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## Barruulee Articles

Criminal Adjudication by State Courts under the FDRE Constitution: The Quest for Compartmentalization of Jurisdiction

Human Rights Protection under the FDRE and the Oromia Constitutions: A Comparative Study

Hariiroo Hojii fi Sirna Hiikkaa Waldhabbii Falmii Hojii Keessatti Rakkoolee  
Mul'atan

The Right to Counsel of Children in Conflict with the Law: Case Study in  
Adama

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**CRIMINAL ADJUDICATION BY STATE COURTS  
UNDER THE FDRE CONSTITUTION: THE QUEST FOR  
COMPARTMENTALIZATION OF JURISDICTION**

*Abdi Gurmessa Amenu\**

**ABSTRACT**

*With the introduction of federal arrangement with the FDRE Constitution, the issue of distribution of powers between the Federal Government and the states in general and that of criminal adjudicative jurisdiction between the Federal courts and state courts in particular has become a controversial point. This controversy has resulted in due to the fact that the Constitution has established a dual court structure. On the one hand, the dualism of the court structure presupposes that the federal courts adjudicate federal criminal matters, whereas state courts adjudicate state criminal matters. This principle is accompanied by an exception that the state courts adjudicate federal criminal matters by delegation power. On the other hand, since the federal government has centralized criminal legislative power, it has become controversial how the state courts are adjudicating criminal matters of the federal government: with delegation power or as an original power. This article explores how the state courts are adjudicating federal criminal matters, and how the criminal adjudicative jurisdiction of the federal courts and state courts is compartmentalized.*

**Keywords:** *jurisdiction, criminal adjudication, compartmentalization, constitution, federalism*

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## INTRODUCTION

As a complete departure from the previous form of state which was unitary in its approach and a centralized system of government, Ethiopia introduced a federal form of government with the formal promulgation of the 1995 Constitution whose nomenclature of the government is termed as the Federal Democratic Republic of Ethiopia (hereinafter referred to as the FDRE)<sup>1</sup>. It consists of the Federal Government and the State members<sup>2</sup>. The main and distinguishing hallmark of a federal form of government is the existence of the doctrine of the distribution of powers which is constitutionally safeguarded as between the central government and constituent units<sup>3</sup>. This holds true to the Ethiopia's federal set up as well. Accordingly, the legislative, executive and judicial powers are distributed between the Federal Government and the States<sup>4</sup>.

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<sup>1</sup>Art.1 of the FDRE Constitution unlike the former type of state under the monarchical and dictatorial regimes which was unitary and autocratic, the FDRE established a federal and democratic state.

<sup>2</sup>The cumulative readings of Art.50 (1) and Art.47 (1) of the FDRE Constitution spell out the nine Member States of the FDRE. These are Tigray, Afar, Amhara, Oromia, Somalia, Benishangul/Gumuz, SNNP, Gambella, Harar.

<sup>3</sup>The phrase 'Constituent units' is known by different nomenclatures in different federations. For example, it is called State in the US and Australia, Province in Canada and South Africa, *Lander* in Germany. In Ethiopia, it is named by various terms. For example, during the Transitional Period, it was called National/Regional Self-governments, and in the FDRE Constitution, it is termed as State Member or Member States, States, and there are also other authors who name it Regional State. Whatever its nomenclature, it denotes the building blocks of federal/central government in any federation.

<sup>4</sup>Art.50 (2) of the FDRE Constitution provides that the Federal Government and the States shall have legislative, executive and judicial powers. While HPR enacts laws on federal matters (Arts.51 & 55), State Councils enact laws on matters falling under the respective state jurisdictions (Arts. 39, 50(4), & 52). The executive wing of government also follows similar pattern in that the federal executive body implements federal laws (Arts.51, 71, 72, 74, 75, 77) and state executive organ executes state laws (Arts. 50(6), & 52). Furthermore, while federal courts adjudicate cases whose jurisdiction falls under the Federal Government, regional courts would adjudicate cases whose jurisdiction fall under the state jurisdictions notwithstanding exceptional circumstances such as delegation clause in which federal matters are delegated to state courts subject to consequences resulting from such as

The fact that powers of such kind are divided between the Federal Government and the States calls for a degree of compartmentalization that necessitates for the clear determination of jurisdiction in general and criminal adjudicative jurisdiction in particular. As a result, the legislative powers of the House of People's Representatives (hereinafter referred to as HPR) at federal level and the State Councils at the state levels, the executive and judicial powers of the federal and state executive and federal and state judiciaries, respectively should be demarcated as clearly as possible. This article concentrates on and is devoted to the discussion of the demarcation of criminal adjudicative jurisdiction between the Federal Courts and State Courts providing a more emphatic explanation as to how regional courts are adjudicating criminal cases under the current federal arrangement. A critical appraisal of the scope of the criminal adjudicative jurisdiction of the state courts will also be made in the discussions. Moreover, an in-depth scrutiny will be made as to whether the Regional First Instance Courts do have criminal adjudicative jurisdiction.

Before launching into the discussion of the theme under consideration, the writer would like to elucidate why compartmentalization of criminal jurisdiction between the Federal Courts and State Courts is required in the current Ethiopia's federal set up. In the above introductory statements, it has been touched upon that judicial powers are divided between the Federal Government and the States, namely the Federal Courts and the State Courts. Thus, litigant parties should be capable of being cautious and conscious to which court they would lodge their criminal file: to the Federal Courts or the State Courts. To do so *per se* requires the existence of a body of law that

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reimbursement of financial expenditures by the delegating party (the Federal Government) (Art.78(2) cum. Art.94 (1) of the FDRE Constitution).

clearly figures out the criminal adjudicative jurisdiction of the Federal Courts and State Courts.

Consequently, the need for a watertight compartmentalization of criminal adjudicative jurisdiction between the Federal Courts and State Courts on the one hand and among the courts of the same tiers on the other may be justified on different compelling grounds. The first rationale for the quest for a clear demarcation of criminal jurisdiction between the federal and state courts is necessitated for the avoidance or at least prevention of conflict of jurisdiction. A jurisdictional conflict may arise in many instances. For example, if there is no law that regulates or governs the issue under consideration; there is a regulatory law but ambiguity, vagueness, or unclarity that obstructs the proper interpretation and application of the law in determining the jurisdiction, or where there is a circumstance whereby a law appears to give power to both tiers of courts. In order to settle such potential conflict of jurisdiction over criminal cases, there must be a clear law that is capable of regulating the issue both at federal and regional levels.

The second rationale behind the need for a clear demarcation of criminal jurisdiction of the Federal Courts and State Courts is strongly linked with sparing litigant parties from confusion and uncertainty with which court they would file their cases, and thereby saving them from incurring unwanted costs. The more the litigant parties are certain of a specific court, in which they lodge their cases, the more economical, accessible, and well-timed they become. There are crimes which may be barred by period of limitation unless they are lodged with a competent court within the time specified thereof for prosecution<sup>5</sup>. So the time specified for prosecution of a certain

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<sup>5</sup>Arts.213, 216, 218 of the FDRE Criminal Code indicate that crimes are subject to time limitation with the exception of Art.28 of the FDRE Constitution which denies period of

crime should not be expired or lapsed while the complainant or victim is toiling in search for which court is unequivocally competent to consider the case at hand. The fact that a litigant party may be perplexed and thereby subject to extra costs in lack of a specified court to which he/she would lodge his/her file may happen either at both tiers of courts or one of them. This concern may be complicated based on different factors. One among other factors is whether the case at hand is federal or regional criminal matter (the issue of subject matter jurisdiction) and then which court is competent to entertain and how.

The third *raison d'être* of the quest for a clear demarcation of criminal jurisdiction is built in the need for the baseline for the allocation and assignment of budgets in general and criminal adjudication in particular. Actually, budget is allocated not on the basis of case by case or subject by subject when it is meant for the judiciary whether it is at federal or state level. But the whole idea here is it is recommendable if criminal adjudicative jurisdiction is taken as a baseline in the process of allocation or assignment of budget for the judiciary. That is to say, if the criminal jurisdiction of the Federal courts appears to be more bulky than that of the State Courts, more budget should be allocated to the Federal Courts and the vice versa must be done if more criminal cases are adjudicated by the State Courts<sup>6</sup>.

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limitation for such crimes as genocide, summary execution, forcible disappearance or torture. However, the Constitution goes on to state that such offences may be commuted by amnesty or pardon of the legislature or any other state organ.

<sup>6</sup>As the detail will be discussed in the subsequent discussion, the FDRE Constitution stipulates the financial expenditure clause which is due for the enforcement and adjudication of federal laws and matters by the state agencies and courts (Arts. 78(2), 79(7) & 94(1)). Accordingly, the delegating party (mostly, the Federal Government) should take into account the bulkiness of the criminal jurisdiction while it allocates compensatory budgets for the Regional States regarding delegated criminal jurisdiction.



Furthermore and above all, the whole idea of a watertight compartmentalization of criminal adjudicative jurisdiction is required as a resultant phenomenon of one of the underlying principle (s) of federalism: distribution of judicial powers namely, criminal cases between the two tiers of courts<sup>7</sup>. As indicated above, this piece of writing also explores whether the Regional First-Instance Courts have criminal adjudicative jurisdiction which could be backed by constitutional provisions and principles of federalism.

Thus, the article surveys criminal adjudicative jurisdiction under the FDRE Constitution and other subsidiary laws; how criminal cases are allocated between the Federal Courts and State Courts on one hand and among State Courts on the other putting an emphasis on the State First-Instance Courts. Accordingly, the article consists of five parts. Part one, as described hereinabove, presents the introductory discussion and the rationales of the need for watertight compartmentalization of criminal adjudicative jurisdiction. Part two highlights judicial jurisdiction and court organization or structure in general. Part three deals with judicial power and jurisdiction, and court organization in the FDRE. Criminal adjudicative jurisdiction in the FDRE will be discussed in part four. The Constitutional and statutory basis of criminal adjudication will also be dealt with in this very part. Part five presents criminal adjudicative jurisdiction among State Courts. An adequate and in-depth speculation will be made on the legal regimes governing the criminal adjudicative jurisdiction of the State First-Instance Courts and the ambivalence surrounding same. To this end, the Oromia and Harar Regional State Courts have been selected based on the availability and accessibility of laws. Then, the paper will be wrapped up by conclusion.

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<sup>7</sup>This imperative may not work for federations in which regional courts are responsible for adjudication of criminal laws enacted by the central government such as Switzerland (Art.123 of the Constitution).

# 1. JUDICIAL JURISDICTION AND ORGANIZATION OF COURT STRUCTURES

## 1.1. JUDICIAL JURISDICTION

Judicial jurisdiction could be defined as the legal power and authority of a court to make a decision that binds the parties to any matter properly brought before it<sup>8</sup>. Just like that of the legislative body that enacts laws and an executive organ that implements same, courts adjudicate matters so defined by laws<sup>9</sup>. Any court possesses jurisdiction over matters only to the extent granted to it by the Constitution, or legislation of the sovereign on behalf of which it functions. The question of whether a given court has the power to determine a jurisdictional question is itself a jurisdictional question. Such a legal question is referred to as jurisdiction to determine jurisdiction<sup>10</sup>.

There are different dimensions of jurisdictions. These are subject matter jurisdiction (the court's authority to decide the issue in controversy such as contracts issue, civil rights issue, etc), general jurisdiction (the fact that the courts can hear any controversy so defined except those prohibited by law), exclusive jurisdiction (a type of jurisdiction which is limited only to one order of courts), territorial jurisdiction (the court's power to bind the parties to the action), appellate jurisdiction (power of a court to correct the errors of another, lower court), concurrent jurisdiction (the notion that two courts might share the power to hear cases of the same type, arising in the same

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<sup>8</sup>Black's Law Dictionary, P.2494

<sup>9</sup>In general, a jurisdictional question may be broken down into three components 1.whether there is jurisdiction over the person (*in personam*), 2.Whether there is jurisdiction over the subject matter (*in rem*), and 3.Whether there is jurisdiction to render the particular judgment sought.

<sup>10</sup>For instance, Art.35 (2) of Proclamation No.25/96 (hereinafter referred to as the Proclamation) states that where two or more Regional or Federal Courts claim or disclaim jurisdiction over a case, the Federal Supreme Court shall give the appropriate order thereon.

place), diversity jurisdiction (the power of Federal Courts to hear cases in which the parties are from different states)<sup>11</sup>.

One of the frequently asked questions revolving around a federal system as a political arrangement is whether the underlying principles of federalism, more specifically, the doctrine of the distribution of powers, is applicable to judiciary. Regarding this question, Samuel shares his idea that a judiciary in a federal government must be seen and understood within the context of the basic principles underlying a federal system<sup>12</sup>. This indicates that there must be devolution of power between the two tiers (federal and state courts) and among the courts of various levels.

## 1.2. ORGANIZATION OF COURT STRUCTURE

As far as the organizational structure of courts in federal states is concerned, there are two approaches discovered up until now. These are dual court structure and single (integrated) court structure. The dual court structure is a type of system of organization of courts in which both the central government and the constituent units have their own tiers of courts which are competent to adjudicate or settle matters falling under the respective orders of governments or interpret and implement laws made by the respective governments as the case may be. Explained otherwise, the federal courts are there to adjudicate federal matters and laws, and the state courts are there to adjudicate state matters and laws<sup>13</sup>. The dichotomy of federal matters and state matters may be determined by the nature of law (whether it is a federal

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<sup>11</sup> <http://www.yourdictionary.com/jurisdiction>, Accessed on 10/06/2014 at 3:00 PM

<sup>12</sup>Samuel Alemayehu, *The Judiciary and Court Organization in Federal States: A Comparative Study* (AAU, Law Faculty, unpublished, 1992).

<sup>13</sup>The genesis of the federal structure may have an impact on the duality of courts. The dualism of legislative and executive bodies of government may predetermine and influence the judiciary to have and follow a dual structure in an organizational set up.

law or state law), the nature of the matter itself (whether the matter falls under the federal and/or state jurisdiction), and other standards set by the Constitution of a certain federation. Example, USA and Ethiopia have set up dual court structure. The dual system of the organization of courts in federations may be found an ambivalent concern in the instance of concurrent jurisdictions. Litigant parties and their advisors may be confused in deciding which court has a jurisdiction over a particular matter<sup>14</sup>. But, this is more apparent than real fear if the subject matter is clearly demarcated between the Federal Government and the States over which their respective courts would have adjudicative jurisdiction.

The second approach to the organization of court structure in federations is single or integrated court system. The proponents of this approach assert that since decisions rendered by the state courts are subject to review by the Federal Supreme Courts at apex, federal interests may be maintained without the need for the establishment of any lower federal courts. They vindicate this opinion asserting that lower federal courts are unnecessary, expensive and likely to be an intrusion on the autonomy of the state governments<sup>15</sup>. However, when this view is tested in terms of the underlying principles of federalism especially, with the litmus test of the doctrine of the distribution of powers and self-rule, the trend tends more to a unitary system than a federal one. As the name implies, it turns to be a single or integrated court structure which at the end of the day boils down to denial of self-government on judicial affairs. Example, India, Germany, Switzerland.

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<sup>14</sup> Brooke Groves, *American Intergovernmental Relations*, 1964, P.204.

<sup>15</sup> Sileshi Zeyonnes, *Constitutional Law II*, Justice and Legal Research Institute, 2009, P.189.

## **2. JUDICIAL POWERS AND COURT STRUCTURE UNDER THE FDRE CONSTITUTION**

The FDRE Constitution clearly states that judicial powers are vested in the courts, both at Federal and State levels<sup>16</sup>. As touched upon in the foregoing discussions, Ethiopia's system of court structure is dual like that of the US counterpart. Accordingly, there are two tiers of courts each of them consisting of three levels of courts (Supreme, High and First-Instance)<sup>17</sup>. While the Federal Supreme Court is directly established by the Constitution, the Federal High Court and First-Instance Courts may be established by the HPR by two-thirds majority vote. Should the HPR deem it necessary to establish the Federal High Court and First-Instance Courts nationwide or in some States, there are many issues that are at stake<sup>18</sup>. For instance, working language, regional autonomy of the states and other concerns would become the subject of debate. Economic feasibility and institutionalization will also be the other issue in case the HPR establishes the Federal High Court and First-Instance Courts within the States.

## **3. CRIMINAL ADJUDICATIVE JURISDICTION UNDER THE FDRE CONSTITUTION**

The Constitution, being a general law, does not treat criminal adjudicative authority in isolation from other subjects. Neither does it elaborate a specific jurisdiction of courts as far as criminal adjudication both at federal and state levels is concerned. Consequently, it is a state of necessity to opt for other

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<sup>16</sup>Art.79 (1); This provision is also adopted by the constitutions of each Regional State.

<sup>17</sup>Art.78 (2) of the FDRE Constitution.

<sup>18</sup>Accordingly, Proclamation No.322/2003 established the Federal High Court within five States: Afar, Benishangul Gumuz, Gambella, Ethio-Somale and the SNNP. The Proclamation does not justify why these five States are selected.

subsidiary laws which should complement the Constitution<sup>19</sup>. Despite the fact that the constitution does not single out the criminal jurisdiction of courts, there are provisional premises that support us in the explanation of the theme at hand and also applicable *mutatis mutandis* to criminal adjudicative jurisdiction as well.

As discussed in the foregoing section, the Constitution already envisaged the dual court structure in Ethiopia under the federal set up. Accordingly, both the Federal Government and the States have their own judiciaries which are, in principle, beholden with adjudicating their respective criminal matters save in exceptional stipulations such as delegation. To put it in a clearer word, Federal Courts adjudicate criminal cases whose laws are enacted by the HPR and the Regional Courts entertain criminal cases if the laws made by the State Councils are breached. This principle is safeguarded by the Constitution under the mutual respect of powers between the Federal Government and the States<sup>20</sup>. Thus, non-interference of power in each other's authorities so defined by the Constitution is the rule to be observed between the two orders of government.

### 3.1. CONSTITUTIONAL BASIS

The FDRE Constitution, more or less, provides for the jurisdiction of courts in a way open to subjective views. This holds true especially for criminal adjudication which revolves around concurrent and delegated judicial jurisdictions that is envisaged by the Constitution. Let us see them one by one.

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<sup>19</sup>With all its defects, Proclamation No.25/96, the Federal Courts Establishment, was enacted with a view to fill the gaps and for detailed contemplation of criminal jurisdiction of Courts.

<sup>20</sup>Art.50 (8) states that the States shall respect the powers of the Federal Government and the Federal Government shall likewise respect the powers of the States.

### **a. Concurrency of Criminal Adjudicative Jurisdiction**

Before embarking on the discussion of this subsection, let us look at concurrency as a whole: its definition, attributes, and significance under the FDRE Constitution in the doctrine of the distribution of powers. Concurrent jurisdiction is a jurisdiction that might be exercised simultaneously by more than one court over the same subject matter and within the same territory, a litigant having the right to choose the court in which to file the action<sup>21</sup>. Concurrent adjudicative jurisdiction, thus, contemplates that within the limited judicial powers so determined by relevant laws, both Federal and State Courts have jurisdiction over a certain matter, a litigant party being granted the right to lodge her case to any competent court she wants.

The concurrency of judicial power under the Constitution is found in Art.80. It is captioned as ‘Concurrent Jurisdiction of Courts’. But the reading and wording of the whole substances go beyond the essence of judicial concurrency. Hesitantly, sub-articles (2) and (4) of the article might appear to convey the message of concurrency but these two sub-articles again do not appear to indicate the significance of judicial concurrency under the Constitution. Sub-article (2) states that State Supreme Court shall exercise the jurisdiction of the Federal High Court (*emphasis added*). Sub-article (4) on the other hand states that State High Courts shall exercise the jurisdiction of the Federal first-Instance Court (*emphasis added*). These sub-articles are also backed up by sub-article (7) of Art.79 which provides that the HPR shall allocate compensatory budgets for states whose Supreme and High Courts concurrently exercise the jurisdictions of the Federal High Court and Federal First-Instance Courts.

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<sup>21</sup>*Supra* note 8, P.2492.

There are some debatable issues which can be drawn from the phrase “concurrent judicial powers” as provided by the Constitution. The first issue goes to the heart of the interplay of the usual meaning and attribute of concurrent judicial power on one hand and that is provided in the Constitution on the other. As touched upon in the above discussion, the caption and substances of Art.80 go slight far apart from each other. Sub-articles (2) and (4) of Art.80 *per se* are not sufficient provisions to help one reach the conclusion that the State Supreme and High Courts shall exercise the jurisdictions of the Federal High and First-Instance Courts respectively, concurrently with one another unless it is backed up by Art.79(7). This argument may be substantiated by different valid grounds. The first one is that there is no law that has been made concurrently by the Federal Government and the States so far over which the aforementioned Courts would have concurrent jurisdiction in general and criminal adjudicative jurisdiction in particular. This again is justified on the ground that, in principle, the Federal Courts adjudicate Federal matters and the State Courts adjudicate state matters which on the other hand vindicates the principle of duality of court structure adopted by the FDRE Constitution<sup>22</sup>. For example, the FDRE Criminal Code is utterly enacted by the HPR without the involvement of the States. Thus, the principle goes, crimes incorporated in the Code should be entirely adjudicated by the Federal Courts. On the other hand, the State Courts are, at least legally speaking, not duty bound to

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<sup>22</sup>The dichotomy of federal matters and state matters has not adequately been defined by the Constitution. But a closer look at the provisions of the Constitution in general and Arts.51, 55, and 77 and Arts.39 & 52 in particular, depict the federal matters and state matters respectively. In connection with this concern, Abebe Mulatu (*infra at* note 48) holds two views here: firstly, the responsibility of dichotomizing matters as federal and state is borne by the legislator, and secondly, he asserts that a case is a federal matter if it arises on federal law and a case is a state matter if it arises on state law.



adjudicate criminal cases which arise from the Criminal Code because it is not a concurrent power and exclusively belongs to the Federal Government<sup>23</sup>.

Thus, there is no criminal law concurrently enacted by the Federal Government and the States in order for the Federal High and First-Instance Courts, and the State Supreme and High Courts respectively exercise criminal jurisdictions concurrently<sup>24</sup>. As a result, the concurrency of jurisdiction with respect to criminal cases under the FDRE Constitution turns to be absurd as there is no criminal law so far enacted concurrently by the Federal Government and the States.

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<sup>23</sup>Some people hold and question that whether all laws enacted by the HPR belong to and are categorized to be the Federal laws. However, the writer emphatically argues that any law made by the HPR and any other Federal Government agency belongs to and is said to be federal law because in accordance with Art.2 (3) of Proclamation No.25/96 defines the Laws of the Federal Government as “all previous laws in force which are not inconsistent with the Constitution and relating to matters that fall within the competence of the Federal Government as specified in the Constitution”. Thus, Federal laws include all previous laws which are consistent with the Constitution and all powers which are assigned to the Federal Government by the Constitution namely, powers provided and listed under Arts.51, 55, 71, 72, 74, 75, & 77, *inter alia*, belong to and are termed as Federal matters and laws and regulations issued on these areas are unquestionably called Federal Laws. The power to enact criminal code and other federal criminal legislations (as provided under Art.55 (5) is the typical and relevant example. Regardless of the dichotomy of Federal matters (crimes) and State matters (crimes), the new FDRE Criminal Code comprehensively incorporates a great deal of crimes which are also capable of featuring regional characters. This, in fact, is another issue. Read Chapter Three of the thesis done by the same author on the title “Criminal Jurisdiction of State Courts under the FDRE Constitution” which was submitted for the LL.M fulfillment at the Law Faculty of Addis Ababa University.

<sup>24</sup>Contrary to this assertion, Dr. Assefa Fisseha argues that Art.55 (5) of the Constitution is concurrent power as between the Federal Government and the States (*Supra* note 22 p.145). But the writer continues persisting in his stand that Art.55(5) of the Constitution in cumulative with the FDRE Criminal Code and other criminal legislations enacted by the Federal Government, indicates that all these aforesaid criminal laws are the exclusive powers of the Federal Government because we could not find any element of concurrency of powers such as the fact that the States exercise such powers until they gain federal importance and as a result, the Federal Government would step into centralize same. But rather the norm has dominantly become that the Federal Government has been given a priority and it can criminalize any act it wants and deems necessary, and the States enact criminal laws which are left unmentioned. This is not, typically speaking, concurrent but ‘residual’ power with a relative reference to criminal legislative power in Ethiopia. At this juncture, the author would like to unfold the potential readers about the dichotomy of concurrent and ‘residual’ criminal legislative that he compares the notion of residualism thereof not in view of general distribution of powers, but criminal legislative power *per se*.

## **b. Delegated Criminal Adjudicative Jurisdiction**

In case the dual federal arrangement proper may not work appropriately, the Constitution has provided and stipulated delegation mechanism<sup>25</sup>. Delegation clause under the Constitution is entailed by financial effect<sup>26</sup>. From these two premises, we could safely deduce that delegation clause may be employed under the condition of necessity (as deemed by the Federal Government) and all financial expenditures incurred under delegated tasks shall be borne by the delegating party (*viz.* the Federal Government). This indicates that unless there is an agreement between the Federal Government and the States which excludes the financial expenditure clause on delegation, the States are not duty bound to discharge the powers and functions granted to the Federal Government by law<sup>27</sup>.

Delegation clause is also provided in the Constitution in relation to judicial powers. The Constitution unequivocally delegates the jurisdictions of the Federal High Court and First-Instance Courts to the State Courts (*emphasis*

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<sup>25</sup>Art.50 (9) of the FDRE Constitution enshrines that the Federal Government may, when necessary, delegates to the States powers and functions granted to it by Art.51. Powers and functions enumerated under Art.51 are so many and broad as well as they encompass legislative and executive spheres within themselves. Delegation in this sense is not an arbitrary act but an undertaking carried out by the Federal Government as a matter of necessity to delegate those powers and functions to the States.

<sup>26</sup>Art.94(1) of the FDRE Constitution provides that the Federal Government and the States shall respectively bear all financial expenditures necessary to carry out all responsibilities and functions assigned to them by law. Unless otherwise agreed upon, the financial expenditures required for the carrying out of any delegated function by a State shall be borne by the delegating party.

