher assured the participants that the comments will be incorporated as much as possible, and expressed his appreciation for their active participation and comments.

Ato Tamirat Kidanemariam, the President of Ethiopian Lawyers Association in his closing remarks, stated that the research has shown the extent to which the public defender's service is critical for the protection of indigent defendants. He underlined that the poor are desperately in need of legal assistance not only in criminal cases but also in civil suits. He indicated the barriers to access to justice due to illiteracy and inability to understand the legal issues as factors that do not allow the poor to represent themselves in courts. The president of Ethiopian Lawyers Association remarked that the availability of legal representation in civil suit and criminal proceedings helps justice to prevail.

Ato Tamirat also noted that as we go far from the center to the periphery, the density of lawyers gets thinner and this is a serious concern as trial in the absence of lawyers is susceptible to miscarriage of justice. He also stated that the legal aid centers run by ELA in five regions including Addis Ababa are playing a part in ensuring access to justice for those who cannot afford to pay for legal services in civil as well as criminal cases. Ato Tamirat indicated the need for the involvement of every lawyer in the pursuits of rendering legal aid. Finally, Ato Tamirat wound up his speech by reiterating that every legal professional has the duty to contribute towards ensuring access to justice and this starts with providing *pro bono* services.

The workshop came to an end at 12:00 am

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