<sup>27</sup>However, Abebe (*infra at* note 48) firmly argues that the States are duty-bound to enforce federal laws because they are considered as the laws of the whole country and as a result, should be taken as integral parts of the laws of the constituent states. His assertion is more assumptive and practice-based than constitutional backup. Unlike the US doctrine of federal supremacy, the FDRE Constitution keeps silent as to how federal laws are enforced by the States as their own laws except on the basis of delegation. Thus, unless the predominant practice dictates otherwise, it is the firm stand of the writer, that the States are not duty-bound to enforce federal laws as their own, taking into consideration Constitution as it is.

added)<sup>28</sup>. From this constitutional provision, there are at least two scenarios that we could draw up. The first one is that the jurisdictions of the Federal Supreme Court are not delegated to State Courts of any level anyway. While it is directly established by the Constitution, the other two levels of Courts, the Federal High Court and First-Instance Courts, are made conditional and to be established by the HPR upon the fulfillment of the requirements so set. The second scenario takes us to the most apparently debatable issue among scholars and legal practitioners which is the delegation of the jurisdictions of the Federal High Court and First-Instance Courts is undertaken to all the three levels of State Courts (Supreme, High and First-Instance). There are many writers who argue that the State First-Instance Courts<sup>29</sup> do not have a criminal jurisdiction<sup>30</sup>. All of them substantiate their arguments by using the

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<sup>28</sup>Art.78 (2) of the FDRE Constitution The fact that the jurisdictions of the Federal High Court and First-Instance Courts are delegated to the State Courts are subject to the requirement that and until the aforementioned two levels of Federal Courts are established in each or some of the States, upon the fulfillment of the conditions set out in the Constitution namely, the two-thirds majority vote of the HPR and if it is convinced on the establishment of the Courts under consideration. The logical conclusion drawn from this premise is that if these requirements are not met, the delegation clause continues to be a permanent undertaking. Abebe (*infra note 48*) notes that the establishment of the Federal High and First-Instance Courts is not mandatory. If the establishment of the Federal High and First-Instance Courts is not mandatory, one may be tempted to pose a question as to what is the difference between the delegated jurisdiction and inherent power of the delegate courts provided that the delegation takes the form of permanence. Vander Beken, on the other hand, argues that Art.78 (2) is the transitional provision. This assertion awaits and presupposes the mandatory establishment of the Federal High and First-Instance Courts upon the fulfillment of the requirements (Christophe Van der Beken, *Constitutional Diversity in Ethiopia: A Comparative Analysis of Ethiopia's Regional Constitutions*, Ethiopian Civil Service College, P.33).

<sup>29</sup>As far as their nomenclature is concerned, constitutions of many Regions designate it as 'Woreda' Courts. The Oromia Regional State Constitution terms them 'District Courts'. Anyhow, they are levels of courts established at the district administrative units below zonal level next to state high courts.

<sup>30</sup>Munir Abdullahi, *Delegated Jurisdiction of State Courts on Federal Matters: Particular Reference to Harari Regional State*(Submitted in Partial Fulfillment of the Requirements for the Bachelor of Degree of Law (LL.B) at the Faculty of Law, Ethiopian Civil Service College, July 2005, Unpublished),P.28; Sintayehu Birhanu, *Federalism: Legislative and Judicial Competence on Criminal Matters in Ethiopia: A Critical and Comparative Analysis* (Submitted in Partial Fulfillment of the Requirements for the Degree of Bachelor of Laws (LL.B) at the Faculty of Law, Addis Ababa University, June,2006, unpublished), P.73;Teklit

terms ‘delegation and concurrency’ interchangeably. However, the writer asserts that the two terminologies are far different from one another and the Constitution itself does not have the view of making them one<sup>31</sup>. At any rate, contrary to those who assert that the State First-Instance Courts do not have criminal adjudicative jurisdiction, the writer puts forward the following justifications that are capable of substantiating the argument that it does have a criminal jurisdiction.

Firstly, the Constitutional parlance makes it clear that the judicial delegation clause includes all the three tiers of the State Courts. This comes true when we read Art.78 (2) in isolation from that of Art.80 (2 and 4) of the Constitution. As discussed in detail in the above explanations, delegation and concurrency are two different concepts. It is quite difficult to use them interchangeably. What should rather be done is that the HPR is expected to make law (s) which deals with these issues differently in order to reduce or avoid the controversy, vagueness and ambiguity which may be capable of complicating the issue. Leaving the judicial concurrency to the State Supreme Court and High Courts only (though absurd and disused), we could state that the judicial delegation as envisaged by the Constitution is extended to the State First-Instance Courts. In support of this line of argument, Jetu

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Yimesel, Jurisdiction of Courts under the FDRE Constitution: The Case of Cassation Power (Submitted in Partial Fulfillment of the Requirements for the Bachelor of Degree of Law (LL.B) at the Faculty of Law, Ethiopian Civil Service College, July 2005, Unpublished), P.33; Gaddissa Butta, Federal Criminal Jurisdiction and Its Delegation to States with Special Reference to Oromia (Senior Research Paper Submitted in Partial Fulfillment for Bachelor of Law (LL.B), Ethiopian Civil Service College, Faculty of Law, August 2007, Unpublished), P.20; Assefa Fisseha, Federalism, Teaching material, Justice and Legal System Research Institute (2009), Addis Ababa, P.462.

<sup>31</sup>While concurrency of judicial power denotes an inherent power (for the sake of the present discussion that the Federal High Court with the State Supreme Court, and the Federal First-Instance Court with the State High Court), delegation however, implies a temporary act. Delegation exists until the contract on a specific subject matter terminates but concurrency continues as it has no view of temporal act in itself. The notion of delegation clause follows the relationship between the principal-agent scenarios.

submits that the State First-Instance Courts can exercise the criminal jurisdictions of the Federal High and First-Instance Courts so delegated because the Constitutional delegation clause simply provides “State Courts” and as a result, does not specify only the State Supreme Court and High Courts to exercise the jurisdictions of the Federal High and First-Instance Courts respectively, thereby depriving the State First-Instance Courts of the delegated criminal jurisdiction<sup>32</sup>. Thus, the delegated criminal jurisdictions of the Federal High and First-Instance Courts are exercised by the three tiers of State Courts. But, the Federal Government through its legislative organ, the HPR, should enact law (s) which could determine and regulate such jurisdiction.

The Constitution excludes the State First-Instance Courts from exercising the concurrent judicial power and grants the State Supreme Court and High Courts to concurrently exercise the jurisdictions of the Federal High and First-Instance Courts respectively. In this respect, no doubt, the State First-Instance Courts cannot exercise judicial concurrent powers with any Federal Court counterpart, the criminal jurisdiction being the typical aspect. To this effect, Jetu holds the view that the State First-Instance Courts exercise delegated jurisdiction over federal matters which is not exclusively given to the Federal and State Courts concurrently<sup>33</sup>. The Constitution does not have a view to exclude the State First-Instance Courts from consideration of delegated criminal jurisdiction.

Secondly, there are some scholars who argue that the State First-Instance Courts have delegated judicial power in general and criminal jurisdiction in

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<sup>32</sup>Jetu Edosa, What Is Wrong with Criminal Jurisdiction of Courts in Ethiopian:Re-Thinking Ethiopian Criminal Jurisdiction, (available with the author, Unpublished), P11.

<sup>33</sup> *Id.*, P.13.

particular in accordance with Art.50 (9) of the Constitution<sup>34</sup>. This line of argument recognizes the delegated criminal jurisdiction of the State First-Instance Courts in view of the general delegation clause putting aside the delegation-concurrency dilemma as provided under Art.78(2) and 80(2 &4). But some counter argue that the delegation clause envisaged by Art.50 (9) is limited only to Art.51 which on the other hand does not incorporate the criminal adjudicative authority clause<sup>35</sup>. The same critique goes on to castigate the general delegation purported to be applicable for the workability of criminal jurisdiction by the State First-Instance Courts on the ground of procedural jumble. That is to say, if decisions rendered by the State Supreme Court on federal matters are appealable to the Federal Supreme Court, and decisions rendered by the State High Courts exercising the jurisdiction of the Federal First-Instance Court are appealable to the State Supreme Court,<sup>36</sup> then the question arises as to which level of court should the criminal cases rendered by the State First-Instance Courts be appealable? Again, the issue of procedural hodgepodge comes into picture when the judicial delegation is interpreted to mean judicial concurrency provided in the Constitution. But having a scrutiny of the notions of delegation and concurrency as envisaged by the Constitution separately, the fear of the procedural mishmash becomes more apparent than real because the criminal jurisdiction in relation to delegation power is expected to be issued by the HPR pertaining to first instance jurisdiction as well as an appellate jurisdiction of the three tiers of the State Courts.

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<sup>34</sup>Fasil Nahum, *The Distribution of Powers between the Federal Government and the States under the FDRE Constitution (4<sup>th</sup> Round Symposium, 1999, Bishoftu (Translation mine))*.

<sup>35</sup>Sintayehu Birhanu, *Federalism:Legislative and Judicial Competence on Criminal Matters in Ethiopia:A Critical and Comparative Analysis (Submitted in Partial Fulfillment of the Requirements for the Degree of Bachelor of Laws (LL.B) at the Faculty of Law, Addis Ababa University, June 2006, Unpublished)*,P.51.

<sup>36</sup>The FDRE Constitution, Art.80 (5 and 6).

Thirdly, the Constitution itself dictates that all Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of [Chapter Three] which deals with the human rights regimes<sup>37</sup>. In view of this Constitutional mandate, it is not an option but a necessity for the State First-Instance Courts to receive and entertain criminal cases so delegated to it by the Constitution as is to be complemented by other subsidiary laws. Thus, the human rights protection necessitates the assumption of criminal jurisdiction by the State First-Instance Courts. It is also clear that “respecting and enforcing” fundamental rights and freedoms by the judiciary is meaningless, unless the judiciary in one way or another is involved in interpreting the scope and limitation of those rights and freedoms which it is bound to enforce<sup>38</sup>. Virtually, all human rights and fundamental freedoms constitutionally guaranteed are strongly and even entirely connected with criminal laws.

The Constitutional mandate of the human rights sacredness to be respected and enforced by all levels of courts, the State First-Instance Courts being one of them, is also augmented by other aspect of human rights which is the right of access to justice<sup>39</sup>. Thus, the State First-Instance Courts are duty bound to assume criminal jurisdiction because they are one of the levels of the State Courts on one hand and with a view to ascertaining the right of access to justice, they could be claimed (even as of right) to see criminal cases based on the apportionment of same.

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<sup>37</sup>*Id*, Art.13 (1).

<sup>38</sup>Assefa Fiseha, Federalism, Teaching Material, Sponsored by Justice and Legal System Research Institute, 2009, P.447.

<sup>39</sup>Art.37 (1) of the FDRE Constitution provides that everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by a court of law or any other competent body with judicial power.

Furthermore, the State First-Instance Courts are constitutionally rooted in their establishment. They are directly and expressly recognized by the Constitution. Moreover, Art.50 (4) states that State government shall be established at State and other administrative levels that they find necessary. It goes on to state that adequate power shall be granted to the lowest units of government to enable the People to participate directly in the administration of such units. A superficial reading of this provision may lead one to the implication that it stands for the executive organ of the States alone. But a close reading thereof could take us to the other side of the flip, the need for the State First-Instance Courts, not only to be established but also to be accessible to the people including consideration of criminal cases. The minutes of the Constitutional Assembly also reaffirms this suggestion<sup>40</sup>.

Fourthly, notwithstanding the above explanations and arguments, it could not be possible to avoid the practical necessity and actual disposition of criminal cases by the State First-Instance Courts. We know also for certain that the state courts do adjudicate criminal cases in the regular discharge of judicial duties, not in their delegated powers<sup>41</sup>. Even one might not believe that the State First-Instance Courts exercise criminal jurisdiction in their delegated capacity because there is no such an indication. For instance, there is no compensatory budget allocated for the State First-Instance Courts which is entailed by the delegation principle.

Fifthly, the overall Constitutional discourse and the need for introduction of federalism also necessitates and maintains the Constitutional status of the State First-Instance Courts in the assumption of criminal jurisdiction so delegated from the Federal High and First-Instance Courts. The Constitution

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<sup>40</sup>The Minutes of the Constitutional Assembly, Compilation 5, November 1995, Addis Ababa (*Translation mine*), PP.11-12.

<sup>41</sup>*Supra* note 38, P.447.



focuses on devolution of power in general and judicial power in particular in order to make a significant departure from the past unitary state and centralized form of government. Even in the past unitary and centralized government, although monolithic or integrated court system, the *Woreda* Court was recognized and it exercised criminal jurisdiction. Thus, the concept of devolution of power envisaged by the Constitution should also be applicable to the lowest level of the State Courts, the First-Instance Courts, over criminal adjudicative jurisdiction.

In fact, there are subsidiary laws which deprive the State Courts as a whole of some criminal cases such as terrorism cases. Terrorism cases are entertained by only the Federal High and Supreme Courts<sup>42</sup>. In this respect, both the Federal First-Instance Courts on one hand and the three levels of State Courts on the other are devoid of criminal jurisdiction over terrorism cases. This raises such questions as what happens in areas where there has not been established the Federal High Courts yet? Will the suspects of the terrorism crimes be brought where the Federal High Courts are there? Or as the case may be, are they taken to Addis Ababa where the Federal Supreme Court is seated? How should this be considered in terms of ensuring the right of access to justice, which is constitutionally guaranteed? What justifications are there behind such judicial limitation only to the Federal Supreme and High Courts in relation to terrorism cases? Setting aside the issue of constitutionality or otherwise of the deprivation of criminal jurisdiction of terrorism cases of the Federal First-Instance Courts and the State Courts, unlike the Anti-Terrorism Proclamation in this manner, the Constitution does not expressly deprive the State First-Instance Courts of criminal jurisdiction. Nonetheless, with respect to the criminal adjudicative jurisdiction of

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<sup>42</sup>Proclamation No.652/2009, Anti-Terrorism Proclamation, *Federal Negarit Gazeta*, 15th year, No.57, 28<sup>th</sup> August, 2009, Art.31.

terrorism cases, the practice shows that the Regional State Supreme Courts are exercising such a power<sup>43</sup>.

Alongside the discussion of delegation and concurrency, it is noteworthy to consider the consequence stemmed there from, the fiscal effect. Art.79(7) of the FDRE Constitution states that the HPR shall allocate compensatory budgets for States whose Supreme and High Courts concurrently exercise the jurisdictions of the Federal High Courts and Federal First-Instance Courts. But, we have seen in the above discussion that the legal and practical significance of concurrent power in general and judicial concurrency in particular under Ethiopian law is dubious. On the other hand, the overall reading of the Constitution gives an impression that since dual federalism is adopted in Ethiopia on one hand and there is no principle of federal supremacy clause, the option would be, as already envisaged by the Constitution, delegation. This also holds true for judicial functional relations between the Federal Courts and State Courts. Even so, the Constitution spells out financial expenditure clause for concurrency and disregards that of the delegation clause. Thus, there is a sort of mishmash of provisions in the Constitution. However, this does not mean that the financial expenditure clause for judicial delegation is groundless. Rather, Art.94 (1) will be used by analogy for judicial delegation as a particular subject.

### **3.2. STATUTORY BASIS**

Proclamation No.25/96 and its successive amendment proclamations are ones among those subsidiary laws which are supposed to govern criminal

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<sup>43</sup>An interview conducted with Mr. Turi Kanassa, a judge at Oromia Supreme Court and a criminal section leader, which was conducted on 11/12/2013. The interviewee responded that the power that enables the Oromia Supreme Court to adjudicate terrorism cases seems to have emanated from the constitutional delegation of the jurisdiction of the Federal High Court to the State Supreme Court till the establishment of the former in the states.

jurisdiction of Federal Courts. The Proclamations are totally destined to regulate criminal jurisdiction of the Federal Courts excluding that of the State Courts. This indicates that State Courts need other subsidiary laws which deal with compartmentalization of criminal jurisdiction among the three levels of courts.

At any rate, there are three scenarios which can be drawn from the Proclamation as far as criminal adjudicative jurisdiction is concerned. These are: 1) common criminal jurisdiction of the Federal Courts as per Art.3, 2) specific criminal jurisdictions of the Federal Courts as pursuance to Art.4, and 3) criminal jurisdiction over crimes left unmentioned in the Proclamation or other relevant laws. With regard to the common jurisdiction of the Federal Courts, they have criminal as well as civil jurisdictions over cases arising in the Constitution, Federal Laws, International Treaties, parties and places specified in the Constitution and Federal Laws<sup>44</sup>. This stipulation contemplates and connotes that the Federal Courts have criminal jurisdiction over matters which are capable of featuring federal characters. That is to mean that they do not have criminal jurisdiction over crimes featuring regional behaviors, and as a result, State Courts are expected to entertain criminal cases which are supposedly made to be categorized under the state jurisdiction though this assertion has not been taken into consideration at the time the FDRE Criminal Code was enacted<sup>45</sup>.

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<sup>44</sup>Cases involving the Constitution, Federal Laws and International Treaties indisputably fall under the jurisdiction of the Federal Courts because issues arising in these lists are most of the time supposed to be federal matters and powers. The question will be what about criminal cases involving state constitutions and state laws, parties and places specified therein? How could the State Courts consider criminal cases arising in these laws provided that they are comprehensively packed and enacted by the federal agencies?

<sup>45</sup>This issue is being envisaged in the FDRE Draft Criminal Procedure Code. Arts.38 and 39 contemplate that the Federal Courts adjudicate 'federal crimes' and the state courts adjudicate 'state crimes'. The question is how could it be valid that the Draft Criminal

Secondly, the fact that the criminal jurisdictions of the Federal Courts are specified in a very limited manner has also its own problem<sup>46</sup>. This in turn raises a question as to which court (federal or state) adjudicates criminal cases which are not listed under Art.4 but may be found to be categorized under Art.3 of the Proclamation (matters and laws which are supposed to characterize federal (central) government's behaviors). This indicates that there is a contradiction between Arts.3 and 4 of the Proclamation regarding criminal adjudicative jurisdiction. The Proclamation does not either have any room to regulate the crimes left unspecified therein.

Thirdly, a question comes into picture as to which court (federal or state) that adjudicates criminal cases which are out of the regime of the Proclamation<sup>47</sup>. This comes true especially having a closer look at the FDRE Criminal Code which is so comprehensive that it incorporates crimes featuring regional characters as well. To this effect, there are two views as far as the adjudicative jurisdictions of crimes which are not specified in the Proclamation are concerned. The first view states that crimes which are not

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Procedure Code incorporates those issues which are not dealt with by substantive criminal law? Who or which body/organ does have such a power to dichotomize matters or crimes as 'federal crimes' or 'state crimes'?

<sup>46</sup>Art.4 of Proclamation No.25/96 lists a fraction of crimes over which the federal courts have adjudicative jurisdiction. These are offences against the Constitutional order or against the internal security of the state, offences against foreign states, offences against the law of nations, offences against the fiscal and economic interests of the Federal Government, offences regarding counterfeit currency, offences regarding forgery of instruments of the Federal Government, offences regarding the security and freedom of communication services operating within more than one region or at the international level, offences against the safety of aviation, offences regarding foreign nationals, offences regarding illicit trafficking of dangerous drugs, offences falling under the jurisdiction of courts of different regions or under the jurisdiction of both the Federal and Regional Courts as well as concurrent offences, offences committed by officials and employees of the Federal Government in connection with their official responsibilities or duties.

<sup>47</sup>The Proclamation is designed to regulate only criminal cases arising in the FDRE Constitution, Federal Laws, International Treaties and parties and places mentioned in the federal laws, as a common jurisdiction of the Federal Courts, including criminal cases mentioned above under Art.3.

mentioned in the Proclamation are the exclusive jurisdiction of the State Courts<sup>48</sup>. The second view advocates that such crimes should be adjudicated by the Federal and State Courts concurrently<sup>49</sup>. However, a closer look at the two views in light of the Constitution may lead one to cause a hardly defensible attack on the views held by the commentators. Thus, the Proclamation barely solves the problem of criminal adjudicative jurisdiction between the Federal Court and the State Courts but rather it created other problem to the extent that it goes against the Constitution. Consequently, unless other mechanism is sought in order to alleviate this problem otherwise, the writer emphatically holds that State Courts exercise the jurisdictions of the Federal Courts in general and criminal jurisdictions over crimes which are not mentioned in the Proclamation and its subsequent amendments in particular, with the competence of delegation. This has a constitutional basis as expounded in the foregoing discussion. There is no

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<sup>48</sup>Abebe Mulatu, *The Court System and Questions of Jurisdiction under the FDRE Constitution and Proclamation No.25/96 in Proceedings of the Symposium on the Role of Courts in the Enforcement of the Constitution(Organized by the Faculty of Law, Ethiopian Civil Service College and United States Agency for International Development (USAID), Vol. I, May 19-20, 2000, Addis Ababa)*, PP.129-130. He argues that crimes which are not specified in the Proclamation are the exclusive jurisdiction of the state courts. However, it is not clear how and why the state courts are supposed to assume an exclusive criminal adjudicative jurisdiction over crimes which are incorporated in the FDRE Criminal Code. This sort of practice defeats the very purpose of dual federalism which Ethiopia has currently adopted. Legally speaking, there is no way in which the State Courts do have an exclusive jurisdiction over federal laws or matters, the Criminal Code/law being one of such laws. This is against the principle of mutual respect of powers between the Federal Government and the States. This principle advocates the prohibition of unlawful encroachment of powers into one another's jurisdiction.

<sup>49</sup>Assefa Fisseha, *Federalism, Teaching Material*, P.461. He holds that with regard to the crimes which are not specified in the Proclamation, the Federal Courts and the State Courts would have a concurrent criminal adjudicative jurisdiction. He based his assertion on the fact that if the scenario of the federal courts' exclusive and state courts' exclusive criminal adjudicative jurisdiction is drawn, the Federal Government will lose its inherent power as envisaged in the Constitution, the Criminal Code and the Proclamation itself (Art.3). However, it has been noted, in the preceding discussion, that the essence and significance of concurrency in general and judicial criminal concurrency in particular is opaque in the Ethiopia's federal arrangement.

other way than delegation how State Courts exercise the jurisdictions of the Federal Courts as an inherent power so long as the laws are made by the HPR or other Federal Government agencies.

#### 4. CRIMINAL ADJUDICATIVE JURISDICTION OF STATE COURTS: STATUTORY BASIS

It has been stated, in the foregoing discussions, that the dual court structure designed by the Constitution dictates both the federal and state courts to have their own laws which regulate criminal jurisdiction of courts within their respective jurisdictions<sup>50</sup>. The writer limits his inquiry to the Oromia and Harari States regarding laws regulating criminal adjudicative jurisdiction<sup>51</sup>. With regard to the State, it appears that the Criminal Procedure Code, Proclamation No.141/2008 (Oromia Courts Re-establishment),<sup>52</sup> and

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<sup>50</sup>Art.78 (3) provides that particulars are determined by law as far as the three-tiered state courts are concerned. This includes also the adjudicative jurisdiction of state courts which await a law for compartmentalization of criminal jurisdiction.

<sup>51</sup>This is not a random selection but rather based on the accessibility of regional laws both on website and in hard copy. The writer has been working as legal practitioner in Oromia Courts and as a result accustomed to being conscious of and having had access to the laws enacted by the *Caffee Oromia* on subject at hand.

<sup>52</sup>Art.27 (1) of Proclamation No.141 reads, in Afaan Oromoo, as “[*Manni Murtii Olaanaa*] akka adeemsa falmii sivilii, seera adeemsa falmii yakkaa, yookiin akka seera birootiin tumametti dhimmoota sivilii fi yakkaa sadarkaa jalqabaan ilaalee ni murteessa”. Sub-article 2 goes on to state that “*kan keewwata xiqqaa 1 jalatti tumame akkuma jirutti ta’ee, Manni Murtii Olaanaa dhimmoota yakkaa ka’umsi adabbii isaanii waggaa 10 (kudhan) ol ta’e irratti aangoo abbaa seerummaa sadarkaa jalqabaa ni qabaata.*” The English version (*translation mine*) of the above article (provision) reads as “The High Court shall have the first-instance jurisdiction over civil and criminal matters defined in accordance with the Civil Procedure Code, the Criminal Procedure Code or in pursuance of other laws enacted.” Sub-article 2 may read as “Notwithstanding sub-article 1 of this Article, the High Court shall have the first-instance jurisdiction over crimes whose initial punishment exceeds 10 (ten) years.” Art.28 (1) (a) also states, in Afaan Oromoo, as “*Manni Murtii Aanaa seerota adeemsa falmii sivilii, yakkaa yookiin akka seera birootiin tumametti dhimmoota sivilii fi yakkaa sadarkaa jalqabaan ilaalee ni murteessa.*” That is to say that the *Woreda* (State First-Instance Court) shall have an initial jurisdiction over civil and criminal matters in accordance with the Civil Procedure Code, Criminal Procedure Code and other laws so enacted.

Proclamation No.25/96 (Federal Courts Establishment)<sup>53</sup> may be employed in compartmentalizing criminal jurisdiction of the Courts. The question is which law prevails in case of inconsistency while using these laws as a means to allocate criminal cases among the aforesaid Courts or whether the task of the allocation of criminal cases among the State Courts in general and the Oromia Courts in particular is carried out haphazardly.

In relation to an approach to criminal adjudicative jurisdiction of the State Courts making a cross reference to the Criminal Procedure Code, since there was a centralized court structure in the Country, jurisdictional question was rarely an issue at stake<sup>54</sup>. It becomes more problematic in the current federal set up which introduced a dual court system on one hand and which lacks a clear law that governs compartmentalization of criminal jurisdiction between the Federal Courts and State Courts as well as among the State Courts, on the other. Actually, this approach has been adopted by the Oromia Courts as a principle and in a generic expression. For example, while the Oromia First-Instance Courts and High Courts are supposed to adjudicate criminal cases in accordance with the Criminal Procedure Code, it is not clarified the

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<sup>53</sup>Art.27 (4) also provides that [the High Court] shall exercise the jurisdiction of the Federal First-Instance Court over matters brought before it (translation mine). The Afaan Oromoo version reads as “*Manni Murtii Olaanaa aangoo Mana Murtii Federaalaa sadarkaa jalqabaatiin dhimmoota isaaf dhiyaatan ni ilaala; murtii ni kenna.*” Art.26 (1) (b) also provides for the Oromia Supreme Court. Accordingly, it states that “*Manni Murtii Waliigala Oromiyaa dhimmoota Federaalaa ilaalchisee aangoo Mana Murtii Olaanaa Federaalaa bakka bu’uudhaan sadarkaa jalqabaatiin ilaalee murtii ni kenna.*” If translated, it means “The Oromia Supreme Court shall, in initial jurisdiction, exercise the jurisdiction of the Federal High Court in delegation.” There is an apparent contradictory expression here. While it is expressly stated that the Oromia Supreme Court exercises the jurisdiction of the Federal High Court in delegation, the High Court, however, shall exercise the jurisdiction of the Federal First-Instance Courts over crimes whichever are brought before it.

<sup>54</sup>The First Schedule of the 1961 Criminal Procedure Code of the Empire of Ethiopia (which is also in force up until now) presents the list of the crimes (which were incorporated in the Penal Code of the Empire) on the left hand side and the order of the courts (High, *Awradja*, and *Woreda*) on the right hand side in compartmentalizing the criminal jurisdiction of the then courts existing in the Country.

jurisdiction of which level of court(s) of the former unitary State, Ethiopia, they would substitute. Does it mean that the current First-Instance Courts of Oromia substitute the former *Woreda* Courts? In the same token, does it mean that the present Oromia High Courts substitute the former *Awradja* or High Courts? This and other pertinent issues have not been given a wide room for the matter of an unequivocal understanding of the clear determination of criminal adjudicative jurisdiction between the State Courts. As will be discussed subsequently, the criminal jurisdictions of the past *Awradja* and *Woreda* Courts shall fall under the current Federal First-Instance Courts<sup>55</sup>.

The second approach adopted by the Oromia Courts as a means to determine the criminal jurisdiction among the courts of the three levels is the amount of punishment of imprisonment (the ten-year-punishment as an initial penalty). This method of standard-setting as a way of compartmentalization of criminal jurisdiction leads one to posit a couple of possible questions. Firstly, while crimes, whose initial punishment exceeds ten years, fall under the jurisdiction of the High Court, which crimes should fall under the jurisdiction of the Oromia Supreme Court? How many crimes, strictly speaking, are there whose initial punishment exactly begins from ten year? What other methods could be employed to determine the jurisdiction of crimes whose initial punishment ranges above and below ten years? Secondly, how can we determine the criminal jurisdiction of courts over

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<sup>55</sup>Art.15(2) of Proclamation No.25/96 states that without prejudice to judicial power vested in other organs by law, the Federal First-Instance Courts shall have [other] criminal cases arising in Addis Ababa and Dire Dawa as well as other criminal cases under the jurisdictions of *Awradja* and *Woreda* Courts pursuant to other laws in force.



crimes whose punishment is other than imprisonment?<sup>56</sup> All these issues remained unsettled in the Proclamation.

Thirdly, the Proclamation makes an implied cross reference to Proclamation No.25/96 (the Federal Courts Establishment) with regard to the delegate jurisdiction of the Oromia Supreme Court and High Courts on behalf of the Federal High Court and First-Instance Courts respectively. The Proclamation (No.141/2008) clearly states that the Oromia Supreme Court exercises an initial jurisdiction of the Federal High Court in delegation<sup>57</sup>.

In connection with this issue, it is worth noting the Harari Regional State Courts experience. In Harari Region, the State First-Instance Courts are made to have assumed the initial criminal jurisdiction of the previous *Awradja* and *Woreda* Courts<sup>58</sup>. This gives an impression that the Harari Regional State Courts use the Criminal Procedure Code for the allocation of criminal cases with respect to the State First-Instance Courts thereof. Accordingly, crimes which were under the *Awradja* and *Woreda* Courts during the past unitary state and centralized government would fall, in their initial jurisdiction, under the State First-Instance Courts of the Harari Regional State. Furthermore, the Harari Regional State High Court exercises

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<sup>56</sup> Arts.99-102 of the FDRE Criminal Code deal with one mode of ordinary punishment, fine, confiscation and sequestration, which exist in parallel or addition to imprisonment.

<sup>57</sup> Art.26 (1) (b) of Proclamation No.141/2008 (Oromia Courts Reestablishment) The first instance criminal jurisdictions of the Federal High Court are enumerated under Art.12 of Proclamation No.25/96. Thus, the rule here seems that the Oromia Supreme Court exercises a delegated criminal jurisdiction over these crimes being delegated by the Federal High Court. But, the Oromia Constitution does not clearly stipulate and identify whether the State Supreme and High Courts exercise the jurisdictions of the Federal High Courts and First-Instance Courts by delegation or concurrently, respectively. This is the verbatim copy of Art.80 (2 & 4) of the FDRE Constitution which deals with the issue of concurrent judicial powers. Art.78 (2) of the FDRE Constitution does not single out which level of State Courts exercise the jurisdictions of the Federal High and First-Instance Courts by delegation.

<sup>58</sup> Proclamation No.3/96, the Harari Regional State Courts and Judicial Administration Council Establishment Proclamation, *Harar Negarit Gazeta*, 1<sup>st</sup> Year No.3, March 14, 1996, Art.17 (1).

initial criminal jurisdiction over crimes that would fall under the past High Court in accordance with the Criminal Procedure Code<sup>59</sup>. In addition, the Regional High Court also exercises the criminal jurisdiction of the Federal First-Instance Courts in accordance with Art.78 (2) of the Constitution. The Harari Regional State Supreme Court does have an initial criminal jurisdiction over criminal cases that fall under the jurisdiction of the Federal High Courts.

From the experience of the Harari Regional State Courts, we could draw three scenarios as far as apportionment of criminal cases is concerned. The first scenario, which is solely connected with the First-Instance Courts, is the fact that the criminal jurisdiction thereof is determined by the Criminal Procedure Code, hence the jurisdictions of the *Awradja* and *Woreda* Courts of the past regime. As is going to be discussed in the following paragraphs, the Harari Regional State law which governs the apportionment of criminal cases among its Courts at each level gives an impression that the State High and Supreme Court exercise respectively the criminal jurisdiction of the Federal First-Instance Courts and of High Courts as envisaged by the Constitution, hence ruling out the principle that the delegation stated therein is also applicable to the State First-Instance Courts.

But, this again raises other questions such as how do the Harari Regional State First-Instance Courts adjudicate criminal cases that were under the past *Awradja* and *Woreda* Courts, by delegation, concurrently, or exclusively? Can we avoid the notion of criminal delegation which is already envisaged by the Constitution so as to include the State First-Instance Courts as well? This is because there are crimes which were under the jurisdictions of the past *Awradja* and *woreda* Courts but currently which fall under the Federal

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<sup>59</sup>*Id*, Art.16 (1).

Courts jurisdiction. Namely, the Federal First-Instance Courts have jurisdiction over criminal cases under the jurisdictions of the *Awradja* and *Woreda* Courts pursuant to other laws in force<sup>60</sup>. The phrase “other laws in force” refers to the Criminal Procedure Code which is yet in force. So the Harari Regional State First-Instance Courts exercise criminal jurisdictions which are equated with those of the Federal First-Instance Courts. If the criminal jurisdictions of the *Awradja* and *Woreda* Courts fall under the Federal First-Instance Courts, then by the Constitutional provisions, it is the Harari Regional State High Court, not the First-Instance Courts thereof that should assume those jurisdictions. So there is a contradiction between the Harari Court establishment proclamation on one hand and the FDRE Constitution and the Federal Courts Establishment Proclamation on the other.

The second scenario, which is related with the Harari Regional State High Court, is the fact that partly the Criminal Procedure Code, and partly Proclamation No.25/96, the part dealing with the criminal jurisdiction of the Federal First-Instance Courts are used. With this scenario, as far as the apportionment of criminal cases is concerned, the implication is that the criminal jurisdiction of the previous High Court would fall under the Harari Regional State High Court in its first instance jurisdiction. From the Constitutional perspective, moreover, crimes falling under the Federal First-Instance Courts would fall under the Harari Regional State High Court in their first instance jurisdiction. Accordingly, Art.15 of Proclamation No.25/96 would be applicable. This tells us something that in the allocation of criminal cases, the Criminal Procedure Code and Proclamation No.25/96 are used by the Harari Regional State High Court.

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<sup>60</sup>Federal Courts Establishment Proclamation No.25/96, Art.15 (2).

The third scenario is solely related with the fact that without having regard to the Criminal Procedure Code, the Harari Regional State Supreme Court exercises the criminal jurisdiction of the Federal High Courts in an initial jurisdiction. Thus, Art.12 of Proclamation No.25/96 is *mutatis mutandis* applicable to the Harari Regional State Supreme Court in the apportionment of criminal cases. Hence, the Constitution and the Proclamation dealing with the Federal Courts jurisdiction are the determinant guidelines for the allocation of criminal cases in the Harari Regional State Supreme Court.

## 5. CONCLUDING REMARKS

From the commonplace understanding point of view, it is a plain fact that the issue of distribution of powers between and among different organs of government in general and of courts in particular becomes more problematic in a federal system than in that of a unitary system. In a federal system of governance, powers are divided between the federal government and the constituent units on the areas of legislative, executive and judicial functions. Such a system of division of powers is safeguarded by the constitution and mutual respect of the principle of non-interference between the two tiers of the government. No set of government would be allowed to unlawfully encroach into the powers of the other order of government because both are considered to be autonomous over matters falling under their respective jurisdictions. As a result and antecedent condition, matters should be divided between the central government and the states as unequivocally as possible.

The doctrine of distribution of powers that is an underlying principle of a federal system of governance may also work for judicial powers as between the federal courts and state courts on one hand and between the courts of different levels of government on the other. This is an undertaking that

should be regulated by laws as stemmed from the constitution. Actually, judicial system may differ from federation to federation based on the type of organizational set up of courts whether dual or integrated court structure. Ethiopia follows the dual court structure. Accordingly, both the Federal Government and the States have Supreme, High and First-Instance Courts. Judicial powers are divided between these two tiers of courts amongst the three layers at each level.

The FDRE Constitution attempts to provide for the jurisdiction of courts at federal and state levels. The overall reading of the Constitution implies that the Federal Courts consider federal matters and State Courts entertain state matters. In case this rule does not work, the Constitution has envisaged the delegation clause as entailed by the reimbursement of financial expenditure by the delegating party. The FDRE Criminal Code (Law) is one among the so called Federal laws. Based on the comprehensive nature of the Code, a sort of complication in relation to compartmentalizing criminal adjudicative jurisdiction between the Federal Courts and State Courts on one hand and amongst the State Courts on the other is inevitably created. The problem becomes more glaring with respect to the reading of the Constitution and the Criminal Code alongside with Proclamation No.25/96 which considerably restricts the scope of the criminal jurisdiction of the Federal Courts.

The Constitution provides for the delegation and concurrency clauses which are hardly clear and invites some scholars to have different views on criminal jurisdiction of courts. Some of them note that delegation and concurrency provided in the Constitution would mean one and can be used interchangeably. This mode of interpretation, while can easily be attacked on many valid grounds, will deprive the State First-Instance Courts of criminal adjudicative jurisdiction and this argument would defeat the very purpose of

federalism in general and judicial federalism in particular. Moreover, Proclamation No.25/96 and its successive amendment proclamations could not yet solve the problem of criminal jurisdiction of courts both at the federal and state levels. There is neither adequate law which clearly regulates the criminal adjudicative jurisdiction of the State Courts. Some Regions have issued laws which are not adequate enough to alleviate problems related to criminal adjudicative jurisdictions.

Therefore, taking into account the duality of courts structure and the purpose of federalism, a law which clearly identifies the criminal jurisdiction of the Federal Courts and State Courts should be enacted at both levels. Actually, the determination of the criminal adjudicative jurisdiction of courts may necessitate the issue of criminal procedure legislative power. As per Art.52 (1) of the FDRE Constitution, such a power belongs to states in the name of the residual powers reserved to them.

Moreover, in order to have a clear understanding of criminal adjudicative jurisdiction of federal courts and state courts (in situations where criminal cases are adjudicated with original power, delegation or concurrent), the provisions of the Constitution on the area must be clarified either through amendment or interpretation given by the House of Federation.

## HUMAN RIGHTS PROTECTION UNDER THE FDRE AND THE OROMIA CONSTITUTIONS: A COMPARATIVE STUDY

*Teferi Bekele Ayana\**

### **ABSTRACT**

*This paper makes a comparative analysis of human rights protection as provided under the 1995 Federal Democratic Republic of Ethiopian Constitution (FDRE Constitution) and the 2001 Oromia Regional State Revised Constitution with its amendments (Oromia Constitution). Guided by the principle of a better protection of human rights under the state constitutions, it compares and contrasts the two constitutions in terms of recognized rights for the right holders, and the way the recognized rights are limited, derogated from, amended, and adjudicated. The overall comparison shows that although the two constitutions are largely similar as far as the protection of human rights is concerned, there are areas of differences resulting in less protection by restricting the rights, or better protection by expanding the rights under the Oromia Constitution than the minimum protection given under the FDRE Constitution. The departure by the Oromia Constitution to build on the minimum protection given under the FDRE Constitution is normal and acceptable. However, the departure with the effect of providing less protection for human rights cannot be justified under the existing international jurisprudence. The paper recommends revision of the Oromia Constitution to the extent it provides lesser protection of rights than the FDRE Constitution.*

**Key words:** A better protection of human rights, FDRE Constitution, Oromia Constitution

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## INTRODUCTION

Although the historical development of human rights has passed through different periods, the period after the Second World War (WWII) marks its modern development. Today, the protection of human rights has become an issue across the globe resulting in adoption of different human right instruments at national, regional, and/or international level. Constitutions, being one of the national instruments, provide for the protection of human rights. In most federal countries, the constitutionalization of human rights is not only limited to the national constitutions but also extends to the state constitutions. This is also the case in Ethiopia where the federal Constitution and all the state constitutions (including Oromia's) give significant coverage to human rights.

The purpose of this paper is to make a comparative analysis of human rights protection as provided under the FDRE and the Oromia Constitutions with a view to evaluate whether or not a better protection of human rights is maintained under the latter as it is supposed to be. To do this, the paper is organized into four sections.

Following the introduction, the first section deals with the constitutional base and purposes of having state constitutions. It briefly addresses the constitutional base of state constitutions in general and in Ethiopia; and the concept of better protection of human rights under the state constitutions based on explanations of convergence and divergence doctrines.

The second section compares and contrasts the 'types' of recognized rights and for whom they are recognized under the FDRE and the Oromia Constitutions. As such, it analyzes the three categories of human rights recognized under both constitutions and indicates areas of similarities and



differences. The implication of the differences on the better protection of rights is also deduced in the same section.

The third section compares and contrasts how the recognized rights are limited, derogated from, amended, and adjudicated under the two constitutions. Areas of similarities and differences are identified on these issues to judge the extent of the better protection of rights under the Oromia Constitution.

Finally, based on the overall discussions of the paper, the fourth section draws conclusions and recommendations.

## **1. STATE CONSTITUTIONS: CONSTITUTIONAL BASE AND PURPOSES**

This section provides the general framework of state constitutions and their purposes. It is divided into two sub-sections. The first sub-section briefly establishes the constitutional base of the state constitutions in general and in Ethiopia in particular. The second sub-section discusses the need to have state Constitutions, mainly from the perspective of a better protection of human rights.

### **1.1. CONSTITUTIONAL BASE**

One of the most important common features of federations is having written and supreme federal constitution<sup>1</sup>. This federal constitution divides power between/among levels of government, establishes government structures, provides rules for resolving disputes, protects rights and provides procedures

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<sup>1</sup>Ronald L.Watts, *Comparing Federal Systems in the 1990s* (Institute of Intergovernmental Relations, Queen's University Kingston, Ontario Canada K7L3N6, 1996), P90; Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study* (3<sup>rd</sup> Revised Ed., 2010), P.107.

for its amendment<sup>2</sup>. Whether the states can draft, adopt or amend their own constitutions or not is also a matter to be determined by the federal constitution<sup>3</sup>.

In Ethiopia, the FDRE Constitution provides that the federation comprises the federal government and the state members<sup>4</sup>. It also distributes competences between the two levels of governments (federal and the state members) via articles 51 and 52. One of the competences given to member states is to draft, adopt, and amend their own constitutions<sup>5</sup>. The FDRE Constitution also sets certain frameworks which the states should adhere to while exercising their competence of drafting, adopting, and amending their constitutions. Accordingly, they are required to ensure that the three branches of government (legislative, executive, and judiciary) are established, that the State Council is the highest regional organ and accountable to the people, that the state administration is the highest organ of the executive, and that the administration established by the states should best advances self-governments and democratic order based on the rule of law<sup>6</sup>.

Apart from adhering to these frameworks given by the FDRE Constitution, the states in Ethiopian federation are at ‘liberty’ to draft, adopt or amend

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<sup>2</sup>But, the extent of the details provided in the federal constitution varies from federation to federation. Although most constitutions of the federal countries give a general framework without prescribing all constitutional arrangements of the whole system, in some others like Canada and Belgium, the federal constitution is very detail and goes to the extent of describing the political institutions and processes for the states (*see G. Alan Tarr, Explaining Sub-national Constitutional Space, Penn State Law Review (2011), Vol. 115, No.4, P1133*).

<sup>3</sup>Not all federal constitutions allow the states to have their own constitutions. For example, in India, Nigeria and Belgium federating units are not empowered to adopt their own constitutions.

<sup>4</sup>The FDRE Constitution, Art.50 (1).

<sup>5</sup>The FDRE Constitution, Arts.50 (5) cum.52 (2) (b).

<sup>6</sup>The FDRE Constitution, Arts.50 (2-7) cum.52 (2) (a).

their constitutions. It is based on this mandate that all of the nine states<sup>7</sup> in Ethiopia today adopted and revised their constitutions. Oromia National Regional State, being one of these nine states, adopted its Constitution in 1995, substantially revised it in 2001, and amended it twice in 2005 (Proc. No. 94/2005) and 2006 (Proc. No.108/2006)<sup>8</sup>.

In short, the base for state constitutions in any federation, including Ethiopia, is the federal constitution.

## 1.2. PURPOSES OF STATE CONSTITUTIONS

Generally speaking, state constitutions do serve two basic purposes: establishing and defining powers and functions of state government structure; and limiting the state power mainly by offering a better protection of rights<sup>9</sup>. Let's see them separately.

### 1.2.1. Establishing and Defining State Government Structure

State constitutions do regulate specific state behaviour at the sub-national (at state and sub-state levels) just as the federal constitutions do regulate the entire federation of a certain country<sup>10</sup>. They do this by providing rules that establish organs of the state, define their powers and responsibilities, govern

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<sup>7</sup>These nine states are those listed under Art.47(1) of the FDRE Constitution: The State of Tigray, The State of Afar, The State of Amhara, The State of Oromia, The State of Somali, The State of Benshangul/Gumuz, The State of the Southern Nations, Nationalities and Peoples, The State of Gambela Peoples and The State of the Harari People

<sup>8</sup>For the exact date of adoption and revision of all nine state constitutions, see generally Christophe Van der Beken, *Sub-national Constitutional Autonomy in Ethiopia: On the Road to Distinctive Regional Constitutions (Paper Submitted to Workshop 2:Sub-national Constitutions in Federal and Quasi-federal Constitutional States)*, P4 available at <https://www.jus.uio.no/english/.../news.../papers/.../w2-Vanderbeken.pdf> <accessed on January 20,2015>

<sup>9</sup>Tsegaye Regassa, *Sub-national Constitutions in Ethiopia: Towards Entrenching Constitutionalism at State Level*, Mizan Law Review (2009),Vol.3, No.1, P37; Apart from these two main ones, state constitutions are also expressions of state sovereignty and the principle of self-rule that constitutes an aspect of federal governance.

<sup>10</sup>*Ibid.*

vertical relationship within the specific state itself (*Zone, woreda, Kebele*) or parallel relationship with other state members<sup>11</sup>.

### 1.2.2. Offering A Better Protection of Rights

Of all purposes served by having the state constitutions in federations, better protection of rights and freedoms of citizens is the most important one<sup>12</sup>. But, how does the idea of better protection to the rights by the state constitutions come to existence? How do state constitutions do give better protections? These are some questions to be dealt with.

Justice Brennan of the US Supreme Court provides an answer to the first question. He strongly argued for the better protection of human rights by state courts through state constitutions than the protection given by the federal Constitution. He wrote as follows:

*State courts cannot rest when they have afforded their citizens the full protection of the federal Constitution. State Constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law*<sup>13</sup>.

The whole message here is that state courts in the US give more protection to human rights than the US Supreme Court. Justice Brennan's publication<sup>14</sup>

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<sup>11</sup>*Ibid.*

<sup>12</sup>*Ibid* (see footnote number 7).

<sup>13</sup>William J. Brennan, *State Constitutions and the Protection of Individual Rights*, Harvard Law Review (1977), Vol.90, No.3, P.491.

<sup>14</sup>Of course, there were proponents of Brennan's philosophy and in fact there were cases decided in this way even before 1977. *K. Gordon Murray Productions, Inc. v. Floyd* (1962) decided by Georgia Supreme Court; *State v. Moore* (1971) decided by Washington Supreme Court; *State v. Burkhart* (1976) decided by Tennessee Supreme Court are some cases decided in line with Brennan's philosophy (*for details see generally, Randall T. Shepard, The Maturing Nature of State Constitution Jurisprudence, Valparaiso University Law Review* (1996), Vol.30, No.2 Symposium on the New Judicial Federalism: A New Generation, PP.424-426).

initiated many scholars to further consider the issue that flourished arguments for or against the concept. These arguments revolve around the practicability of Brennan's better protection of rights at state level movement which ultimately end up with development of two doctrines: convergence and divergence<sup>15</sup>. Let us briefly see the difference between these doctrines.

a) **Convergence Doctrine**

This doctrine dictates that in the course of interpreting bills of rights in the state constitutions, state courts may adopt federal doctrine in whole or in part<sup>16</sup>. Proponents of the doctrine argue that since Americans are now a people who are so alike from state to state and whose identity is so focused on national institutions with no significant social variations, they deserve similar protection throughout the country<sup>17</sup>. The doctrine advocates for following federal track in applying rights although that does not *necessarily* mean verbatim copy of applying the federal interpretation. Four principal forms of doctrinal convergence can be identified:

- a) *'Unreflective adoption' - of both the meaning of a similarly worded provisions and applications.*
- b) *More 'reflective adoption', case-by –case of the meaning of the federal Constitution*
- c) *"prospective lock stepping," which involves not only adoption of the provision's federal meaning, but also a ruling that the federal test shall apply in all future cases under the relevant provision*

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<sup>15</sup>Scott R. Bauries, *State Constitutions and Individual Rights: Conceptual Convergence in School Finance Litigation*, Geo. Mason Law Review, Vol.18, No.22 (University of Kentucky, College of Law, Law Faculty Publications), P302 available at [http://uknowledge.uky.edu/law\\_facpub](http://uknowledge.uky.edu/law_facpub) accessed on January 6, 2015.

<sup>16</sup>Ibid.

<sup>17</sup>Randall T. Shepard, *Supra* note 14, P.431.

- d) *"Borrowing" a test or form of reasoning from the federal courts, but not necessarily the meaning of the provision or its application; a more nuanced form of convergence*<sup>18</sup>.

In all scenarios, although the degree varies, we see the need for the state courts to make reference to the federal application indicating that convergence doctrine assumes the existence of same 'kind' of rights in both federal and state constitutions which may not be necessarily the case at least in the American context<sup>19</sup>.

### **b) Divergence Doctrine**

Divergence doctrine provides that states may choose to craft their own doctrine while interpreting bill of rights in the state constitutions since the principle of state constitutionalism demands this way of understanding<sup>20</sup>. It is all about double protection of rights. That is, state constitution is the creation of the sovereign people of the state and reflects the fundamental values, and indirectly the character of that people which actually differ both from state to state and as between the state and the country as a whole<sup>21</sup>.

Accordingly, in the US, state constitutions were relevant for better protection of rights in the following instances:

- a) *Where no parallel federal provision existed, the state constitution regularly provided the sole basis for a constitutional challenge.*

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<sup>18</sup> Scott R. Bauries, *Supra* note 15, P.303.

<sup>19</sup> *Ibid.*

<sup>20</sup> Randall T. Shepard, *Supra* note 14, P.430.

<sup>21</sup> *Ibid.*

- b) *The state constitution was also pertinent where a parallel federal provision had not been incorporated into the meaning of the Fourteenth Amendment*
- c) *Where a parallel federal provision had been construed in such a way that it clearly did not apply to the facts of the instant case.*
- d) *State supreme courts heard cases involving claims under parallel federal and state constitutional provisions and gave the state constitutional claim independent consideration*<sup>22</sup>.

From this, one can easily understand that where the federal constitution remained silent, or where the federal constitution had not incorporated in line with the spirit of the constitution in force, or where the federal constitution did not consider the specific reality of states, the role of state constitutions to fill the gap for better protection of rights was highly remarkable. Hence, although the role of state constitution for better protection of rights passed through these doctrines of convergence and divergence, it is clear that the idea is well settled today and more realistically by resorting to divergence approach.

Once divergence doctrine is taken as a guiding principle (which is in fact the case), there will be several avenues for better protection of rights. These avenues can be provided “by enshrining human rights that are not included in the federal constitution, by restricting the possibilities for human rights limitations and derogations or by allowing a more protective interpretation to human rights provisions”<sup>23</sup>.

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<sup>22</sup> *Id.*, P424.

<sup>23</sup> Van der Beken, *Supra* note 8, P.9.

In Ethiopia, all nine state constitutions provide for protection of rights. Hence, in principle, they all are expected to manifest these features. Although it is logical to examine whether or not they actually do that, the scope of this paper is limited to examine whether the Oromia Constitution has manifested the features by making comparative analysis with that of the FDRE Constitution in the subsequent sections.

## **2. RECOGNIZED RIGHTS UNDER THE FDRE AND THE OROMIA CONSTITUTIONS: COMPARATIVE ANALYSIS**

The texts of both the FDRE and the Oromia Constitutions give much attention to protection of rights. This can be understood from the preambles of both Constitutions that make protection of both group and individual rights as a condition precedent to achieve the very objective of the Constitutions<sup>24</sup>, from chapter two of both Constitutions that sanctified human and democratic rights by considering them as one of the five fundamental principles of the Constitutions<sup>25</sup>, and from chapter three of both Constitutions that make comprehensive list of rights. The rights provided under chapter three of both Constitutions are comprehensive in a sense that they encompass all three categories of rights: civil and political rights (first category), socio-economic rights (second category), and group rights (third category). Such a comprehensive recognition is implicit recognition of the interdependence, interrelatedness and indivisibility of all three generations of human rights by incorporating them on equal footing without any difference in consequence<sup>26</sup>. Now, let us turn to see all categories of the rights one by one.

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<sup>24</sup>Compare the preambles of the FDRE Constitution, Parag. 2 with that of the Oromia Constitution, Parag. 2.

<sup>25</sup>Compare the FDRE Constitution, Art 10 with the Oromia Constitution, Art.10.

<sup>26</sup>Adem Kassie, *Human Rights under Ethiopian Constitution: A Descriptive Overview*, Mizan Law Review (2011), Vol. 5, No.1, P.44.



## 2.1. CIVIL AND POLITICAL RIGHTS

In terms of number of provisions, civil and political rights are given much coverage both under the FDRE and the Oromia Constitutions. Out of 31 total articles dealing with rights in chapter three, both the FDRE and the Oromia Constitutions devoted 24 articles to civil and political rights<sup>27</sup>. This is without including the right to property which is difficult to classify exclusively as civil and political or socio-economic right as it shows both characteristics<sup>28</sup>.

The content of civil and political rights enshrined in both Constitutions is almost the same. Accordingly, the right to life; the right to security of person; the right to liberty; prohibition against inhuman treatment; the right of arrested person; the right of accused person; the right of detained or imprisoned person; non-retroactivity of criminal law; prohibition of double jeopardy; right to honor and reputation; equality before the law; right to privacy; freedom of religion, belief and opinion; crimes against humanity; right of thought, opinion and expression; the right of assembly, demonstration and petition; freedom of association; freedom of movement; marital, personal, and family rights; right of women; right of children; right of access to justice; the right to elect and to be elected are all civil and political rights included in both the FDRE and the Oromia Constitutions<sup>29</sup>.

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<sup>27</sup>See Arts. 14-38 of both the FDRE and the Oromia Constitutions; Art. 13 is not counted here because it applies to all rights in both Constitutions. It is not specific to civil and political rights alone.

<sup>28</sup> Rakeb Messele, Enforcement of Human Rights in Ethiopia, Research Subcontracted by Action Professionals' Association for the People (APAP), August 2002 (*Ethiopian Civil Service University, Documentation Centre*), P.34, Footnote 67.

<sup>29</sup> Compare Arts.14-38 of the FDRE Constitution with Arts.14-31; 33-38 of the Oromia Constitution.

The subjects of these rights can be every person, or limited to a specific group of individuals as the case may be. They are phrased as ‘everyone’, ‘every person’ or at times in negative form ‘no one’. Accordingly, some rights like the right to life, to security of person or to liberty are enjoyed by every person. On the other hand, rights like the right to procedural due process guarantees (like the right of arrested person, the right of accused person, the right of convicted person), right of women or right of children are enjoyed only by the respective specific title groups. The rights are limited to a certain group and this is done either by explicitly mentioning that the specific group enjoy them, or by setting certain limits as criteria for exercising the rights<sup>30</sup>.

In relation to the subjects, i.e., the right holders of civil and political rights, one may ask as to who is ‘everyone’ or ‘every person’ to exercise the rights? Is it limited to a natural person only or does it also include artificial person? Neither the FDRE Constitution nor the Oromia Constitution explicitly addresses the issue. But, based on the nature of civil and political rights themselves, *Rakeb* rightly concludes that the rights can be exercised either by a natural or artificial person as the case may be<sup>31</sup>. Accordingly, if we take the right to life, only a natural person is given it. Nature did not provide a life for artificial persons and hence there is no reason to extend it to artificial persons. On the other hand, if we take, article 29(4) of both Constitutions, the press as an institution, enjoy legal protection to ensure its operational autonomy and its capacity to entertain diverse opinions. In this case, the right to opinion is given to artificial person, not to a natural person.

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<sup>30</sup>For example, rights of children are enjoyed by children (*see Art.36 of the FDRE and the Oromia Constitutions*). Likewise, only Ethiopian nationals who attain 18 years of age can vote (*Compare Art.38 (1) (b) of the FDRE with that of the Oromia Constitutions*).

<sup>31</sup> *Rakeb*, *Supra* note 28, P.28.

From the above discussions, one can easily conclude that civil and political rights included both under the FDRE and the Oromia Constitutions are basically the same. However, this does not mean that there are no areas of divergences at all. There are areas of differences because of addition or omission of rights in any one of the two Constitutions.

Firstly, there is a difference between the content of the right to movement provided under the FDRE and the Oromia Constitutions. The FDRE Constitution guarantees only the right to come into the country for Ethiopian nations or to go out of the country for every one or to choose place of residence within different parts of the country<sup>32</sup>. The Oromia Constitution also gives similar protection. However, it goes beyond this by guaranteeing the freedom to work, acquire or own property for any resident or any one lawfully residing in the region in addition to the protection provided under the FDRE Constitution<sup>33</sup>.

A point worthy considering here is the implication of the disparity between the two Constitutions on the protection of rights mainly from the perspective of ethnic federalism. As indicated in the first section of this paper, a state constitution may make difference with a federal constitution so long as it is

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<sup>32</sup> FDRE Constitution, Art.32 (1-2)

<sup>33</sup> The full Art. 32 of the Oromia Constitution reads as follows: *Without prejudice to Article 32 of the Federal Constitution, any resident or person who lawfully stays in the region has the right to freedom of movement and freedom to choose his residence, **work, acquire or own property** as well as the freedom to leave the region at any time he wishes to.* At this juncture, one may ask that since the right to work or acquire property is also guaranteed by the other provisions of the FDRE Constitution (Arts. 41(1-2) & 40(1)), how can one say that the Oromia Constitution goes beyond the FDRE Constitution? It is true that the FDRE Constitution provides for both the rights to work and own property but in a different context since the subject of the rights is 'every Ethiopia'. The Oromia constitution also guaranteed similar rights under similar provision for every resident of the region. But, the right guaranteed under Art.32 of the Oromia Constitution specifically addresses the concern of freedom of movement in addition to other residents of the region. This means that the Oromia Constitution more expanded the right to movement than the FDRE Constitution .

for a better protection. It is an important protection against possible aberrations of an ethnic federal system<sup>34</sup>. It protects people who do not originate in a specific ethnic-based regional state against residence restrictions imposed upon them by the concerned regional state<sup>35</sup>.

Here, we see that the Oromia Constitution gives a better protection by expanding the right to movement provided under the FDRE Constitution. To this extent, Oromia Constitution is in line with the main purpose of having state constitutions, i.e., better protection of rights. Indeed, this not only gives a better protection to human rights but also serves as a step toward creating *one economic community* as promised in the preamble of the FDRE Constitution.

Secondly, the right of nationality provided under Art.33 of the FDRE Constitution does not exist in the Oromia Constitution. However, this should not be construed as if the Oromia Constitution erroneously limited the right guaranteed under the FDRE Constitution. The absence of the right to nationality under the Oromia Constitution is justified based on division of power between the federal and state governments. One of the powers conferred to the federal government is to determine matters relating to nationality<sup>36</sup>. This means that state governments, including Oromia cannot regulate nationality issues by their constitutions as it falls outside of their jurisdiction. Hence, there is no ground for the Oromia Constitution to recognize it.

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<sup>34</sup>Christophe Van der Beken, Constitutional Diversity in Ethiopia: A comparative Analysis of Ethiopia's Regional Constitution, P.26 (*available on the Institute of Federalism and Legal Studies intranet of the Ethiopian Civil Service University*).

<sup>35</sup> *Ibid.*

<sup>36</sup> The FDRE Constitution, Art.51 (17).

Finally, there is a difference in the content of prohibition of double jeopardy provided under Art.23 of the FDRE and the Oromia Constitutions. The FDRE Constitution prohibits second trial or punishment of a person in case s/he has already been finally convicted or acquitted *in accordance with the criminal law and procedure*. Here, the conviction or acquittal procedure is in accordance with the criminal law and procedure. The Oromia Constitution, however, did not limit the conviction or acquittal procedure to the criminal law and its procedure. The procedure, by which conviction or acquittal is made, according to the Oromia Constitution, is *in accordance with criminal law and its procedure or any other relevant law*<sup>37</sup>.

A good point to consider here is whether this difference has any implication on the protection of human rights. The phrase “.... *any other relevant law*” added in the Oromia Constitution is larger in scope and it can even include conviction or acquittal made in accordance with customary law procedures. Hence, one can see that the Oromia Constitution deviated from the FDRE Constitution as far as prohibition of double jeopardy is concerned thereby building the existing protection under the FDRE Constitution for a better protection<sup>38</sup>.

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<sup>37</sup>To make the comparison easier, Art.23 of both Constitutions reads as follows:

**FDRE Constitution:**

*No persons shall be liable to be tried or punished again for an offense for which he has already been finally convicted or acquitted in accordance with the criminal law and procedure (emphasis added)*

**Oromia Constitution:**

*No one shall be tried or punished twice for an offense for which he has been finally convicted or acquitted in accordance with criminal law and its procedure or any other law (emphasis added).*

<sup>38</sup> In fact, this is without going into examining the very content of customary law procedures as to what extent they protect human rights. Whether customary law procedures expand or restrict human rights by their nature needs further study. What is analysed here is simply the available options of procedures from conviction or acquittal under the Oromia Constitution are larger in number when compared to the FDRE Constitution. This creates fertile ground for better protection of human rights under the Oromia Constitution.

To conclude, although the civil and political rights included in the FDRE and the Oromia Constitutions are largely similar, there are also areas where the latter differs from the former with an effect of expanding or at times neither expanding nor restricting rights.

## 2.2. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Economic, social, and cultural rights include the right to engage freely in economic activity; the right to employment; the right to choose means of livelihood, occupation and profession; the right to marriage and protection of the family, the right to resource allocation for health, education, and other public service, etc<sup>39</sup>. In addition to this, chapters of both Constitutions dealing with policy principles and objectives<sup>40</sup> to a larger extent reflect economic, social, and cultural right aspects. These rights, as provided under the FDRE Constitution, are fewer in number, broad and very vague to apply, and poorly drafted<sup>41</sup>. The same applies to the same rights enshrined under the Oromia Constitution as one does not see a difference in their content and manner of drafting except that the former talks in the national context and the latter talks in the sub-national context.

The right holders are mostly individual citizens although in some cases they are limited to specific groups such as the physically and mentally disabled<sup>42</sup>,

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<sup>39</sup> Compare Art.41, 42, and 34 of the FDRE Constitution with that of the Oromia Constitution.

<sup>40</sup>Chapter 10 (Arts. 89-91) of the FDRE Constitution and chapter 11 (Arts.104-106) of the Oromia Constitution respectively deal with National Policy, Principles and Objectives, and Policy Directives of the Region. In both chapters of the FDRE and the Oromia Constitutions, economic objectives, social objectives, and cultural objectives of the country as a whole and the Oromia region in particular are respectively dealt with.

<sup>41</sup>Amsalu Darge, *Derivation of Rights: Affording Protection to Latent Socio-economic Rights in the FDRE Constitution*, Oromia Law Journal (2013), Vol.2, No.2, PP.34-35.

<sup>42</sup> Compare Art.41 (5) of the FDRE Constitution with the same provision of the Oromia Constitution.

the aged and the children who are left without parents or guardian<sup>43</sup>, and Ethiopian farmers and pastoralists<sup>44</sup>. The objectives and principles under Arts.89-91 are also formulated for the benefits of all Ethiopians though some are for the benefit of a defined group of the right holders such as least advantaged nations, nationalities and peoples, victims of disaster, and women<sup>45</sup>. Similar trend is followed in the Oromia Constitution except that the scope of the right holders of the rights is limited to residents of the Oromia region.

From this, one can safely conclude that unlike civil and political rights, none of economic, social and cultural rights are explicitly formulated for the benefit of “everyone” under both Constitutions. The International Convention on Economic, Social and Cultural rights seems that it has already contemplated the probability of such scenario by allowing developing countries to guarantee economic rights provided in the Covenant *to non-nationals to the extent of their national economy*<sup>46</sup>. Hence, the reason why both the FDRE and the Oromia Constitutions did not extend the right holders of economic, social and cultural rights to everyone seems to be justified on the ground of economic development of the country or the sub-national.

The other related point to be considered here is whether allowing only certain groups (women, pastoralists, farmers, etc) as the right holders of economic, social and cultural rights goes in line with the right to equality. Approaching such type of issue needs to interpret the models of the right to equality. Equality can be *formal* where everyone treated equally without

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<sup>43</sup> *Ibid.*

<sup>44</sup> Compare Art.41 (8) of the FDRE Constitution with the same provision of the Oromia Constitution.

<sup>45</sup> The FDRE Constitution, Arts.89 (4), 89(3), and 89(7).

<sup>46</sup> See the 1966 International Convention on Economic, Social and Cultural Rights, Art.3 (2).

taking into account the social and economic disparities between people and individuals, or *substantive* where equality of result is achieved by taking into account different disparities<sup>47</sup>. So, when certain groups are given preferences under both Constitutions, the Constitutions are envisaging substantive equality; equality of result. This shows that not all differentiations will lead to discrimination. In line with this understanding, one may argue that a similar concern for achieving true equality lies behind the constitutional authorization for special assistance to the most backward ethnic groups<sup>48</sup>.

In short, as far as the protection of economic, social, and cultural rights is concerned, what is provided under the FDRE and the Oromia Constitutions is similar.

### **2.3.GROUP/SOLIDARITY RIGHTS**

The other protected rights under the FDRE and the Oromia Constitutions are group rights. Both Constitutions recognize three types of group rights: the right to self-determination up to secession, the right to development, and the right to environment<sup>49</sup>. Of the three group rights, significant disparity between the FDRE and the Oromia Constitutions is observed in case of the right to self-determination. Under both Constitutions, the contents of the other two rights, i.e., the right to development and the right to environment are similar although there is a difference on the subjects of the rights. For example, while the subjects of the right to development under the FDRE Constitution are the peoples of Ethiopia in general and each Nation,

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<sup>47</sup>Johan de waal Lain Currie and Gerhard Erasmus, *The Bill of Rights: Handbook* (3<sup>rd</sup> ed.) in association with Lawyers for Human Rights and Law Society of South Africa (2000), P.184 cited in Rakeb, *supra* note 28.

<sup>48</sup>Van der Beken, *supra* note 34, P.26.

<sup>49</sup> Compare Arts.39, 43, and 44 of the FDRE Constitution with the same provisions of the Oromia Constitution.



Nationality and People in Ethiopia in particular, under the Oromia Constitution this right is given to the peoples of the region<sup>50</sup>. Again, the subjects of the right to clean and healthy environment under the FDRE Constitution are all persons, but under the Oromia Constitution, they are all residents of the region<sup>51</sup>. Apart from this, the content of the right to development and environment under both Constitutions are basically similar.

However, the secession aspect of the right to self-determination under the Oromia Constitution is different from what is provided under the FDRE Constitution not only in terms of the subjects of the right but also in terms of its content. The FDRE Constitution clearly stipulates that the right to secession is the right to be exercised by every Nation, Nationality and People of Ethiopia *unconditionally*<sup>52</sup>. Here, the subjects of the right are every Nation, Nationality and People of Ethiopia. The right is also unconditional as its subjects are not required to provide any justification if they want to secede. What is expected from the group is simply adhering to the procedures prescribed under Art.39 (4) (a-e) of the FDRE Constitution.

Under the Oromia Constitution, however, the subjects of the right are the Oromo Nation. This, of course, has logical flow as the Constitution empowers only one ethnic group- the Oromo Nation as far as group right is concerned<sup>53</sup>. Again, under the Oromia Constitution, the right to secession is conditional since the Oromo Nation exercises it *'where they are convinced that the internal aspects of self-determination have been violated, suspended*

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<sup>50</sup>Compare Art.43 of the FDRE Constitution with Art.43 of the Oromia Constitution.

<sup>51</sup>Compare Art.44 of the FDRE Constitution with Art.44 of the Oromia Constitution.

<sup>52</sup> The FDRE Constitution, Art.39 (1).

<sup>53</sup>This is clear from the preamble of the Constitution which begins with, We the Oromo People, and Art.8 of the same Constitution that declares sovereign power in the region resides in the People of the Oromo Nation.

*or encroached and when such cannot be remedied under the auspices of a union with other peoples*<sup>54</sup>.

So, the Oromia Constitution made exercising the right to secession the last resort to be exercised after exhausting available remedies within the existing federal arrangement<sup>55</sup>. By doing so, the Oromia Constitution gave less protection to the right guaranteed by the FDRE Constitution failing to meet the better protection standard normally expected of the state constitution. Although some scholars argue that this is a violation of the FDRE Constitution and to that extent null and void via Art. 9(1) of the same Constitution<sup>56</sup>, another argument is recently emerging as far as state constitutions which are empowering only a single ethnic group such as Oromia's are concerned<sup>57</sup>. Since the Oromia Constitution empowered only the Oromo Nation who is assumed as a homogeneous in the regional territory, deciding to exercise the right to secession conditionally or

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<sup>54</sup>The Oromia Constitution, Art.39 (4).

<sup>55</sup>With this scenario, *Tsegaye* remembers Transitional Period of Ethiopia as follows:[T]he state Constitutions excluding Somali and SNNPR reintroduced *the conditions for the exercise of the right to secession by bringing in the provisions of the Transitional Charter which said that secession can be exercised only if massive violation or denial of the rights to language, culture, history, autonomy, self-rule and democracy and this cannot be corrected within the union* (see *Tsegaye, supra note 9, P54, Foot note 97*).

<sup>56</sup> *Tsegaye, supra note 9, P.55*.

<sup>57</sup> In Ethiopia, the way state constitutions empowered ethnic groups is not similar across all constitutions. While some constitutions empowered a single ethnic group, some others empowered more than one ethnic groups. For example, the Oromia Constitution by empowering only the Oromo Nation (see the preamble and Art.8), and the Somali Constitution by empowering only the Somali people (see the preamble and Art.8) belong to the first category. On the other hand, the Benishangul Gumuz Constitution by empowering five ethnic groups-*Berta, Gumuz, Shinasha, Mao, and Komo* (see the preamble and Art.2), the Gambella Constitution by empowering five ethnic groups-*Nuer, Anywar, Majanger, Upo, and Komo* (see the preamble and Art.46(1)), the Amhara Constitution by empowering three ethnic groups-*Himra, Awi and Oromo* in addition to Amhara (see the preamble which says, we the Peoples of Amhara National State with Art. 45(2)), the Afar Constitution by empowering *Afar and Argoba* (see Art.43(2)), the Tigray Constitution by empowering three ethnic groups-*Tigray, Kunama and Irob* by residing sovereignty on the People of Tigray (See the preamble and Art. 8) belong to the second category.

unconditionally is nothing more than expressing sovereign will of the Nation, and thus not a violation of the FDRE Constitution<sup>58</sup>.

The argument seems logical as there is no ‘division’ of sovereignty in the Oromia state as is the case in other states like Benishangul Gumuz and Gambella where heterogeneous ethnic groups are empowered. Here, we see a kind of ‘division’ of sovereignty. Sovereignty is ‘divided’ among the empowered ethnic groups. This implies that making the right to secession conditional in these two regions falls short of reflecting expression of sovereignty thereby restricting the right guaranteed under the FDRE Constitution which is obviously violation of the supremacy clause. However, when the Oromo Nation decides to make the right to secession conditional that amounts to exercise of sovereignty since there is/are no other empowered ethnic group/s to exercise group rights. The Oromo people may prefer to exercise the right to secession as the last resort considering that this will better protect the interest of the people which cannot be violation of the FDE Constitution.

In short, although both the FDRE and the Oromia Constitutions are largely similar on the solidarity rights, there is a significant difference at least on the right to secession. However, the difference is simply a difference without violating the FDRE Constitution.

### **3. LIMITATION AND DEROGATION, AMENDMENT, AND ADJUDICATION OF RIGHTS UNDER THE FDRE AND THE OROMIA CONSTITUTIONS: COMPARATIVE ANALYSIS**

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<sup>58</sup>This kind of argument was, foreexample, propagated by Dr. Christophe Van der Beken while lecturing on State Constitution, Local Government and Good Governance module for LLM in Comparative Public Law and Good Governance, and MA in Federalism program students at Ethiopian Civil Service University, January 2015.

In section two, we have noted that protected rights and the right holders under the FDRE and the Oromia Constitutions are largely similar with some notable differences. However, mere recognition of the rights alone does not mean that they are automatically protected. Effective protection goes more than recognition and depends upon different factors like limitation, derogation, amendment procedure, and adjudication of the recognized rights. Hence, comparing the FDRE Constitution with the Oromia Constitution on these issues is also an imperative task at least to judge the degree of a better protection offered by the latter Constitution. This is, of course, the core task of this section.

### 3.1. LIMITATION AND DEROGATION

Although rights are constitutionally entrenched, that does not mean that their entrenchment is absolute. Exceptionally, they can be infringed. Limitation and derogation are the two mechanisms of infringing the protected rights although they are conceptually different and applicable in different contexts<sup>59</sup>. For a better understanding, let us see them separately.

#### 3.1.1. Limitation

Limitation of rights refers to justifiable infringement of fundamental rights and freedoms<sup>60</sup>. It does not mean a total deprivation of rights whether that deprivation is temporary or permanent<sup>61</sup>. Limitation refers to a situation where guaranteed rights are encroached under narrowly contoured permissible circumstances<sup>62</sup>. This can be done by following general

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<sup>59</sup>Abdi Jibril, *Distinguishing Limitation on Constitutional Rights from their Suspension: A Comment on the CUD Case (2012)*, Haramaya Law Review, Vol.1, No.2, P.1.

<sup>60</sup>Iain Currie & Johan de Waal, *The Bill of Rights Handbook* (2005), P165 in Abdi Jibril, *Id.*, P5.

<sup>61</sup>Abdi Jibril, *supra* note 59, P5.

<sup>62</sup>Adem Kassie, *supra* note 26, P85.

limitation clause, specific limitation clause, or hybrid approaches<sup>63</sup>. Of these three options, both the FDRE and the Oromia Constitutions followed the specific limitation approach. Accordingly, under both Constitutions, while some of the internal limitations simply refer to those limitations determined or established by law<sup>64</sup>, some others are more detailed and require specific laws to safeguard public security, peace, public morality, the rights and freedoms of others<sup>65</sup>. Hence, although both Constitutions follow specific approach of limitation, the degree of specificity varies from provision to provision.

A much relevant issue to the present paper is to examine the implication of following such limitation approach on the protection of rights<sup>66</sup>. The present writer does not believe that resorting to any one of limitation approaches is sufficient by itself for judging the degree of protection of rights. The existing experiences also show differences<sup>67</sup>. Whatever approach is followed, what

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<sup>63</sup> General limitation clause is a way of limiting rights by using a separate provision (section or article) that applies to all rights in a constitution or in a particular instrument; specific limitation clause is the way of limiting rights following specific provisions that guarantees the same right; and the hybrid one is the situation where specific limitation clause is used together with a general limitation clause (*for details on these issues, see generally, Abdi Jibril, supra note 59,P5;see also Adem Kassie, supra note 26,P58*).

<sup>64</sup>For instance, limitations of the right to life, liberty, and bail (*compare Arts.15, 17 and 19 of the FDRE Constitution with that of the Oromia Constitution*).

<sup>65</sup>The rights to privacy, freedom of religion, belief and opinion, freedom of expression and assembly and association are examples (*Compare Arts. 26, 27, 29, 30, 31of the FDRE Constitution with that of the Oromia Constitution*).

<sup>66</sup>Regarding this, authorities vary in opinions. For example, for *Tsegaye*, it restricts the protection of rights since in the absence of the general limitation clause, we hardly know how to rule on the (im) propriety of a limitative legislation, decision or any other measure (*Tsegaye, supra note 9, P.48, Foot note 71*). For *Adem*, however, the situation is both advantageous and disadvantageous (*Adem Kassie, supra note 26, P.58*). To the extent that it makes uncertainty to decide the propriety or otherwise of a decision or other measures taken to limit the rights, *Adem* shares *Tsegaye's* argument. But, he also rightly remarks that following specific limitation approach is advantageous as it leaves some rights, which do not have internal limitations, beyond limitations-hence better protection.

<sup>67</sup>For example, Constitution of the Republic of South Africa (1996) follows a hybrid approach; some international human rights instruments also contain general limitation clauses (e.g. UDHR, Art.29).

matter is *to clearly prescribe limitation grounds in the law*. For example, as indicated above, limitation of certain rights like the right to life, liberty, and bail under both Constitutions needs only the enactment of laws (regardless of the content of the laws) and hence highly susceptible to abuse. However, there are specific grounds for limiting some rights like the right to privacy, assembly, etc and hence one expects relatively a better protection. In short, *prescribing the grounds of limitation and government's commitment to protection of human rights* are more important than simply resorting to a type of available options of limitation approaches.

Another related but important point is to emphasise the similarity of limitation approach followed by both Constitutions. The limitation clauses in the Oromia Constitution are the same as the limitation clauses prescribed in the FDRE Constitution. The implication of this on the better protection of human rights at the state level is not good. It is not only the Oromia Constitution but also all other regional constitutions that have not used the opportunity to limit the limitations<sup>68</sup> thereby missing the opportunity of offering better protection of rights.

### 3.1.2. Derogation

Derogation is the situation where application of guaranteed rights are temporarily suspended in response to incidences of emergency that threaten the life of a nation or a region as the case may be<sup>69</sup>. Derogation, unlike limitation, can suspend the whole right. The FDRE Constitution provides substantive and procedural requirements for declaring state of emergency<sup>70</sup>. The substantive requirements are the grounds for declaring state of

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<sup>68</sup>Christophe Van der Beken, *supra* note 8, P.11.

<sup>69</sup>Adem Kassie, *supra* note 26, P.71; Abdi Jibril, *supra* note 59, P.12.

<sup>70</sup> The FDRE Constitution, Art.93.

emergency both for the federal and regional governments. Accordingly, while there are four grounds for declaring state of emergency at the federal level; there are only two grounds that necessitate the state governments to declare a state of emergency<sup>71</sup>. The Oromia Constitution also repeated these two grounds under its Art.108 (1).

The procedural requirements for declaring state of emergency are also prescribed in both Constitutions. Accordingly, the requirement of legislative approval, the establishment of a State of Emergency Inquiry Board, and the renewal of a state of emergency are important procedures prescribed under both Constitutions<sup>72</sup>. These procedures are strict to be observed by both levels of governments so as to avoid unnecessary encroachment on human rights.

The most striking event at the time of the state of emergency is suspension of guaranteed rights which is, of course, envisaged by both Constitutions<sup>73</sup>. But, this does not mean that all guaranteed rights are subject to suspension. In this regard, both the FDRE and the Oromia Constitutions specifically make lists of rights which cannot be derogated during a state of emergency.

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<sup>71</sup>To be more specific, external invasion, break down of law and order which endangers the Constitutional order and cannot be controlled by the regular law enforcement agencies, a natural disaster, or occurrence of an epidemic disease are the four grounds that necessitate the federal government to declare state of emergency. Out of these four grounds, only natural disaster and epidemic disease are grounds of declaring state of emergency at state level (*See the FDRE Constitution, Art.93 (1) (a) (b)*).

<sup>72</sup>Compare the FDRE Constitution, Arts.93 (2) (3) (5) with the Oromia Constitution, Arts.108 (2) (3) and 109.

<sup>73</sup>Compare the FDRE Constitution, Art. 93(4)(b) which authorises the Council of Minister to suspend the rights provided in the Constitution *to the extent necessary to avert the conditions that required the declaration of a state of emergency* with Art.108(4) of the Oromia Constitution which impliedly talks the power of Regional Administrative Council and “*Caffee*” to do the same.

Accordingly, under the FDRE Constitution, rights under three provisions<sup>74</sup>, viz., prohibition against inhuman treatment(Art.18),the right to equality (Art.25) and the right to self-determination of Nations, Nationalities and Peoples of Ethiopia (art.39(1 and 2)) cannot be derogated in a state of emergency.

Under the Oromia Constitution, however, the number of non-derogable rights is not limited to what are mentioned under the FDRE Constitution. Eight provisions are considered as non-derogable ones. Accordingly, the right to life (Art.15), the right to security of person (Art.16), prohibition against inhuman treatment (Art.18(1 and 2)),the right of detained or imprisoned person to treatments respecting his human dignity (Art.21(1)),the right to recognition everywhere of his status as a person (Art.24(1)), the right to equality before the law (Art.25), freedom of thought, conscience and religion (Art.27(1)),and the right to self-determination of the Oromo Nation (Art.39) are recognized as non-derogable rights and can neither be suspended nor limited<sup>75</sup>.

Here, two issues are worth considering. The first is as to what explains the disparity between the two Constitutions. The second is as to what implication the disparity has on the protection of human rights. To begin from the first, increasing the number of protected rights in case of the Oromia Constitution has logical connection to the grounds for declaring state of emergency by the state governments. As explained above, states declare state of emergency only on two grounds and this expands the extent of protection of rights when compared to the federal government which declares on four grounds. The

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<sup>74</sup>Art.93 (4) (c) of the FDRE Constitution mentions four articles: Arts.1, 18, 25, and 39(1 and 2). But, the author deliberately preferred to say three as Art.1 does not belong to any of the category of rights.

<sup>75</sup> The Oromia Constitution, Art.108 (4).



implication of the disparity is utilising constitutional space by the Oromia Constitution for a better protection of rights.

### 3.2. AMENDMENT

Amendment is a mechanism by which constitutions adapt to changing circumstances through “perfecting imperfections”<sup>76</sup>. With this consideration, both the FDRE and the Oromia Constitutions provide for amendment procedure that includes two steps of initiation and approval<sup>77</sup>. Both Constitutions provide for a separate amendment procedure for human right provisions which is more stringent when compared to amendment procedure for other provisions<sup>78</sup>. Accordingly, under the FDRE Constitution, human rights provisions are amended when:

- a) *All State Councils, by majority vote, approve the proposed amendment;*
- b) *HoPR, by two-thirds majority vote, approves the proposed amendment; and*
- c) *The HoF, by two-thirds majority vote, approves the proposed amendment*<sup>79</sup>.

It is stringent enough to discourage retrogressive amendment and to constitutionalize new rights as well as to raise the level of protection of

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<sup>76</sup>Johan Hatchard, “Perfecting Imperfections”: *Developing Procedures for Amending Constitutions in Common wealth Africa*”, The Journal of Modern African Studies (1998), Vol.36, No.3, P.381; cited in Adem Kassie, *supra* note 26, P.63.

<sup>77</sup> Compare the FDRE Constitution, Arts.104 and 105 with the Oromia Constitution, Arts.111 and 112.

<sup>78</sup>It is good to note that the amendment procedure for amending amendment provisions is also stringent. Under the FDRE Constitution it is equally stringent with the amendment procedure of human rights; under the Oromia Constitution, too it is relatively stringent as it requires approval of all District Council and “Caffee” by a majority vote of three fourth (*Compare the FDRE Constitution, Arts.105(1) with the Oromia Constitution, Art.112(3)*).

<sup>79</sup>The FDRE Constitution, Art.105 (1) (a-c).

recognized rights<sup>80</sup>. The Oromia Constitution also made cross-reference to the FDRE Constitution regarding the amendment procedure of human rights provisions. In full it reads: “*Provisions of chapter two and three of this Constitution may not be amended contrary to the conditions specified under Art.105 of the Federal Constitution*”<sup>81</sup>. This means, provisions of fundamental principles and human rights under the Oromia Constitution are amended only if the provisions in the FDRE Constitution are amended.

This, in effect, not only undermines the autonomy of the Oromia region for it cannot revise its own Constitution without cooperation of other states<sup>82</sup> but also blocks the opportunity of adding new human right provisions or expanding the protection of the same through amendment depending upon the demanding circumstances<sup>83</sup>. Hence, it is unnecessary self-imposed restriction.

### 3.3. ADJUDICATION

Recognized rights under both Constitutions do not make sense unless they are properly enforced for the subjects they are recognized for. Accordingly, under the FDRE Constitution, “*all federal and state legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of fundamental rights and freedoms listed in chapter three*”<sup>84</sup> (*emphasis added*). The Oromia Constitution dictates the same duties on the three branches of regional government<sup>85</sup>.

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<sup>80</sup> Adem Kassie, *supra* note 26, P.63.

<sup>81</sup> The Oromia Constitution, Art.112 (1).

<sup>82</sup> Tsegaye Regassa, *The Constitution of Oromia: A Brief Account*, P.2 in Tsegaye Regassa, *State Constitutions and Local Government: A Reader (Vol. II: Texts, Cases, and Thoughts, available at ECSU Library)*, August 2008.

<sup>83</sup> Christophe Van der Beken, *supra* note 8, P.12.

<sup>84</sup> The FDRE Constitution, Art.13 (1).

<sup>85</sup> The Oromia Constitution, Art.13 (1).

Although it is less clear when compared to Art.13 (1) of the FDRE and the Oromia Constitutions, the duty to enforce human rights is not limited to government alone. This is because “*all citizens, organs of the state, political organizations, other associations as well as their officials have the duty to ensure the observance of the Constitution*”<sup>86</sup>. This in effect means, all listed groups are duty bound to enforce human rights provisions which are parts of the whole constitution. As such, non-state actors including citizens are also obliged to enforce human rights.

The question is what if duty bearers (states and/or non-state actors) fail to carry out their constitutional obligation? Here comes the issue of constitutional adjudication. Both the FDRE and the Oromia Constitutions established political bodies that interpret the respective Constitutions. These bodies are known as the HoF (whose members are composed of all Nations, Nationalities and Peoples of Ethiopia) under the FDRE Constitution; and the Constitutional Interpretation Commission (whose members are a representative nominated from each District Council) under the Oromia Constitution<sup>87</sup>. In both cases, the Constitutional Interpretation Council, a body playing an advisory role to the body interpreting the Constitution is established<sup>88</sup>. Hence, one can easily see that the Constitutional interpretation system in Oromia is basically modelled after the federal one. *Tsegaye* wrote as follows:

*The Constitutional interpretation system (of Oromia)  
imitates the FDRE Constitution without a compelling*

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<sup>86</sup> Compare the FDRE Constitution, Art.9 (2) with the same provision of the Oromia Constitution.

<sup>87</sup> Compare the FDRE Constitution, Arts.83 (1) and 61(1) with the Oromia Constitution, Art.67 (1).

<sup>88</sup> Compare the FDRE Constitution, Arts.82 and 84 with the Oromia Constitution, Arts.68 and 69.

*reason for such imitation. One wonders why the ordinary court or a Constitutional court is not considered the ultimate interpreters of the Constitution. One also wonders why the Woredas of Oromia, without them being the makers, are considered the guardians of the Constitution*<sup>89</sup>.

It is very difficult to establish the logic of replicating the power to interpret the FDRE Constitution by the HoF at the federal level for the homogeneous state of Oromia by giving similar power to the Constitutional Interpretation Commission. The makers and owners of the FDRE Constitution are Nations, Nationalities and Peoples, entities represented in the HoF. So, the logic here is let the makers and owners of the Constitution be the guardians of the same which is achieved by empowering the HoF. In Oromia, we cannot find a similar logic. The Oromia Constitution is the expression of all Oromo Nation (Art.8), not the expression of the sovereignty of *Woredas* in Oromia state. Even if one can establish the HoF logic, there is no ground to trust Constitutional Interpretation Commission than the HoF when it comes to protection of human rights as both of them are political bodies<sup>90</sup>.

In addition to this, the probability of expanding protection of human rights through interpretation is also already blocked by Art.19(3) of the Constitutional Interpretation Commission establishment proclamation as the commission is required to interpret in a manner conforming to decisions of the HoF on similar human right matters<sup>91</sup>. On the one hand, this is advantageous as it prohibits the Constitutional Interpretation Commission

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<sup>89</sup> Tsegaye, *supra* note 82, P.5.

<sup>90</sup> Adjudication by its nature needs neutral body with no conflict of interest. But, the HoF and the Constitutional Interpretation Commission are both political organs and their impartiality is not beyond doubt.

<sup>91</sup> A Proclamation Enacted to Establish Oromia Constitutional Interpretation Commission and Determine Its Powers and Duties”, Proclamation No. 167/2011, *Megeleta Oromia*, July 2011.

not to go below the minimum protection given by the HoF through interpretation. On the other hand, it is disadvantageous since the probability of exercising '*judicial federalism*' within the existing framework for a better protection of human rights is rare or none because of uniformity of interpretation.

In short, it is very difficult to say constitutional adjudication system both in Ethiopia and Oromia is conducive for protection of human rights as the bodies assigned to do the task are politicians.

#### **4. CONCLUSIONS AND RECOMMENDATIONS**

State constitutions whose bases are the federal constitutions in federations do play many roles in regulating state behaviours. One of the justifications for the need to have state constitutions in a federal arrangement is their capacity to give a better protection to human rights than the federal constitution. It is well settled that state constitutions can do that by adding human rights that are not included in the federal constitution, by limiting limitation and derogation clauses, by providing relatively flexible amendment procedure, and by giving a more liberal (protective) interpretation.

The comparison of the FDRE and the Oromia Constitutions shows that although the two Constitutions are largely similar as far as protection of human rights is concerned, there are areas of differences that create mixed opportunities. By restricting rights, the Oromia Constitution provides lesser protection than the FDRE Constitution. At times, it also provides for better protection by expanding rights provided under the FDRE Constitution.

- 1) With regard to limitation clause, both Constitutions are similar in that they follow specific limitation approach. To avoid the possible abuse

of limitation, it is commendable if the Oromia Constitution utilizes its opportunity of limiting limitation clause for a better protection.

- 2) With regard to derogations at the time of emergency, although both Constitutions prescribe both substantive and procedural requirements for suspending rights, the number of protected rights in the Oromia Constitution is by far greater than that of the FDRE Constitution. This indicates well utilization of constitutional space by the Oromia Constitution for a better protection of rights as it is expected to be.
- 3) The amendment procedure of human rights in the Oromia Constitution is difficult to add new rights or provide better protection for the rights. Hence, the procedure (Art.112 (1)) should be repealed and replaced by a more flexible one.
- 4) Both FDRE and Oromia Constitutions establish political bodies to adjudicate constitutional rights. These bodies are not neutral and less trusted. Hence, it is commendable if both Constitutions opt for other constitutional adjudicatory body perceived to be politically 'neutral'.

## HARIIROO HOJII FI SIRNA HIIKKA WALDHABBII FALMII HOJII KEESSATTI RAKKOOLEE MUL'ATAN<sup>1</sup>

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### ABSTRACT

*Under the 1995 Constitution, Ethiopia has tried to guarantee fundamental rights of workers provided under ILO Conventions. Accordingly, it has issued the labour proclamation and other subsidiary laws to provide the basic principles of rights and obligations which govern the worker-employer relations, as well as to form the relevant institutions. However, this paper*

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<sup>1</sup> Barruun kun qorannoo bara 2007 ILOQHQS'O'n gaggeeffame ture irraa gabaabbatee kan dhiyaate dha. Qorannichi sirna iddattootti fayyadamuun kan gaggeeffame yommuu ta'u, dhaabbilee hojjechiisaa gara garaa (Warshaa Biqila Asallaa, Warshaa Oomisha Huccuu Ayikaaddis, Warshaa Oomisha Biiraa Baddallee, Korporeeshinii Humna Ibsaa Itoophiyaa Damee Jimmaa, Warshaa Gogaa Moojoo, Addis-Moojoo Kompileksii Zayita Nyaataa, Moenco Damee Adaamaa, Warshaa Oomisha Qorqoorroo Adaamaa, Oomisha Abaaboo Sheer Itoophiyaa, Oomisha Abaaboo Hoolotaa Roozis, Warshaa Oomisha Bishaan Albudaa Amboo, Warshaa Oomisha Saamunaa Walisoo, Warshaa Sukkaaraa Matahaaraa, Hospitaala Jeneraalaa Adaamaa, Xiqur abbaay Ergaa fi Fichisiisaa Damee Adaamaa, Itiyoo teeleekoom Damee Lixa Oromiyaa fi Humna Ibsaa Itoophiyaa Damee Naqamtee) fi Manneen Murtii, Waajjiraalee Dhimma Hojjetaa fi Hawaasummaa godinaalee dhaabbileen kunneen keessatti argaman 7 fi aanaalee godinaalee kana jalatti argaman 14; akkasumas, qaamolee sadarkaa naannootti argaman irraa odeeffannoon funaanameera. Waliigalatti, bar-gaaffiin 89 hojjetoota dhaabbilee kanneeniin kan guutame yoo ta'u, af-gaaffiin 137 hooggantoota waldaalee hojjetootaa, hojjechiistotaa, Pirezidaantotaa, abbootii seeraa dhaddacha falmii hojii fi abukaattotaa wajjiin godhameera. Dabalataan, galmeelee fi ragaaleen sanadaa 90 gahan sakatta'amaniiru. Bu'aan qorannichaas Waxabajjii 2007 woorkishooppiif ILOQHQS'O'dhaan qaamolee ilaallatuuf dhiyaatee yaada hirmaanttotaan gabbateera.

*contends that there are critical legal and institutional gaps in order to realize the rights of workers protected under the Constitution and ILO Conventions. In Oromia region, where this study is conducted, workers have little or no bargaining power to deal with their wages and other work conditions, which led to gross labour exploitation. Moreover, the principle of equal pay for equal work is overlooked. Absence of fit for purpose institution and uniform guidelines regarding employees' recruitment and hiring process has engendered incidents of employment discrimination. Generally, there is no industry based employment policy or systems to ensure equality in employment and rectify issues of discrimination at work place. Employment contracts mostly contradict the principles provided in the labour law. Dispute settling organs do not correctly construe the labour laws particularly while: determining employment relations to which labour law is applicable; dealing with the burden of proof, assessing the legitimacy of termination of employment contract and determining disablement compensation. Government shall be committed to fill the legal gaps including by signing important ILO Conventions like the minimum wage convention. It should also strengthen and empower institutions which take part in improving employment relations. Continuous training is important for judges, labour relations board members, labour inspectors, conciliators and trade union members to enable them properly execute employment legislations.*

## **1. SEENSA**

Dhaabbatni Dhimma Hojjetaa fi Hojjechiisaa Addunyaa (ILO) yeroo akka qaama 'Liigii mootummootaatti (*League of Nations*) hundaa'e, bara 1919 irraa jalqabee haalota hojii /working conditions/ fooyyaa'oo uumuuf, sadarkaawwan dhimma hojii /labour standards/ fi yaadota furmaataa



(recommendations) baasuun hojjechaa tureera. Konveenshinootnii fi yaadotni furmaataa (reccommendations) miseensota dhaabbatichaatiin yeroo adda addaatti bahan kunneenis istaandardiiwwan hojii addunyaa (International Labour Standards) uumaniiru. Biyyi keenyas ALA bara 1923 miseensa Dhaabbata Hojjetoota Idil-addunyaa yeroo taatee jalqabee mirgoota hojjetootaa kabajuu fi kabachiisuuf tattaaffii adda addaa godhaa turteetti. Bu'uura kanaanis, konvenshinoota bu'uuraa dirqisiisoo saddeet jiran dabalatee konveenshinoota 22 raggaasifteetti<sup>2</sup>. Sirnoota mootummaawwan darbanii keessattis ta'e Heerri Mootummaa RDFI erga bahee asitti, mirga hojjetootaa kabachiisuudhaaf uwwisa seeraa fi caaseffama gara garaa dhimma kana irratti hojjetu hundeessuudhaan hojiiwwan hojjetamaa turaniiru.

Heera Mootummaa RDFI keessatti mirgootni gurguddoo hojjetaan qabu teechifamaniiru. Imaammata fi Tarsiimoon Biyyoolessaa Dhimma Hojii Itoophiyaa bara 2009 bahes industirii hojjetoota baay'inaan hirmaachisan (labour intensive) uumuu fi oomishtummaa fi galii hojjetootaa fooyyeessuu jiddu-galeessa godhatee kan qophaa'e dha<sup>3</sup>. Labsiin hojjetaa fi hojjechiisaa lab.lakk. 377/96 (kana booda LHH) yeroo ammaa hojiirra jirus nageenya industirii mirkaneessuuf kaayyeffatee kan bahe yoo ta'u, innis dhimmoota murtaa'an irratti yeroo lama fooyya'eera. Seerotni kunis Labsii 466/97 fi Labsii lak.494/98 dha. Labsii hojjetaa fi hojjechiisaatiin alattis seerotni hariiroo hojii waliin rogummaa qaban biroo hedduun bahanii jiru<sup>4</sup>. Ta'us, seerotni kunneen bahuu fi qaamoleen dhimma kanarratti hojjetan gara garaa

<sup>2</sup>Kan argamu:[http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0:NO:11200:P11200\\_COUNTRY\\_ID:102950](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0:NO:11200:P11200_COUNTRY_ID:102950) irratti dha. <gaafa 12/01/2016 kan ilaalame>.

<sup>3</sup>Imaammataa fi Tarsiimoo Biyyoolessaa Dhimma Hojii Itoophiyaa, 2009,F19. Kan argamu:<https://www.ilo.org/.../ETH89584.pdf> <gaafa 22/3/2016 kan ilaalame>.

<sup>4</sup> Labsii Mirga Hojjechuu Qaama Miidhamtootaa Tumuuf Bahe, Labsii Lakk. 568/2008; Labsii Soorama Hojjetoota Dhaabbilee Dhuunfaa Murteessuuf Bahe, Labsii Lakk. 715/2003; Labsii Tajaajila Hojii fi Hojjetaa Walqunnamsiisu Bituuf Bahe, Labsii Lakk. 632/2001; Qajeelfama Hojjetoota Dubartoota Hojiiwwan Ulfaatoo Yookiin Fayyaaf Balaafamoo Ta'an Yookiin Haala Da'iinsaa Irratti Dhiibbaa Geessisan Murteessuuf Bahe (2005); Qajeelfama Sirna Raawwii Hojjetaan Ittiin Hir'ifamu caqasuun ni danda'ama.

hundeeffamuun qofti mirgi hojjetaa ni kabajama jechuu akka hin taane ni hubatama. Barruun kunis mirgootni hojjetaa sadarkaa addunyaatti akkasumas heeraa fi seerota biyya keenyaatiin beekamtii argatan qabatamaan hangam hojiitti hiikamaa akka jiran ni sakatta'a. Kana gochuufis, barruun kun kutaa jahatti qoodamee dhiyaateera. Kutaa jalqabaa (seensa) kanatti aanee kutaan dhiyaatu yaadrimee hariiroo hojii fi daangaa raawwii labsii hojjetaa fi hojjechiisaatiin walqabatee seeraa fi qabatama jiru kan agarsiisu dha. Kutaan sadaffaan waliigaltee hojii kan ilaallatu dha. Kutaa kana keessatti humna dhiibbaa uumuu hojjetaa fi mirgi walqixxummaa hojjetaa, bifoote waliigalteen ittiin taasifamuu fi turtii yeroo waliigaltee kanneen jedhan qabxiilee xiyyeeffatamani dha. Kutaa afraffaan miidhaa qaamaa hojiirratti dhaqqabuu fi rakkoo sanaan walqabatee jiru kan xiinxalu dha. Kutaan shanaffaan waliigaltee hojii karaa seeraan alaa addaan kutuu fi bu'aa isaa kan ilaalu dha. Dhumarratti, kutaan jahaffaa, yaadota gudunfaa fi furmaataa teechee.

## **2. YAADRIMEE HARIIROO HOJII FI DAANGAA RAAWWII LABSII HOJJETAA FI HOJJECHISAA**

### **2.1. YAADRIMEE HARIIROO HOJII**

Jechi hariiroo hojii (*employment relation or industrial relation*) jedhu dhiphatee ykn bal'atee ilaalamuu danda'a. Hariiroon hojii dhiphatee yoo hiikamu, walitti dhufeenya hojjetootnii fi gaggeessitootni dhaabbata hojjechiisaa adeemsa hojii keessatti qaban akka ta'etti hubatama. Hiikaan inni bal'aan immoo hariiroon hojii walitti dhufeenya bal'aa mootummaa, waldaalee hojjetootaa fi hojjechiistotaa gidduutti uumamu akka ta'etti

ibsama<sup>5</sup>. Akka hiikkoo kanaatti, hariiroon hojii sirna hojjetaa fi hojjechiisaan bakka bu'oota isaanii fi mootummaa waliin ta'uun walitti dhufeenya gidduu isaanii jiru itti to'atani dha. Kanaaf, hariiroon hojii bal'atee yoo hiikame, walitti dhufeenya hojjetaa fi hojjechiisaan ykn gaggeessitootni dhaabbata hojjechiisaa waliin qaban qofa kan ibsu miti. Hariiroon hojii walitti qabaa seerotaa fi dhaabbilee gabaa hojii to'atanii fi sochii gurmaa'insi waldaa hojjetootaa fi hojjechiisaa akka waliigalaatti taasisan kan mul'isu dha. Sirni falmii hojii maloota idilee fi al-idilees qaamuma hariiroo hojii ta'a jechuu dha. Hariiroon hojii seerota dhimmicha bituuf tumamaniin kan bulu dha. Seerotni hariiroo hojii bituuf tumaman kunneenis adda dureen uumamuu fi addaan cituu hariiroo hojii, hojjetoota seericha jalatti eegumsa argatan, mirgoota hojjetaa fi hojjechiisaa fi gahee qaamolee hariiroo hojii bulchan ykn falmii hojii hiikan kan hammatan ta'u.

Hariiroon hojii jiraachuu fi dhiisuu; akkasumas, hojjetoota seerota hariiroo hojii bitan jalatti eegumsa argatan adda baasuuf ulaagaawwan (tests) gargaaran adda addaatu jiru. Ulaagaaleen kunneenis: ulaagaa to'annoo (*control test*), hanga hojjetaan dhaabbata hojjechiisaatti makame ilaaluu (*integration test*), itti gaafatamummaa diinagdee (*the economic reality test*), dirqamnii fi faayidaan gamaa gamanaa jiraachuu (*mutuality test*) kanneen jedhani dha<sup>6</sup>.

Akka ulaagaa to'annootti hariiroon hojii jira kan jedhamu hojii hojjetamuu fi akkaataa itti hojjetamu irratti hojjechiisaan aangoo ajajuu kan qabu yoo ta'e dha. Ulaagaan inni lammataa immoo hanga hojjetaan caasaa dhaabbata

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<sup>5</sup> Trebilcock, Anne (Ed), *Labour Relations and Human Resources Management*; Jeanne Mager Stellman (Ed), *Encyclopedia of Occupational Health and Safety*, International Labor Organization, Geneva, 2011. Also available at <http://www.ilo.org/iloenc/part-iii/> <gaafa 8/10/2007 kan ilaalame>.

<sup>6</sup> Brenda Daly and Micheal Doherty, *Principle of Irish Employment Law* (Text Book, Clarus Press, 2010), F.47.

hojjechiisaa keessatti makamee tajaajila kennu ilaaluun kan murtaa'uu dha. Akka ulaagaa kanaatti, namni tokko hojjetaa jedhamuuf tajaajila ykn oomisha dhaabbatichaa keessatti hirmaannaa ijoo qabaachuu qaba. Adeemsa kenna tajaajilaa ykn omishaa keessatti qaama meeshaa fi baasii hojii dhiyeessu akkasumas qaama itti-gaafatamummaa diinagdee fudhate ilaaluun jiraachuu hariiroo hojii mirkaneessuun ni danda'ama. Itti-gaafatamummaa kanneen kan fudhate qaama hojjechiisu taanaan namni hojjetu sadarkaa hojjetaa argata jechuu dha. Adeemsa hojii keessatti namni hojjetuu fi hojjechiisu mirgaa fi dirqamni walii bahan yoo jiraate (fakkeenyaaf hojjechiisaan hojii dhiyeessuu fi kanfaltii raawwachuu; hojjetaan kanfaltii fudhachaa hojii hojjechuu) hariiroon kun hariiroo hojii ta'a. Maloota olitti ibsaman keessaa hariiroon hojii jiraachuu mirkaneessuuf yeroo ammaa filatamaa kan ta'e, akkaataa barbaachisummaa isaatti maloota kana walkeessa makuun fayyadamuu (*multiple test*) dha<sup>7</sup>.

Yaadrimee 'hariiroo hojii' jedhuuf LHH keessatti hiikni kenname hin jiru. Labsichi jecha hojjetaa jedhuuf hiikaa yommuu kennu, [*...nama hojjechiisaa waliin ... walitti dhufeenya hojii qabu...*] jechuun teechise<sup>8</sup>. Keewwata 4 jalatti immoo hariiroon hojii yeroo waliigalteen hojii raawwatamuu kaasee akka jalqabu agarsiisa. Labsii kana keessatti uumamuu hariiroo hojiitiif ulaagaalee olitti ibsaman keessaa kaan isaanii akka hammataman ni hubatama. Labsicha kwt 4(1) jalatti [*waliigalteen hojii raawwatame kan jedhamu...namni tokko mindaa argachuuf...aangoo hojjechiisaa jalattii fi faayidaa hojjechiisaatiif... hojii hojjechuuf*] yommuu waliigalu ta'uun ibsameera. Keewwata kana keessaa gaalee *aangoo hojjechiisaa jalatti* jedhu irraa kan hubatamu ulaagaalee hariiroo hojii adda baasuuf oolan keessaa ulaagaan to'annoo (*control test*) hammatamuu isaati. Gaaleewwan 'mindaa

<sup>7</sup> *Akkuma lak. 6ffaa.*

<sup>8</sup> Labsii Hojjetaa fi Hojjechiisaa Itoophiyaa, Lab. Lakk. 377/96, Kwt. 2(3).

*argachaa, faayidaa hojjechiisaatiif...*' jedhan immoo ulaagaa jiraachuu faayidaa fi dirqama gamaa gamanaa (*mutuality test*)' kan agarsiisuu dha.

## **2.2. DAANGAA RAAWWII LABSII HOJJETAA FI HOJJECHISAA**

Hariiroo fi gosootni hojii LHH jalatti eegumsa hin arganne kaa'amaniiru. Isaanis: kanneen kallattiin ykn ifatti hambifamanii (express exclusion) fi kanneen haala irratti hundaa'uun hanbifamani (conditional exclusion) dha<sup>9</sup>. Gaggeessitootni dhaabbilee hojjechiisaa dhaabbaticha waliin hariiroo hojii qabaatan bu'uura labsii kanaatiin hin bitamu. Gaggeessaa fi dhaabbata hojjechiisaa jidduutti hariiroon hojii uumamuu fi bu'aan hariirichi hordofsiisus bu'uura tumaalee seera hariiroo hawaasaa kwt 2512 hanga 2609 jiraniitiin bitama. Dhaddachi Ijibbaataa Mana Murtii Waliigala Federaalaa (kana booda DhIMMWF) murtiiwwaan kenneen kanuma cimseera<sup>10</sup>. Hariiroon dhaabbatni hojjechiisaa hoji-gaggeessitoota isaa waliin qabaatu dambii ittiin bulmaataa dhaabbatichi baafatuun bitamuu danda'a. Haala qabatamaa naannoo keenyaa yeroo ilaallu, dambii ittiin bulmaataa keessatti gitni tokko akka hoji-gaggeessaatti yeroo caqasamu, manneen murtii hojjetaan sun gahee gaggeessummaa (aangoo hojjetaa qacaruu, jijjiiruu, ramaduu, fi kkf qabaachuu) ragaan mirkaneeffachuu osoo hin barbaachisiin hojjetichi gahee hoji-gaggeessaa ni qaba jechuun fudhachaa jiru<sup>11</sup>.

Akkasumas, manneen murtii keenya hojjetaan itti-gaafatamaa kutaa tokkoo, fakkeenyaaf Itti-gaafatamaa Bulchiinsaa fi Faayinaansii dhaabbata

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<sup>9</sup>*Akkuma 8ffaa*, kwt 3 fi 4.

<sup>10</sup>Nib Transpoortii (WA) fi Taganuu Mashashaa, DhIMMWF, Lak. G 18307, Jiildii 2ffaa; Dhaabbata Misooma Qonnaa Arsii fi Salamoon Abbabaa, DhIMMWF, Lak. G 15815, Jiildii 3<sup>ffaa</sup>; Ambaayee W/maariyaam fi Dhaabbata Daldalaa Midhaan Itoophiyaa, DhIMMWF, Jiildii 13ffaa; Lak. G 60489.

<sup>11</sup>Masaayi Galataa fi Warshaa Shukkaaraa Matahaaraa, Mana Murtii Aanaa (kana booda MMA) Fantaallee, Lakk. G. 16423 (kan hin maxxanfamne).

himatamaa waan ta'eef, akka hoji-gaggeessaatti yeroon fudhatan ni mul'ata<sup>12</sup>. Ejjennoon faallaa kanaa ta'es manneen murtii keessatti yeroon calaqqisu ni mul'ata. Hojjetuun hooggantuu Bulchiinsaa fi Faayinaansii dhaabbata himatamaa turte waliigalteen kiyya seeraan ala addaan citee jira jechuun kanfaltiiwwan gara garaa gaafachuun yoo himattu, himatamaan mormii sadarkaa duraa dhiyeesseen himattuun hoji-gaggeessituu waan taateef falmii hojii nurratti dhiyeesuu hin dandeessu jedheera. Manni murtii jala-murtii mormicha irratti kenneen himattuun hooggantuu Bulchiinsaa fi Faayinaansii akkasumas miseensa manaajimentii ta'uudhaan ala akka seera hojjechiisaa fi hojjetaa keessatti teechifame gaheewwan hojjetaa qacaruu, jijjiiruu, kkf kan qabdu ta'uu waanti himatamaan mirkaneesse hin jiru jechuudhaan mormicha kufaa taasiseera<sup>13</sup>. Kunis, yaadrimee hoji-gaggeessaatiin walqabatee hubannoo fi hojimaatni jiru walirraa fagoo ta'uu kan agarsiisu dha.

Rakkoon qabatamaan qabxii kanaan walqabatee jiru inni bira, hojjetaan hojjechiisaa irratti himannaa dhiyeesse hoji-gaggeessaa ta'uu mirkanoofnaan manneen murtii dhimmichi LHH'tiin kan bulu miti jechuun galmee cufu<sup>14</sup>. Qabxiin bakka kanatti ilaallamuu qabu, hojjetaan mirga isaa kabachiifachuuf himannaa dhiyeesse tokko hoji-gaggeessaa ta'ee yoo argame, sababa kana qofaaf manneen murtii galmee cufuun isaanii bu'uura seeraa kan qabu hin fakkaatu. Manneen murtii dhimmi hojii-gaggeessitootaa yeroo dhiyaatuuf, aangoo kan qaban yoo ta'e, dhaddacha falmii hojiirraa gara dhaddacha siiivilii birootti jijjiiruun ilaalu qabu. Sababni isaa himataan seera sirrii yookin mata duree dhimma isaa haala sirriin ibsuuf dirqama hin qabu.

<sup>12</sup>Lammaa Urgeessaa fi Yuunivarsiitii Kollejjii Rooyaal – Kaampaasii Adaamaa, Lakk G. MMA Adaamaa 89601.

<sup>13</sup>Eebbisee Bariif fi Dhaabbata 'Women's Living Hope', Lakk. G. MMA Adaamaa 87706.

<sup>14</sup>Shibbiruu Caalchisaa, Abbaa Murtii MMA Adaamaa waliin afgaaffii gaafa 12/04/2007 gaaggeeffame.

Gama biraatiin, hariiroo hojii dhaabbilee tola ooltotaa fi dhaabbilee amantaa keessatti uumamu ilaalchisee akkaataa tumaaleen LHH hojii irra itti hin oolle ilaalchisee Manni Maree Ministeerotaa dambii baasuu akka danda’u labsichi ni agarsiisa<sup>15</sup>. DhIMMWF murtii dhimma dhiyaateef tokko irratti kenneen dhaabbilee amantaa keessatti hojjetootni hojii afuuraa hojjetan hariiroon dhaabbata amantaa sana waliin qaban bu’uura LHH’tiin akka hin bulle hubachiisera. Dambiin Manni Maree Ministeerotaa baasuu danda’a jedhames kan hojjetoota dhaabbilee amantaa kana keessaatti qacaramanii hojii afuuraan ala hojjetan kan ilaallatu malee, kan hojjetoota afuuraa akka hin taane hubachiiseera<sup>16</sup>. Kanaaf labsichi hojjetoota afuuraa dhaabbilee amantaa guutummaatti kan hin ilaallanne yoo ta’u, hojjetootni hojii afuuraan ala hojjetan garuu hanga dambiin jedhame bahutti dhimmi isaanii bu’uura labsichaan kan ilaalamu ta’a jechuu dha.

Haala qabatamaa manneen murtii naannoo Oromiyaa keessatti ittiin hojjetamaa jiru yeroo ilaallu, falmiilee hojii dhaabbilee amantaa irraa gara mana murtii dhufan ilaalchisee yaadota adda addaatu calaqqisa. Ta’ullee, hojjetoota dhimma afuuraa irra hojjetaniin ala jiran kan akka waardiyyaa, hojjetoota herregaa, ogeessa fayyaa fi kkf irraa falmiileen dhufan yeroo hedduu manneen murtiitiin simatamanii ilaalamaa jiru<sup>17</sup>. Yaadni faallaan darbee darbee mul’atu garuu, labsiin hojjetaa fi hojjechiisaa hojjetoota hojii afuuraa hojjetanis ni haammata kan jedhu dha. Sababni isaas, tumaaleen

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<sup>15</sup>*Olitti yaadannoo lak 8, Kwt 3(b).*

<sup>16</sup>Mana Amantaa Laamoorawoorq Qi/Maariyaamii fi Daaqon Mihirata Birahan (n-6), DhIMMWF,Lak. G. 18419, Jiildii 8ffaa.

<sup>17</sup>Baalchaa Cuqqaalaa, B/B Pirezdaantii MMA Lume, Afgaaffii gaafa 14/5/2007 gaggeeffame; Ayyantuu Gurmuu, Abbaa Murtii MMA Lume, Afgaaffii gaafa 14/5/2007 gaggeeffame; Shibbiruu Caalchisaa, Abbaa Murtii MMA Adaamaa waliin Af-ggaaffii gaafa 12/04/2007 gaggeeffame.

LHH dhaabbata amantii irratti raawwii qabaachuu malee hojjettoota dhimmi afuura irratti hojjetan jechuun waanti adda baase hin jiru kan jedhu dha<sup>18</sup>.

Dhimmi biraa daangaa labsichaan walqabatee ilaalamuu qabu hariiroo dhaabbileen idil-addunyaa hojjettoota isaanii faana qabani dha. Dhaabbileen idil-addunyaa iddoo gurguddoo lamatti: Dhaabbilee Miti-mootummaa Idil-addunyaa (*international non-governmental organizations, INGOs*) fi Dhaabbilee Mootummaa Idil-addunyaa (*intergovernmental organization, IGOs*) jedhamuun qoodamu.<sup>19</sup> Dhaabbileen gosti duraa kanneen qaama mootummaa hin taane, akkasumas waliigaltee biyyoota gidduutti godhamuun ala uumamanii biyyoota adda addaa keessatti irra caalmaan hojii bu'aan alaa irratti kan bobba'ani dha. Akka fakkeenyaatti, Koree Fannoo Diimaa idil-addunyaa kaasuun ni danda'ama. Dhaabbileen kanneen lammataa walitti dhufeenya biyyootni birmadummaa qaban ykn waliigaltee biyyoota ykn mootummaaleen taasisan bu'uureffachuun hundaa'anii daangaa biyyoota kanneenii keessa socho'uun kan hojjetani dha. Gosoota dhaabbilee kanneeniitiif fakkeenya kan ta'u Dhaabbata Mootummoota Walta'anii fi Ejensoota dhaabbaticha jalatti hundaa'an ykn dhaabbaticha waliin waliigaltee taasisuun waliin hojjetani (specialized agencies) dha. Dhaabbileen Mootummoota idil-addunyaa kaayyoo dhaabbataniif galmaan gahuu akka danda'an biyyoota miseensa ta'an keessa socha'anii yommuu hojjetan itti gaafatamummaa hariiroo hawaasaa uumamu irraa bilisa akka ta'an waliigaltee taasifamuun murtaa'a. Fakkeenyaaf, Dhaabbanni Mootummoota Walta'anii Guraandhala 13 bara 1946 ALA'tti dhaabbatichi daangaa biyyoota miseensa ta'anii keessatti bilisaan akka hojjetu

<sup>18</sup>Heenok Maammuyyee, Pireezidantii Mana Murtii Aanaa Ada'aa waliin Af-gaaffii guyyaa 20/06/2007 taasifame, Habii Huseen, Abbaa Murtii Mana Murtii Aanaa Adaamii Tulluu waliin Afaaffii guyyaa 15/04 / 2007 taasifame.

<sup>19</sup>International organizations, Toora intarneetii <http://en.wikipedia.org/wiki/> irratti kan argamu; <gaafa 05/09/ 2007 kan ilaalame>.



konveenshinii mirga addaa fi dawoo seeraa dhaabbatichaaf kennu (*convention on previlage and immunities of UN*) labseera. Haaluma walfakkaatuun dhaabbatichi ejensoota hojii dhaabbatichaa gargaaruuf dhaabbatichaan hundeeffaman ykn dhaabbaticha waliin waliigaluun hojjetaniifis konveenshinii dawoo seeraa fi mirga walfakkaataa kennu labseera<sup>20</sup>.

Dhaabbatni Mootummoota Walta'anii bara 2008 ALA'tti sirna falmii naamusaa fi komii hojjetoota isaa bitu baasuun qaama falmii kana dhaga'us hundeesseera<sup>21</sup>. Hojjetootni dhaabbatichaa falmii qaban adeemsa sirnichi ajaju hordofuun komii isaanii qaamaan ykn intarneetiin teessoo qaamolee falmii hojii hojjetoota dhaabbatichaa ilaalan (tribunals) iddoowwan sadii; Niyoork, Jeneevaa, fi Naayiroobiitti argaman keessaa bakka tokkotti dhiyeeffatanii furmaata argachuu danda'u<sup>22</sup>. Akkaataa falmiin hojii dhaabbilee idil-addunyaa itti keessummeeffamu irratti sirna seeraa biyya keenyaa yoo ilaallu, LHH kwt 3(3) jalatti, Manni Maree Ministeerootaa dambii yoo baase ykn waliigalteen mootummaan biyyattii dhaabbilee kanneen waliin taasisan yoo jiraate malee hariiroon hojii dhaabbilee idil-addunyaa fi hojjetoota isaanii gidduutti uumamu bu'uura labsii kanaatiin akka bitamu ibsa. Dhimma kana irratti hanga ammaatti dambiin Mana Maree Ministeerotaan bahe hin jiru. Ta'us, biyyi keenya konveenshinii dhaabbata

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<sup>20</sup>Convention on the Privileges and Immunities of the Specialized Agencies, New York, 21 November 1947 [konveeshinichi dhaabbileen akka; FAO, ICAO, IFAD, ILO, IMO, IMF, ITU, UNESCO, UNIDO, UPU, WBG, WHO, WIPO, WMO, UNWTO fi kanneen walfakkatoo birootiif biyyoota konveenshinicha mallatteessan biratti dawoo akka argatan godheera]. Kan argamu: <http://cil.nus.edu.sg/rp/il/pdf/1947%20Convention%20on%20the%20privileges%20and%20immunities%20of%20the%20specialized%20agencies-pdf.pdf> <gaafa 22/3/2016 kan ilaalame>.

<sup>21</sup>UN Resolution 63/253 on 24 December 2008. Kan argamu toora intarneetii: <https://www.unjspf.org/.../UN%20Appeals%20Tribunal%20Statute.pdf> irratti dha <Gaafa 30/05/2008 kan ilaalame>.

<sup>22</sup>UN Internal Justice System, <http://www.un.org/en/oaj/unjs/formalres.shtml>; <gaafa 06/09/2007 ALI'tti kan ilaalame>.

mootummoota walta'aniif dawoo fi mirga addaa kennu mallatteessiteetti<sup>23</sup>. Kana irraa ka'uun Dhaddachi Ijibbaataa MMWO dhimma oliyyannoon ilaale tokko keessatti, himataan hojjataa dhaabbata UNDP ta'e tokko dhaabbatichi seeraan ala hojii irraa isa gaggeessuu ibsuun beenyaa fi kanfaltiiwwan adda addaa akka murtaa'uuf mana murtichaa gaafatus, falmiin hojii dhaabbatichaa fi himatamaa bu'uura LHH'tiin kan hin keessummeeffamnee fi manni murtii idilee ilaaluuf aangoo kan hin qabne ta'uu ibsuun komii himataa kufaa godheera<sup>24</sup>. Kunis biyyi keenya konveenshinicha mallatteessuun ishii bu'uura LHH kwt 3(3)'tiin waliigalteen mootummaan dhaabbata kana waliin taasise jira waan jechisiisuuf hariiroon hojii dhaabbata UNDP fi hojjetaa kana gidduutti uumame bu'uura labsii kanaatiin akka hin bitamne ni taasisa.

Ejensoota dhaabbata mootummoota walta'anii waliin hojjetaniif konveenshinii mirga addaa fi dawoo seeraa kennu garuu biyyi keenya hin mallatteessine. Haa ta'u malee, yeroo adda addaatti dhaabbilee kanneen waliin waliigaltee adda addaa qofa qofaan raawwataa turteetti<sup>25</sup>. Falmiin hojii dhaabbileen kunneen hojjetoota isaanii waliin qaban bu'uuruma waliigaltee kanaan kan ilaalamu waan ta'eef, qaamoleen falmii kana ilaalan jiraachuu fi qabiyyee waliigaltee sanaa addaan baasuun hojii irra kan oolchan ta'a. Dhaabbilee miti-mootummaa idil-addunyaa ilaalchiseetis haalli jiru kan walfakkaatu dha. Dhaabbileen kunneen hariiroo hojii hojjetoota isaanii waliin uumamu ilaalchisee mootummaa waliin waliigalteen mallatteessan yoo jiraate bu'uuruma waliigaltichaan kan rawwatu ta'a. Waliigalteen kan hin taasifamne yoo ta'e yookin dhimmoota waliigalteen hin haguugne irratti falmii hojii uumamuuf labsiin hojjetaa fi hojjechiisaa hojii irra ni oola.

<sup>23</sup> Kan argamu toora intarneetii: <https://treaties.un.org/status> irratti dha; <gaafa 8/10/2007 kan ilaalame>.

<sup>24</sup> Alamaayyoo Olaanaa fi Dhaabbata UNDP, DhIMMWO, Lakk G 163639 (kan hin maxxanfamne).

<sup>25</sup> Fakkenyaaf Itoophiyaan bara 1958 ALI'tti 'ECA' dawoo kana akka kennitu dhabbata mootummoota walta'anii waliin waliigaltee mallatteessiteetti.

Murtiin DhIMMWF'tiin kennames kanuma kan hubachiisu dha. Dhaddachi kun hojjettoota dhaabbata dhuunfaa idil-addunyaa ilaalchisee Manni Maree Ministeerootaa labsichi akka hin raawwatamne dambii yoo baase ykn waliigalteen mootummaan dhaabbatacha waliin dhimma kana irratti raawwate yoo jiraate malee, falmiin hojii dhaabbileen kunneen hojjettoota isaanii waliin qaban bu'uura LHH'tiin akka ilaalamu murteesseera.<sup>26</sup> Dhaabbilee miti-mootummaa biyya keessaatiif garuu, labsichi guutummaatti hojiirra kan oolu ta'uu isaatu hubatama.

### **3. WALIIGALTEE HOJII**

#### **3.1. WALIIGALTEE HOJII KEESSATTI HUMNA DHIIBBAA UUMUU HOJJETAA FI MIRGA IJA QIXA TA'EEN ILAALAMUU**

Humni namaa yeroo ammaa biyya keenya keessa jiru bal'aa fi baay'inaan ogummaadhaan kan hin deeggaramne dha. Sirni diinagdee biyyi keenya yeroo ammaa gaggeessitu gabaa bilisaa ta'uun walqabatee humni hojii ogummaa hin qabne baay'inaa fi salphaatti argamuun immoo hojjechiisaan haalota hojii fi faayidaa hojjetaa irratti ofumaa akka murteessu carraa guddaa ni uuma. Kuni keessumattuu rakkoo kan ta'u, biyyoota mindaa xiqqaa hojjetaa seeraan murteessanii hin qabne keessatti dha. Mindaan xiqqaan kanfaltii xiqqaa hojjetaaf sababa hojii ykn tajaajila yeroo murtaa'e keessatti kenneef yeroo ykn bu'aa argamsiise irratti hundaa'uun waliigaltee hojii ykn waliigaltee gamtaatiin osoo hin hir'ifamiin, haala diinagdee fi hawaasummaa

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<sup>26</sup> Sasakawaa Giloobaal (Pirojectii) fi Shawaadimbar Dachaasaa, DhIMMWF, Lakk G 67996, Jiildii 13ffaa.

biyyattii irratti hundaa'uun fedhii bu'uuraa hojjetaa fi maatii isaaf akka gahutti seeraan kan murtaa'u dha<sup>27</sup>.

Konveenshiniin Dhaabbata Hojjetaa fi Hojjechiisaa Addunya (ILO) lakkoofsi 131 fi yaadni furmaata lakkoofsi 135 mindaa xiqqaa ilaalchisee waliigalteewwan idil-addunyaa yeroo ammaa hojjiirra jirani dha. Sanadoota kanneeniin alattis waliigalteewwan idil-addunyaa hedduun mirga hojjetootni mindaa gahaa argachuuf qabaniif beekamtii kennaniiru. Fakkeenyaaf, Dikilaarisiyootni Idil-addunyaa Mirgoota Dhala Namaa (UDHR) namni kamiyyuu hojii hojjetuuf mindaa kanfaltii jireenya isaa fi maatii isaaf gahu argachuuf mirga akka qabu ni teechisa<sup>28</sup>. Konveenshiniin Idil-addunyaa Mirgoota Diinagdee, Hawaasummaa fi Aadaa irratti taasifame (ICESCR) immoo hojjetaan haala hojii mijataa, keessumattuu mindaa madaalawaa argachuu akka qabu ni kaa'a.<sup>29</sup> Haaluma walfakkaatuun, Chaartariin Mirgoota Dhala Namaa fi Ummattoota Afrikaa (*Chaartarii Baanjul*) namni kamiyyuu mirga haala mijataa ta'e keessatti hojjechuu fi hojii walfakkaataaf kanfaltii walqixa argachuu akka qabu ni ibsa.<sup>30</sup> Koomishiniin Mirgoota Namoomaa fi Ummattoota Afrikaa Chaartarii kana irratti hundaa'ee akkaataa mirgootni diinagdee, hawaasummaa fi aadaa Chaartarichaan beekamtii argatan hojjiirra ooluu danda'an irratti qajeelfama baase kwt 15 jalatti mootummaaleen miseensa ta'an lammiilee isaanii hojjetaa ta'aniif

<sup>27</sup>General Survey of the Reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), Geneva, 2014, F.19; kan argamu: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/--relconf/documents/meeting\\_document/wcms\\_235287.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/--relconf/documents/meeting_document/wcms_235287.pdf); <gaafa 22/3 /2016 kan ilaalame>.

<sup>28</sup>Universal Declaration on Human Rights (ammaan booda, UDHR), Kwt. 23. Kan argamu toora intarneetii: <http://www.jus.uio.no/lm/un.universal.declaration.of.human.rights.1948/portrait.a4.pdf>; <gaafa 30/05/2008 kan ilaalame>.

<sup>29</sup>International Convention on Economic, Social and Cultural Rights (ammaan booda, ICESCR), Kwt. 7. Kan argamu toora intarneetii: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>; <gaafa 30/05/2008 kan ilaalame>.

<sup>30</sup>African Charter on Human and Peoples Rights, Kwt.15. Kan argamu toora intarneetii: [http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf); <gaafa 30/05/2008 kan ilaalame>.

haala hojii mijataa uumuu, keessumattuu mindaa madaalawaa jireenya ilma namaaf gahuu danda’u kan argatan ta’uu mirkaneessuu akka qaban akeekeera.

Itoophiyaan sanadoota Dhaabbata Hojjetootaa Addunyaa (ILO) waa’ee mindaa xiqqaa hojjetootaa murteessuuf tumaman hin mallateessine. Ta’us, Konveenshinii Idil-addunyaa Mirgoota Diinagdee, Hawaasummaa fi Aadaa irratti taasifamee fi Chaartarii Baanjul mallatteessitee waan jirtuuf, tumaalee sanadoota kanneenii kabajuuf dirqama ni qabdi. Seerri hojjetaa fi hojjechiisaa Itoophiyaa mindaa xiqqaa hojjetoota dhaabbilee dhuunfaa keessa hojjetanii hin murteessine. Kunis mindaan hojjetoota kanneenii waliigaltee hojjetaa fi hojjechiisaan taasisan qofa irratti akka hundaa’u taasiseera.

Haala qabatamaa akka naannoo Oromiyaatti dhimma kanaan walqabatee jiru ilaalchiisee yaada hojjetootni qaban hubachuuf bargaaiffii qophaa’e hojjetootni 89 akka deebisan ta’eera. Bu’aan isaas gabatee armaan gadii keessatti kan agarsiifame fakkaata.

*Gabatee 1*

Gaaffii	Deebii Hirmaattota		
	Eeyyee	Lakki	Yaada kennuu hin danda’u
<i>Waliigaltee hojii keessatti hojjetaan faayidaa yookin haalawwan hojii murteessuu keessatti ni dhagahamaa?</i>	38 (%47)	43 (%53)	8

Daataan kun dhaabbilee hojjechiisaa gara caalaa keessatti humni hojjetaan haalota hojii fi faayidaa isaa eegsisuu irratti dhiibbaa uumuuf qabu gadi aanaa akka ta'e kan agarsiisu dha. Daataan afgaaffii irraa argames, hojjechiistotni olaantummaa humna murteessuu qabaniin faayidaa dhuunfaa isaanii qofa kan eegsifataa jiran akka ta'ee fi carraan dhagahamuu hojjetaa laafaa ta'uu kan agarsiisu dha<sup>31</sup>. Keessumattuu hojjetoota hojii humnaa hojjetan irratti rakkoon kun ni hammaata<sup>32</sup>.

Gama biraatiin, faayidaawwan gara garaa kanneen akka guddina sadarkaa, boonasii fi mindaadhaan walqabatee, keessattuu dhaabbilee waliigaltee gamtaa hin qabne keessatti, hojjetoota jidduutti loogiiin haalli itti uumamu bal'inaan mul'ata<sup>33</sup>. Dhimma kanarratti hojjetootni 89 bargaaaffii akka guutan itti kenname yaada isaanii akka itti aanutti ibsaniiru.

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<sup>31</sup>Alamaayyoo Hirphasaa, Abbaa Murtii Mana Murtii Olaanaa Kibba Lixaa Shawaa waliin gaafa 01/05/2007; Tashoomaa Alamu, Abbaa Murtii Mana Murtii Olaanaa Godina Arsii waliin gaafa 06/05/2007; Taganee Taayyee, Abbaa Murtii Mana Murtii Aanaa Ada'aa, afgaaffii gaafa 22/04/2007; Kaffaalloo Gaaddisaa, Abbaa Murtii Mana Murtii Aanaa Ada'aa, afgaaffii gaafa 21/04/2007; Heenook Maammuyyee, Pireezidantii Mana Murtii Aanaa Ada'aa, afgaaffii gaafa 20/06/2007 taasifame.

<sup>32</sup>Taadlaa Nigaatuu, Bulchiinsa Humna Namaa Warshaa Qorqoorroo Adaamaa waliin gaafa 13/05/2007; Afaworq W/gabreel, Bulchiinsa Humna Namaa Warshaa Biiraa Baddallee, afgaaffii gaafa 16/04/2007; Shawaangizaaw Taddasaa, Bulchiinsa Humna Namaa Warshaa Saamunaa afgaaffii gaafa 27/04/2007; Abarraa Kabbadaa, Humna Namaa Warshaa Huccuu Ayikaa Addis waliin afgaaffii gaafa 20/05/2007 gaggeeffame.

<sup>33</sup>Itti Aanaa Dura-taa'aa fi Barreessaa Waldaa Hojjetaa (maqaa isaanii ibsuu kan hin barbaadne) Kompileksii Zayita Nyaataa Addis-Mojoo, Afgaaffii gaafa 14/5/2007 gaggeeffame.

*Gabatee 2*

Gaaffii	Deebii Hirmaattotaa		
	Eeyyee	Lakki	Yaada kennuu hin danda'u
<i>Qacarrii irratti yoo dorgomtan hojjechiisaan dorgomtoota wal qixxummaan ilaalee ni dorgomsiisaa?</i>	48 (% 53)	26 (%29)	15
<i>Hojii walfakkaataa ta'eef kaffaltiin wal fakkaatu hojjetaaf ni kaffalamaa?</i>	33 (%37)	51 (%64)	5

Daataan kunis sirni qacarrii dhaabbilee hojjechiisaa loogii irraa bilisa ta'uu ilaalchisee amantaan horate lafaa ta'uu kan agarsiisu dha. Kana malees, dhaabbilee hojjechiisaa hedduu (harka caalaa) keessatti hojjetoota hojii walfakkaataa hojjetan jidduutti loogiin bal'aa ta'e raawwatamaa akka jiru kan mul'isu dha. Kana malees, daataa afgaaffii irraa argame irraa akka hubatamutti dhaabbileen hojjechiisaa hedduun akkaataa carraan barnootaa, leenjiin, jijjiirraan iddoo hojii, guddinni sadarkaa fi kkf ittiin kennamu irratti sirna ifa ta'e diriirsanii hin qabani. Dhaabbilee sirna kana qaban keessattis yoo ta'e, sirna bahe hojiirra oolchuu irratti rakkoon ni mul'ata. Carraawwan gara garaa kunneen hojjetaaf yeroo kennamanis, saala, gosa, sanyii, dheerina yeroo waliigaltee, kkf irratti hundaa'uun loogiin ni raawwatama<sup>34</sup>.

<sup>34</sup>Kabbadaa Furgaasaa, Dura-taa'aa Waldaa Hojjetootaa Warshaa Bishaan Albuudaa Amboo, afgaaffii gaafa 20-4-2007 gaggeeffame.

### 3.2. BIFOOTA WALIIGALTEEN ITTIIN TAASIFAMU

Labsiin hojjetaa fi hojjechiisaa hiikaa waliigaltee hojii kaa'uu baatus waliigalteen hojii kan uumamu namni tokko mindaa argachaa to'annoo hojjechiisaa jalatti yeroo hin murtoofneef, yeroo murtaa'eef ykn hojii murtaa'e hojjechiisaaf hojjechuudhaaf yoo waliigale dha jechuun kaa'era<sup>35</sup>. Haala addaan seeraan yoo ibsame malee waliigalteen hojii bifa (foormii) addaatiin godhamuun dirqama akka hin taane labsichi kwt 5 jalatti ni ibsa. Tumaalee labsichaa kwt 6 fi 7 irraa akka hubachuun danda'amutti, waliigalteen hojii barreeffamaa fi barreeffamaan ala (afaaniin ykn gochaan) raawwatamuu danda'a. Waliigalteen hojii gosa qacarrii, iddoo hojii, mindaa fi haala kanfaltii akkasumas turtii yeroo waliigaltichaa haala ifa ta'een teechisuu qaba. Waliigalteen hojii afaaniin yookin gochaan kan uumame yoo ta'e hojjechiisaan haalota kanneen barreeffamatti jijjiruun hojjetaaf guyyoota 15 keessatti kennuu akka qabu seerri dirqama irra kaa'eera. Kunis hojjetaan hariiroo hojii keessatti mirgaa fi dirqama isaa siritti akka hubatu gargaaruuf akkasumas falmiin yoo uumame dhimma falmiif sababa ta'e salphaatti hubachiisuun akka danda'amuuf yaadameeti dha. Qabatama dhaabbilee hojjechiisaa naannoo Oromiyaa keessa jiraniin hubachuuf hojjetootni 89 bargaa'ffii akka guutan kan taasifame yoo ta'u, innis akka armaan gadiitti teechifameera.

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<sup>35</sup>LHH, *Olitti yaadannoo lak 8*, Kwt 4.



*Gabatee 3*

Gaaffii	Deebii Hirmaattotaa		
	Eeyyee	Lakki	Yaada kennuu hin danda'u
<i>Waliigalteen hojii keessan mirgaa fi dantaa kiyya naaf kabachiisuuf gahaa dha jettanii amantuu?</i>	36 (%42)	48 (%56)	5
<i>Waliigaltee barreeffamaa hin qabdan yoo ta'e, hojjechiisaan keessan ibsa barreeffamaa isinii kenneeraa?</i>	29 (%51)	27 (%47)	33

Akka daataan gabatee olii keessatti teechifame agarsiisutti hojjettoota kanneen keessaa garri caalu (%56) waliigalteen hojii isaanii mirgaa fi dantaa qaban nuuf kabajchiisuuf gahaa dha jedhanii hin amanani. Kana malees, hojjettoota waliigaltee bareeffamaa hin qabne keessaa gartokkeetti kan dhiyaatan (47%) ibsi haala hojii barreeffamaan hin kennamuufi. Akka daataan afgaaffii agarsiisutti, hojjettoota isaanii waliin waliigaltee hojii barreeffamaan kan taasisan yeroo hedduu dhaabbilee hojjettoota hedduu qabani dha<sup>36</sup>. Dhaabbileen hojjechiisaa hojjettoota muraasa qaban yeroo hedduu hojjettoota isaanii waliin waliigaltee barreeffamaa hin raawwatani<sup>37</sup>. Bifti waliigalteen hojii ittiin taasifamu amala yookin turtii hojii hojjetaan

<sup>36</sup>Gannat Dagaagaa, A/Adeemsa Ejansii Dhimma Hojjataa fi Hawaasummaa Godina Arsii waliin gaafa 04/05/2007; Shifarraa Abarraa, Waltaasisaa Ejansii Dhimma Hojjataa fi Hawaasummaa Magaalaa Sabbataa waliin gaafa 15/05/2007; Tufaa Haawaan, Itti Gaafatamaa Waajjira Hojjetaa fi Hawaasummaa Aanaa Adaamii Tulluu, waliin gaafa 13/04/2007; Baarrakaa Ragguu, Pireezidantii Mana Murtii Aanaa Adaamii Tulluu waliin guyyaa 14/04/2007; Heenook Maammuyyee, Pireezidantii Mana Murtii Aanaa Ada'aa waliin afgaaffii guyyaa 20/06/2007 taasifame.

<sup>37</sup>Taammiraat Tasfaayee, Dura-taa'aa Waldaa Hojjettootaa Dhaabbata Oomisha Abaaboo Hoolataa Roozis waliin afgaaffii gaafa 21/4/2007 gaggeeffame.

tokko qacarama irrattis hundaa'uun garaagarummaa akka qabu ni hubatama. Hojjetootni yeroo murtaa'eef ykn hojii murtaa'e hojjechuuf qacaraman, hojjetoota kaan caalaa, yeroo baay'ee waliigaltee barreeffamaa hin qabaatan<sup>38</sup>. Kana malees, waliigalteewwan barreeffamaan taasifaman yeroo hedduu hojjechiisaan qofaa isaa kan wixineessu waan ta'eef dirqama hojjetaa malee mirga hojjetaa yookin dirqama hojjechiisaa agarsiisuu irratti kan xiyyeeffatan miti<sup>39</sup>. Tarreeffama gahee hojii hojjetaaf kennuun dhaabbilee hedduu keessatti hin baramne<sup>40</sup>. Dhimma qabatamaa tokko keessatti, hojjetuun gita hojii qulqulleessituu irratti qacaramte uffata hojii hojjetootaaf akka raabsitu ajajamtee waan diddeef, waliigalteen hojii ishii addaan citeera<sup>41</sup>. Kunis, waliigalteen hojii ifa hin taanee fi gaheen hojii tarreeffamee hojjetaaf kennamuu dhabuun falmiiwwan hojii mana murtiitti dhiyaataniif sababa ta'aa akka jiru mul'isa.

Waliigalteen hojii barreeffamaan yeroo taasifamus qabiyyee bu'uura seeraatiin hammachuu qabu hunda haammatee ifa ta'ee qopha'aa hin jiru. Waliigalteewwan taasifaman hedduun haala shallaggii mindaa, iddoo hojii, turtii yeroo hojii, dirqama bitaa fi mirgaa ifatti ibsanii hin teechisani<sup>42</sup>.

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<sup>38</sup>Indaashaw Dassaaleny, Gaggeessaa Oomishaa (Production Manager), Dhaabbata Oomisha Abaaboo Hoolataa Roozis, Afgaaffii gaafa 21/04/2007; Ayyaanaa Abbabaa, Gorsaa Seeraa Dhaabbata *Rovestone* (IGM) waliin guyyaa 05/05/2007; Anteeneh Zeerihuun, Hojii Gaggeessaa Dhaabbata Xiqur Abbaay Damee Adaamaa waliin afgaaffii guyyaa 12/05/2007 taasifame.

<sup>39</sup>Amsaaluu Olaanii, Pirezdaantii MMO Go/Sh/Lixaa, Afgaaffii gaafa 24/4/07; Kumalaa Abarraa, Abbaa Murtii MMA Amboo, Afgaaffii gaafa 24/4/2007; Lammii Dirribaa, Abbaa Murtii MMO Go/Sh/Lixaa, Afgaaffii gaafa 24/4/2007 gaggeeffame.

<sup>40</sup>Birhaanuu Bantii, I/G/Wa/Dh/H/Ma/Naqamtee, Afgaaffii gaafa 28/4/2007; Yohaannis Indaalewu, Ogeessa Qorannoo fi Leenjii, Wa/Dh/H/H/Ma/Naqamtee, Afgaaffii gaafa 28/4/2007 gaggeeffame.

<sup>41</sup>Amaani Aliyyee fi Industirii Nyaataa Halaalaa, MMA Lume, Lakk G 44954 (kan hin maxxanfame).

<sup>42</sup>Dhugumaa Nadhaa, Pirezdaantii Mana Murtii Godina Addaa Naannoo Finfinnee waliin gaafa 14/05/2007, Gizaaw Baqqalaa fi Namoo Toogaa, Abbaa Murtii Mana Murtii Aanaa Xiyyoo waliin gaafa 07/05/2007; Ayyalaa Damisee, Waltaasisaa Ejansii Dhimma Hojjataa fi Hawaasummaa Godina Jimmaa waliin gaafa 13/04/2007; Gosaa Warquu, To'ataa Haala Hojii Ejansii Dhimma Hojjataa fi Hojjachiisaa Magaalaa Asallaa waliin gaafa 04/05/2007,

Waliigaltee hojii tokko tokko keessatti mirga hojjetaa haala miidhuun yookin mirga hojjetaaf LHH ykn waliigaltee gamtaa keessatti kan teechifame irraa gadi haala ta'een walta'iinsi yeroo uumamu ni mul'ata. Fakkeenyaaf, waliigalteen hojii balleessaa hojjetaatiin kan addaan citu yoo ta'e hojjetaan mirga kanfaltii sooramaa ykn providantii hin argatu jechuun waliigaluu,<sup>43</sup> hariiroo hojjetaa fi hojjechiisaa jidduu jiru waliigaltee shaakallii /apprenceship/ fakkeessuun qacaruu,<sup>44</sup> hojjetichi qaxaramaa osoo hin taanee hojii dhuunfaa kan hojjetu fakkeessuun waliigaluu (keessattuu hojii konkolaachisummaa iratti)<sup>45</sup> fi kkf rakkoowwan mul'atani dha.

### 3.3. TURTII YEROO WALIIGALTEE

Waliigalteen hojii yeroo hin murtoofneef, yeroo murtaa'eef ykn hojiin murtaa'e tokko hanga dhumutti kan turu ta'uu danda'a. Akka qajeeltootti, waliigalteen hojii hundinuu kan yeroo hin murtoofneef raawwatame ta'ee akka tilmaamamu LHH kwt 9 irratti teechifameera. Haalotni hojjechiisaan hojjetaa yeroo ykn hojii murtaa'eef itti qacaruu danda'u labsicha kwt 10 jalatti ibsamaniiru. Haalotni kunneenis hojjetaa duraan ture yeroof bakka buusuuf, baay'ina hojii uumame hir'isuuf, hojii balaa tasaa dhufu ittisuuf, hojii darbee darbee dhufu, hojii waqtii murtaa'e keessa dhufuu fi yommuu caasaan dhaabbatichaa qoratamu hojiiwaan hojjetaman akka ta'e tarreeffameera. Haalota kanaan ala hojjechiisaan hojjetaa yeroo murtaa'eef qacaruu hin danda'u.

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Innaaw Daaljuu, To'ataa Haala Hojii Ejansii Dhimma Hojjataa fi Hawaasummaa Magaalaa Adaamaa, waliin afgaaffii gaafa 08/05/2007 gaggeeffame.

<sup>43</sup>Masfin Nugusee, Abbaa Murtii Mana Murtii Olaanaa Godina Jimmaa, Afgaaffii gaafa 24/04/2007 gaggeeffame.

<sup>44</sup>Shibbiruu Caalchisaa, Abbaa Murtii MMA Adaamaa, Afgaaffii gaafa 12/04/2007 gaaggeeffame.

<sup>45</sup>Taganee Taayyee, Abbaa Murtii Mana Murtii Aanaa Ada'aa, Afgaaffii gaafa 22/04/2007 taasifame.

Turtii yeroo waliigaltee hojii ilaalchisee bargaaftiin hojjetoota dhaabbilee garagaraa keessa hojjetaniif dhiyaatee yaadni argame kan itti aanu fakkaata.

#### *Gabatee 4*

Gaaffii	Deebii Hirmaattotaa		
	Eeyyee	Lakki	Yaada kennuu hin danda'u
<i>Hojii amala itti-fufaa ta'e qabuuf waliigalteen hojii yeroo murtaa'etti akka daanga'u yeroon ta'u ni jiraa?</i>	22 (%31)	49 (%69)	18

Daataan kunis dhaabbilee hojjechiisaa keessatti amalli hojii itti fufaa yoo ta'ellee, hojjetaa yeroo murtaa'eef jedhanii qacaruun kan jiru ta'uu dha. Daataan afgaaffii irraa argames dhaabbileen hojjechiisaa hedduun ulaagaa seerri teechise osoo hin guutne hojjetoota waliigaltee yeroo murtaa'ee fi irra deddeebiin haaromuun hojjetaa qaxaraa akka jiran ni agarsiisa. Keessattuu, rakkoon kun hedduminaan kan mul'atu hojjetoota qulqullinaa, eegumsaa fi bareedina mooraa irra hojjetan; akkasumas, konkolaachistoota irratti dha<sup>46</sup>. Dhaabbileen hojjechiisaa tokko tokko immoo hojii walfakkataa irratti hojjetoota gar tokko dhaabbii kaan immoo waliigaltee yeroo murtaa'aatiin qacaruun hojjechiisu<sup>47</sup>.

<sup>46</sup>Afaworq W/gabreel, Bulchiinsa Humna Namaa Warshaa Biiraa Baddallee, Afgaaffii gaafa 16/04/2007 taasifame.

<sup>47</sup>Birquu Hambisaa fi Masaay Abaataa, Ejensii Dhunfaa Edominyaa Damee Biiraa Baddalee, Afgaaffii gaafa 17/04/2007 gaggeeffame.

Manneen murtii birattis yeroo tokko tokko waliigaltee hojii irratti turtiin waliigaltichaa akkaataa qajeeltoo seera jiruutiin faallaa ta'een hojii amala itti fufaa qabuuf waliigaltee yeroon daanga'e yoo mallatteeffame fudhatama dhabsiisuudhaan akka hojjetaa dhaabbataatti fudhachuun ni jira<sup>48</sup>. Yeroo tokko tokko immoo amalli hojichaa kan itti fufu yoo ta'ellee, hojjetaan waliigaltee barrreeffamaa yeroon daanga'e mallatteessee qacameera yoo ta'e, waliigaltichaan dirqamuun irra jiraata yaada jedhu calaqqisiisu<sup>49</sup>.

#### 4. MIIDHAA QAAMAA HOJIIRRATTI DHAQQABU

Miidhaan hojiirraa miidhaa qaamaa balaa hojiirratti uumamuun dhaqqabuu fi rakkoo fayyaa sababa hojiitiin dhufan kan hammatu akka ta'e LHH kwt 95 (2) jalatti teechifameera. Miidhaa hojiirratti hojjetaa irra gahu hambisuuf yookin xiqqeessuuf hojjetaa fi hojjechiisaan dirqama qabu. LHH kwt 12/4/ fi 92 jalatti hojjechiisaan miidhaan hojiirraa irra akka hin geenye tarkaanfii barbaaachisaa hunda fudhachuu akka qabu akkasumas qaama aangoo qabuun qajeelfama isaaf kennamu fudhatee hojiirra oolchuu akka qabu teechifameera. Labsicha kwt 13/4/, 13/5/ fi 93 jalatti hojjetaanis dirqama walfakkaataa akka qabu kaa'ameera. Ta'us, of-eeggannoon bifa kamiyyuu yoo fudhatame hojjetaa irra miidhaan hojii gahuun isaa kan hin hafne dha. Labsiin hojjetaa fi hojjechiisaa yeroo miidhaan bifa kanaan gahu hojjechiisaan hojjetaa sanaaf beenyaa miidhaa kanfaluuf itti gaafatamummaa akka qabu tumeera. Akka tumaa LHH kwt 96/5/ irraa hubatamutti,

<sup>48</sup>Raggaasaa Bayyanaa, Abbaa Murtii, MMA Walmaraa, Afgaaffii gaafa 23/4/07; Tasfaayee Murteessaa; Abbaa Murtii Mana Murtii Aanaa Baddallee, Afgaaffii gaafa 14/04/2007; Gizaaw Baqqalaa fi Namoo Toogaa Abbaa Murtii Mana Murtii Aanaa Xiyyoo waliin gaafa 07/05/2007; Girmaa Abbabaa fi Namoota lama, Abbaa Murtii Mana Murtii Aanaa Sabbataa Hawaaas, afgaaffii gaafa 16/05/2007 gaggeeffame.

<sup>49</sup>Asfawuu Kaliilee, Abuukaattoo Dhuunfaa, waliin afgaaffii guyyaa 21/04/2007;Maqaasaa Taajjabaa, Abuukaattoo Dhuunfaa waliin guyyaa 21/04/2007;Tashoomaa Wayyeessaa, Abbaa Murtii MMA Amboo, afgaaffii gaafa 24/4/2007 gaggeeffame.

hojjechiisaan balleessaa qabaatus qabaachuu baatus miidhaa hojiirraa hojjetaarra gahuuf itti-gaafatamummaa (strict liability) ni qabaata. Ta'us, sababni miidhaan sun dhaqqabeef balleessaa hojjetaan ta'e jedhee raawwatuun ta'uu yoo mirkaneesse, hojjechiisaan itti-gaafatamummaa jalaa baha. Fakkeenyaaf, hojjetaan machaa'ee bakka hojiitti argamuudhaan akka hin hojjenne hojjechiisaadhaan ajajamee didee waan hojjeteef miidhaan yoo irra gahe, hojjechiisaan miidhaa hojicharratti isarra gahuuf itti gaafatamummaa hin qabaatu jechuu dha<sup>50</sup>.

Miidhaan hojiirraa dhaqqabe jechuudhaaf ulaagaawwan guutuu qaban keessaa tokko wayita miidhaan yookin balaan isarra dhaqqabutti hojjetaan hojiisaa raawwachu irratti kan argamu ta'uu yookin haala hojii isaatiin walquunnamtii qabu yookin hojii isaa raawwachuuf tattaaffii taasisuu irratti kan argamu ta'uu qaba. Ulaagaan inni lammataa miidhaan hojjetaarra dhaqqabe sun akka gahu hojiin isaa sababa ta'uun mirkanaa'uu qaba<sup>51</sup>. Sarvisii hojjetaadhaaf dhuunfaadhaan<sup>52</sup> yookin gareedhaan kennameefii gara hojiitti yeroo seenu yookin gara manaatti yeroo galu miidhaan irra gahu akka miidhaa hojiitti kan lakkaa'amu yoo ta'u, bakka hojii osoo hin taane gara bakka biraa osoo deemamaa jiruu yoo ta'e garuu, akka miidhaa hojiitti hin lakkaa'amu<sup>53</sup>. Balaan yookin miidhaan sababa geejjiba gara hojii dhufu yookin bakka hojiitii bahaa jiruutiin hojjetaarra gahu qaama 3<sup>ffaa</sup> yookin hojjetaadhaan dhaqqabuun isaa hojjechiisaa ittigaafatamummaa irraa hin hambisu<sup>54</sup>.

<sup>50</sup>Mitikkuu Hayiluu fi Masfin Xilahun, Dh/Ij/MMWF, Lakk G 67201, Jiildii 13ffaa.

<sup>51</sup>Dhaabbata Inshuraansii Itoophiyaa fi Tsahaaynesh Faantaawu, Dh/Ij/MMWF, Lakk G 47807, Jiildii 9ffaa.

<sup>52</sup>LHH, *Olitti yaadannoo lak.8*, kwt 97.

<sup>53</sup>Xirusawu Xilahun (N-3) fi Siivil Warkis Ammaakkaarii Mahaandisooch (IGM), Dh/Ij/MMWF, Lakk G 68138, Jiildii 13ffaa.

<sup>54</sup>LHH, *Olitti yaadannoo lak.8*, kwt 97 (d); Dr Mandafroo Ishatee fi Feredirik Eevart, Dh/Ij/MMWF, Lakk G 36194, Jiildii 8ffaa.

Kana malees, hojjetaan miidhaan hojii irra gahuu isaa boordii yaalaatiin erga mirkanaa'ee booda itti wayyaa'ee hojii dur hojjetutti deebi'uun isaa itti-gaafatamummaa hojjechiisaa kan hambisu miti. Hojjetaan kamiyyuu yeroo beenyaan kanfalamuufitti hojii isaa dura hojjechaa ture hojjechuu danda'us, miidhaan fulla'aan irra gahe taanaan beenyaan miidhaa qaamaa ni kanfalamaaf.<sup>55</sup> Ta'us, hangi miidhaa gahee boordii mana yaalaatiin irra deebi'amee akka sakatta'amu taasisuun bu'aan qorannaa addaa yoo argame, hojjechiisaan itti gaafatamummaa jalaa bahuu yookin hangi beenyaa kanfaluun hir'achuu akka danda'u LHH kwt 102/3/ irraa ni hubatama.

Miidhaa hojiirraatiin walqabatee qabxiin murteessaan inni kan biraa haala hangi kanfaltii miidhaa qaamaa itti shallagamuun kan walqabatu dha. Hanga kanfaltii miidhaa murteessuuf adda durummaan kan tajaajilu hanga miidhaa dhaqqabee fi dandeettii hojii dhabamsiifame akka ta'e tumaalee LHH irraa ni hubatama. Gosti miidhaa sababa balaa hojiitiin qaama hojjetaa irra gahuu danda'an kunis miidhaawwan bifa 4 qabaachuu danda'a. Isaanis: miidhaa yeroof qofa turu, miidhaa itti-fufaa guutuu, miidhaa itti-fufaa guutuu hin taanee fi du'a ta'uu danda'a. Labsicha kwt 109/3/ jalatti hangi kanfaltii miidhaa qaamaa hojiirraa (hojjetoota uwwisa sooramaa hin qabneef) bifa lamaan ilaalamuu akka danda'u ni kaa'a. Isaanis: miidhaa qaamaa itti fufaa guutuu fi miidhaa itti fufaa guutuu hin taaneef beenyaa kanfalamu dha. Akka hiikkaa labsichaan kennameetti miidhaan qaamaa itti fufaan guutuu hin taane miidhaan hin fayyine ta'ee, gahuumsa hojii hojjetichaa kan hir'isu dha. Miidhaan qaamaa itti fufaa guutuun immoo miidhaa hin fayyine ta'ee miidhamaan sun sana booda hojii kanfaltii yookin mindaa argamsiisuu danda'u keessatti akka hin hirmaatne kan taasisu dha. Kana malees, bu'uura

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<sup>55</sup>Dhaabbata Dhiyeessa Callaa-guddistuu Qonnaa fi Geetaachoo Gadlee, Dh/Ij/MMWF, Lakk G 43370, Jiildii 8ffaa.

kwt 101'tiin miidhaan tokko dandeettii hojii hojjetaa hir'isuu yoo baatellee, bifa isaa kan balleesse yookin busheesse yoo ta'e akka miidhaa itti-fufaa guutuutti lakka'amuu danda'a.

Ta'us, miidhaan tokko miidhaa qaamaa guutuu itti fufaa jedhamuudhaaf boordii mana yaalaatiin %100 miidhameera jedhamee ibsamuun dirqama akka hin taanee fi miidhaan qaamaa tokko guutuu yookin gartokkee jedhamee ilaalamuu kan qabu dandeettii hojii waliin malee hir'ina qaamaa guutummaa nafa nama sanaa waliin walbira qabamee ta'uu akka hin qabne hiikkoo Dh/I/MMWF kenne irraa hubachuun ni danda'ama<sup>56</sup>. Akka tumaa LHH kwt 109 irraa hubatamutti, miidhaan qaamaa itti fufaa guutuun yoo dhaqqabe hojjetaa sanaaf beenyaan /kanfaltiin/ miidhaa kanfalamu mindaa isaa waggaa tokkoo shaniin baay'isuun ta'a. Miidhaan qaamaa itti fufaa guutuu hin taane yoo dhaqqabe hanga beenyaa kanfalamuuf mindaa isaa waggaa shanii hanga miidhaa isaa boordii yaalaatiin ibsamuun baay'atee ta'a. Bakka kanatti rakkoon qabatamaan mul'atu tokko ragaan boordii mana yaalaa hanga miidhaa ifatti yeroo hin ibsinee fi dhibbeentaadhaan osoo hin teechisiin yeroo hafe beenyaan haala kamiin shallagama kan jedhu dha? Yeroo hanga miidhaa ifa ta'e (dhibbentaadhaan) boordii yaalaatiin hin ibsamne haala hojjetaan kanfaltii miidhaa argachuu itti danda'u LHH keessatti hin teechifamne. Ta'us Dh/I/MMWF, yeroo dhimmi akkanaa quunname marartoo (equity) jiddu-galeessa godhachuun beenyaa (kanfaltii) miidhaa haalli itti murteesse ni jira<sup>57</sup>.

Hanga beenyaa miidhaa hojiirraa shallaguuf rakkoon qabatamaan mul'atu inni biraa ragaan boordii mana yaalaa hanga miidhaa agarsiisu kun yeroo

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<sup>56</sup>Darajjee Wulataawu fi Oomisha Bu'aalee Gogaa Waaliyaa, Dh/Ij/MMWF, Lakk G 49273, Jiildii 9ffaa.

<sup>57</sup>Abbaa Taayitaa Daandiiwwan Oromiyaa fi Girmaa Wayyeessaa, Dh/Ij/MMWF, Lakk G 60464, Jiildii 11ffaa.



tokko tokko malaammaltummaa fi walbeekumsaan akkasumas sadarkaa miidhaa qaama hojjetaarra gahe yookin fulduratti gahu sirnaan osoo hin sakatta'iin haalli itti kennamu boordiiwwan mana yaalaa biratti ni mul'ata. Fakkeenyaaf, miidhaan hojjetaa irra gahe boordii mana yaalaatiin 10% jechuun ibsamee, sababa miidhaa kanaatiin lubbuun hojjetaa sanaa yeroon darbellee ni jira<sup>58</sup>. Ragaan boordii mana yaalaa hanga miidhaa %100 ol ta'uu yeroo ibsus ni quunnama. Yeroo kanas manneen murtii akkaataa labsii HH kwt 109/3/a'tiin beenyaa mindaa waggaa shanii hojjetaa caalu yeroon murteessan ni jira.

Dhimma qabatamaa tokko<sup>59</sup> keessatti hojjetaan dhaabbata oomisha abaaboo keessatti *laastikii giriin haawusii* osoo diriirsaa jiruu baaxii irraa kufe %130 miidhamuu ragaan boordii mana yaalaa agarsiiseera. Manni murtichaa beenyaa miidhaa yeroo shallagu mindaan guyyaatti argatu qarshii 20 waan ta'eef beenyaan miidhaa argachuu qabu, mindaa isaa kan waggaa shanii qarshiin 36000 (20x30x12x5) %130'n baay'ifamee qarshiin 46,800 (36,000 x %130) akka kanfalamuuf murteesseera. Kana malees, manni murtichaa ragaan mana yaalaa wal'aansi fulduratti hojjechiisaa kanaaf barbaachisaa ta'uu waan agarsiisuuf tilmaamaan qa.100,000 (kuma dhibba tokko) fi beenyaa hamilee qa.100,000 (kuma dhibba tokko) hojjetaa kanaaf murteesseera. Ta'us, murtiin kun sadarkaa oliyyannootiin osoo ilaalamaa jiruu hojjetichi boqoteera. Murticha keessatti haala shallaggii beenyaa miidhaa qaamaa yeroo ilaallu tumaalee LHH waliin kan deemu akka hin taane hubachuun ni danda'ama. Hojjetaa miidhaan hojiirraa itti-fufaa guutuun irra gaheef bu'uura labsii HH' tiin hanga beenyaa miidhaa hayyamame inni guddaan mindaa hojjetaa waggaa shaniiti. Kana jechuun

<sup>58</sup> Nabiiyyuu Balaay, Abuukaattoo dhuunfaa, Afgaaffii gaafa 08/04/2007 taasifame.

<sup>59</sup> Laggasaa Dibaabaa fi Meedoos Itoophiyaa Dhaabbata Oomisha Abaaboo I/G/M, MMA Walmaraa, Lakk G. 48847(kan hin maxxanfame).

hangi miidhaa akka %100'tti fudhatama jechuu dha. Kanaaf, ragaan boordii mana yaalaa hanga miidhaa %130 jedhee kan dhiyeesse yoo ta'ellee, manni murtichaa bu'uura seeraatiin mindaa waggaa hojjetichaa shaniin baay'isuun murteessuutu irra ture. Beenyaan hamilee manni murtichaa murteesses yeroo ilaalamu bu'uura seeraa kan hin qabne akka ta'e hubachuun nama hin rakkisu.

Miidhaa qaamaatiin walqabatee qabxiin murteessaan ilaalamuu qabu inni biraa dirqamoota hojjechiisaa miidhaan booda jirani fi kanfaltii miidhaatiin ala jirani dha. Miidhaan hojiirraa hojjetaarra yeroo gahu dirqamoota hojjechisaan qabu keessaa tokko hojjetaa miidhaan hojiirraa irra gaheef deeggarsa wal'aansa duraa (*first aid*) taasisuu dha. Haala qabatamaa akka naannoo Oromiyaatti dhimma kanaan walqabatee yaada hojjetootni qaban hubachuuf bargaaffii qophaa'e hojjetootni 89 akka deebisan ta'eera. Bu'aan isaas gabatee armaan gadii keessatti kan agarsifame fakkaata.

#### *Gabatee 5*

Gaaffii	Deebii Hirmaattotaa		
	Eeyyee	Lakki	Yaada kennuu hin danda'u
<i>Deeggarsi wal'aansa duraa dhaabbata hojjechiisaa keessan keessaa ni jiraa</i>	61(%68)	23 (%25)	5

Daataan kunis hojjetaa miidhaan hojjiirratti irra gahuuf deeggarsi wal'aansa duraa dhaabbilee hojjechiisaa hedduu keessatti kan jiru ta'ullee, ammallee gama kanaan harcaatiin jiru salphaa akka hin taane ni hubatama. Akka daataa afgaaffii irraa argame irraa hubatamuttis, dhaabbileen hojjechiisaa kilinika

yookin ogeessa yaalaa hin qabne hojjetaa hojiirratti miidhaan irra gahe ariitiidhaan gara mana yaalaa geessuu irrattis hanqina qabu<sup>60</sup>. Dirqamni biraa yeroo miidhaan hojii dhaqqabe dhaabbileen hojjechiisaa qaban miidhaan hojii hojjetaarra gahuu qaama ilaallatuuf gabaasuu dha. Seerri dirqama isaanirra kan teechise ta'ullee, dhaabbileen hojjechiisaa hedduun yeroo hojjetaa isaaniirra miidhaan dhaqqabu qaama mootummaa ilaallatuuf (waajjira dhimma hojjetaa fi hawaasummaatiif) hin gabaasani<sup>61</sup>. Kunis, dhaabbatni hojjechiisaa hojjetaan hojiirratti miidhaan irra gahe mana murtii osoo hin deemiin beenyaa yookin kanfaltii gadi qabaa kanfaleefii gara hojiitti haala itti deebisu uuma<sup>62</sup>.

## 5. WALIIGALTEE HOJII ADDAAN KUTUU FI BU'AA ISAA

Nageenya industirii mirkaneessuun kaayyoo seera hojjetaa fi hojjechiisaa keessaa isa tokko yoo ta'u, kanas haala itti dhugoomsuun danda'amu keessaa tokko waliigalteen hojii kara seeraan alaa akka addaan hin citne eegumsa gochuu fi kan addaan citus yoo ta'e mirgootaa fi faayidaawwan hojjetaan argachuu qabu akka argatu taasisuuni dha. Kutaa kana jalatti, sababootni

<sup>60</sup>Maammush Taaddee, Barreessaa Waldaa Hojjetootaa, Warshaa Gogaa Mojoo, Afgaaffii gaafa 14/5/2007; Indaashaw Dassaaleny, Gageessaa Oomishaa (Production Manager), Dhaabbata Oomisha Abaaboo Hoolataa Roozis, Afgaaffii gaafa 21/04/2007 gaggeeffame.

<sup>61</sup>Addunyaa Tasammaa, Raawwataa Hojii Hubannoo fi Leenjii Wa/Dh/H/H/Go/Wa/Bahaa, Afgaaffii gaafa 28/4/2007; Birhaanuu Bantii, I/G/Wa/Dh/H/H/Ma/Naqamtee, Afgaaffii gaafa 28/4/2007 gaggeeffame; Gabaasa Raawwii KGT Ejensii Dhimma Hojjetaa fi Hawaasummaa Oromiyaa (2003-2007) irraa daataan argames dhaabbilee hojjechiisaa akka naannoo keenyaatti jiran (30,000 ol ta'an) keessaa bara KGT I keessatti dhaabbileen hojjechiisaa ragaa balaa gabaasan 819 qofa dha; kunis 3% gadi dha. Kunis bu'uura seeraatiin dhaabbileen hojjechiisaa marti balaa hojiirraa dhaqqabe akka gabaasan dirqama irra kaawwame kan bahataa hin jirree fi hordoffiin gama kanaan jirus laafaa ta'uu kan agarsiisu dha.

<sup>62</sup>Fu'aad Alamaayyoo, To'ataa Haala Hojii, Wa/Dh/Hojjetaa fi Hawaasummaa Mag/Mojoo, Afgaaffii gaafa 14/5/07; Yohaannis Indaalewu, Ogeessa Qorannoo fi Leenjii, Wa/Dh/H/H/Ma/Naqamtee, Afgaaffii gaafa 28/4/2007; Yaabbirawu Ayaalqee, I/A/Durataa'aa Waldaa Hojjetaa Warshaa Gogaa Moojoo, afgaaffii gaafa 14/5/2007 gaggeeffame; Birhaanuu Bantii, I/G/Wa/Dh/H/H/Ma/Naqamtee, Afgaaffii gaafa 28/4/2007 gaggeeffame.

waliigaltee hojii addaan kutuuf gahaa ta’anii fi hin taane ni xiinxalamu. Kana malees, bu’aa waliigaltee hojii sababa gahaa malee addaan kutuun hordofsiisu ni sakatta’amu.

## **5.1. SABABOOTA WALIIGALTEE HOJII ADDAAN KUTAN**

Waliigalteen hojii sababa gahaa qofaan adda cituu akka qabu LHH jalatti teechifameera. Sababni gahaan kunis maal maal akka ta’e labsicha keessatti ibsameera. Haala kanaan tumamuun seerichaa wabii hojii mirkaneessuu irratti xiyyeeffachuu isaa mul’isa. Sababoota muraasa seeraan tarreeffaman alatti waliigalteen hojii addaan cituu akka hin qabne teechifamuun isaa investimantii jajjabeessuu irratti dhiibbaa ni qaba jechuun kan ibsan ni jiru<sup>63</sup>. Labsiin HH sababoota waliigaltee hojii addaan kutan bakka gurguddaa afuritti qoodeera. Isaanis; Seeraan, waltahiinsa gareewwaniin, kaka’uumsa hojjechiisaa fi kaka’umsa hojjetaatiin kan jedhanii dha. Kutaa itti aanutti, sababoota waliigaltee hojii addaan kutan kanneenii fi haala qabatamaa akka naannoo keenyaatti jiran gaggaabaabsuun ni ilaalla.

### **5.1.1. Waliigaltee Hojii Seeraan Addaan Citu**

Waliigalteen hojii seeraan kan addaan citu fedhii gareewwanii tilmaama keessa osoo hin galchiin sababootni seeraan tarreeffaman yeroo guuttamanii argamani dha. Waliigalteen hojii ija seeraan addaan cite kan jedhamu yoom yoom akka ta’e labsii HH kwt 24 jalatti tarreeffamanii jiru. Isaanis: hojjetaan yoo du’u, hojjetaan umurii soorama bahuu waggaa 60<sup>64</sup> yeroo gahu, sababa

<sup>63</sup>Getachew Minas, The Impact of Ethiopian Labour Laws on Business Efficiency and Competitiveness, Produced and Distributed by Ethiopian Chamber of Commerce and SIDA, 2011,F11. Qaboo yaa’ii waltajjii Koreen Dhaabbii Dhimma Hawaasummaa, Seeraa fi Dubartootaa wixinee seera hojjechiisaa fi hojjetaarratti taasise, 07/03/1996 , FF. 7-10’tti jiru irrattis waldaaleen hojjechiistotaa yaada walfakkaataa kaasaniiru.

<sup>64</sup>Labsii Soorama Hojjetoota Dhaabbilee Dhuunfaa Murteessuuf Bahe, Lab. Lak. 715/2003, Kwt 17(1).

kasaaruutiin yookin sababa biraatiin hojjechiisaan hojii yoo dhaabe, hojjetaan sababa miidhaan qaamaa irra gaheen dandeettii hojii yoo dhabee fi turtiin yeroo yookin hojiin waliigaltee keessatti irratti waliigalame yoo xumurame dha.

Sababoota kanneen keessaa yeroo hedduu hojjetaa fi hojjechiisaa jidduutti falmiin akka ka'u kan taasisu waliigalteen hojii turtii yeroo daanga'eef taasifame yoo xumurame ykn waliigalteen hojii murtaa'aaf taasifamee hojichi yeroo xumuramu dha. Qabxii kana ilaalchisee rakkoon qabatamaan yeroo hedduu mul'atu hojii amala itti fufaa qabu irratti akkaataa faallaa seeraa ta'een waliigalteen hojii yeroo daanga'eef yoo taasifamee fi yeroon turtii isaanii yoo xumuramu waliigalteen hojii seeraan addaan ni cita moo hin citu? kan jedhu dha. Waliigalteen hojii yeroon turtii isaa xumurame sababa jedhuun adda cituuf waliigalteen qaxarii sun haallan LHH keewwata 10 jalatti tarreeffame keessatti kan raawwatame ta'uu hojjechiisaan mirkaneessuu qaba. Hojjechiisaan waliigalteen hojichaa keewwata 10 jalatti kan kufu ta'uu yoo hin mirkaneessine, waliigalteen hojii yeroo hin daangofneef akka raawwatameetti fudhatamuu qaba. Kanaaf, hojjechiisaan waliigaltee bifa kanaan yeroo murtaa'eef raawwatame sababa godhachuun waliigaltee hojii kan addaan kute yoo ta'e, waliigalteen hojii kun seeraan ala addaan cite jechuun ni danda'ama. Dhaabbileen hojjechiisaa tokko tokko garuu, waliigaltee hojii amalli isaa LHH keewwata 10 jalatti hin kufne yeroo yeroon kan haaromu akka ta'etti waliigaluudhaan yeroo sana eeggatanii hojjetaa sana gaggeessuun bal'inaan mul'ata<sup>65</sup>.

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<sup>65</sup>Amaaraa G/Igzaabeer, Gorsaa Seeraa Dhaabbata Tajaajila Humna Ibsaa Itoophiyaa Distiriiktii Kibba Dhihaa, afgaaffii gaafa 23/04/2007 gaggeeffame.

### 5.1.2. Walta'iinsa Gareewwaniin Waliigaltee Hojii Addaan Kutuu

Waliigalteen hojii walta'iinsa gareewwaniin addaan cituu ni danda'a. Waliigaltee hojii walta'iinsaan addaan citeera jedhamuuf waliigaltichi ifatti barreeffamaan kan raawwatame ta'uu qaba.<sup>66</sup> Kaffaltii adda addaa kan akka kaffaltii hojiirraa geggeeffamaa kaffaluuf walta'iinsi taasifamu waliigalteen hojii addaan cituu hin agarsiisu. Kana malees, hojjetaan mirgoota isaa seeraan kennamaniif dhiisuuf walta'iinsi raawwatu bu'aa seeraa akka hin qabaanne tumaan labsichaa kun ni teechisa. Qabatama jiru keessatti garuu, faallaa tumaa kanaa yeroo raawwatamu ni mul'ata. Dhimma qabatamaa tokko keessatti hojjetaan hojjechiisaa isaa duraanii waliigaltee hojii koo seeraan ala addaan kuteera jechuun himateera. Hojjechiisaa isaa duraanii kana kan himate yeroo dhaabbata (hoteela) isaa dhaabbata biraaf kiraa kennu hojjetoota isaatiif waliigalteen ana waliin qabdan addaan citee dhaabbata hoteelicha haaraa kireeffate waliin itti fufa kan jedhu xalayaa kenneefi ture. Himatamaanis gochaan hojjechiisaa isaa duraanii kun seeraan ala waliigaltee addaan kutuu dha jechuun faayidaa gara garaa gaafachuun kan himate yoo ta'ellee, manni murtii dhimmicha ilaale waliigalteen himataan himatamaa 1ffaa waliin qabu fedhii isaaniitiin (akkaataa LHH kwt 25/2/ tiin) adda cite jechuun himatamaa itti-gaafatamummaa irraa bilisa taasiseera<sup>67</sup>. Kunis, manni murtii kun waliigalteen hojii walta'iinsaan addaan citeera jedhamuuf waliigaltichi ifatti barreeffamaan kan raawwatame ta'uu qaba jechuun LHH kwt 25 jalatti kan teechifame hubachuu dhabuu irraa kan madde dha.

<sup>66</sup>LHH, *Olitti yaadannoo lak.8*, kwt 25.

<sup>67</sup>Tasfaayee Hayilee fi Hoteela Maayaa (him 1ffaa) fi Boston Partners (him 2ffaa), MMA Adaamaa, Lakk G 82610 (kan hin maxxanfame).

### **5.1.3. Waliigaltee Hojii Kaka'umsa Hojjechiisaan Addaan Kutuu**

Waliigalteen haala kanaan addaan citu yeroo hedduu falmiif ka'umsa kan ta'u waan ta'eef, seerota biyya keenyaan uwwisa bal'aa argateera. Sadarkaa idil-addunyaattis waliigaltee hojjechiisaan addaan citu qofaaf koonveenshiniin Dhaabbata Hojjetootaa Addunyaa (C158) baheera<sup>68</sup>. Waliigalteen hojii sababa gahaa malee addaan cituu akka hin qabne ni hubatama. Waliigalteen hojii kaka'uumsa hojjechiisaan kan addaan citu yoo sababni gahaan dandeettii hojjetaa, naamusa hojjetaa, hojmaata dhaabbatichaa, tajaajila kennamuu fi hundeeffama dhaabbatichaan wal qabatu jiraate qofa akka ta'e LHH kwt 26(1) jalatti tumameera. Koonvenshiniin kana (C158) kwt 4 jalattis haaluma wal fakkaatuun tumamee jira. Waliigaltee hojii kaka'uumsa hojjechiisaan addaan citu bakka sadiitti qooduun ilaaluun ni danda'ama. Isaanis: gaggeessaa akeekkachiisa malee raawwatamu (summary dismissal), gaggeessaa akeekkachiisa kennuun raawwatamu (ordinary dismissal) fi hojjetoota baay'ee yeroo tokkotti hojii irraa geggeessuu (lay off) jedhamee beekama.

#### **5.1.3.1. Akeekkachiisa Malee Waliigaltee Hojii Addaan Kutuu**

Sababootni waliigaltee hojii akeekkachiisa malee addaan kutan LHH kwt. 27(1) jalatti tarreeffamanii jiru. Sababootni kun bu'uuraan amala yookiin naamusa hojjetaa waliin walqabatu. Haaluma walfakkaatuun, Koonveenshiniin Dhaabbata Hojjetoota Addunyaa (C158) kwt 11 jalatti hojjetaan rakkoo naamusaa argisiise akeekkachiisa malee hojjiirra akka gaggeeffamu ibseera.

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<sup>68</sup>ILO Termination of Employment Convention, C158, 1982, Kwt. 3. Kan argamu toora intarneetii: <https://www.linkedin.com/pulse/c158-termination-employment-convention-iloorg-del-espiritu-santo>; <gaafa 30/05/20 08 kan ilaalame>.

Sababootni kunis akeekkachiisa kennamu cinaatti dhiisuun irra deddeebiin barfachuu, hojiirra hafuu, qabeenyaa hojjechiisaatti garmalee fayyadamuu, bakka hojiitti jeequmsa kaasuu, qabeenya hojjechiisaarraan miidhaa gahuu, yakkaan adabamee guyyaa 30 oliif hojiirraa hafuu, sababa yakkaan adabameef gita sanarratti gahumsa dhabuu, gochaawwan LHH kwt 14/2/ jalatti dhoorkaman dalaguu fi waliigaltee gamtaa keessatti waliigaltee addaan kutuuf sababoota tarreeffaman kan dabalatu dha.

Hojiirraa hafuun walqabatee qabatamaan hubannoon wal fakkaataan hin mul'atu. Bu'uura LHH kwt 27/1/ b'tiin hojjetaan tokko walitti aansuun guyyaa hojii 5 yookiin baatii tokko keessatti guyyaa hojii 10 yookiin waggaa tokko keessatti guyyaa hojii 30 sababa gahaa malee hojiirraa yoo hafe akeekkachiisa malee hojiirra gaggeessuun ni danda'ama. Sababni gahaan kun garuu hojjetaa fi hojjechiisaa biratti haala tokkoon hubatamuu dhiisuu waan danda'uuf falmisiisaa ta'a. '*Sababa gahaa*' kana murteessuuf illee sababootni tilmaama keessa galuu qaban maalfaa akka ta'an labsichi hin keenye. Sababni hojjetaan hafeef sun yeroo madaalamu yaada nama dhama-qabeessa ta'een dhugumaan hojii irratti akka hin argamne kan taasise ta'uun yoo hubatame sababa gahaa dha jechuun ni danda'ama.

Rakkoon qabatamaan tumaa kana waliin walqabatee mul'atu hojjechiisaan hojjetaa gaggeessuu barbaadu waardiyyaan akka ol hin seenne yookin galmee to'annaa haftee irratti akka hin mallatteessine taasisa. Sana boodas guyyaa hojii shan walitti aansuun hafe jechuun hojiirra gaggeessaa jira<sup>69</sup>. Hoji-gaggeessaan tokko tokkos bakka ragaan hin jirretti hojjetaa waajjiratti waamee hojiirra gaggeeffamteetta jedhee itti hima. Garuu, akka waan hojjetaan ofiin hojii hafeetti galmee to'annaa (attendance sheet) irratti hafaa

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<sup>69</sup>Baarrakaa Ragguu, Pireezidantii Mana Murtii Aanaa Adaamii Tulluu, afgaaffii gaafa 14/04/2007 taasifame. Kaffaaloo Gaaddisaa, Abbaa Murtii Mana Murtii Aanaa Ada'aa, afgaaffii gaafa 21/04/2007 taasifame.



taasisa. Hojjechiistotni tokko tokkos hojjetaadhaan guyyaa shaniif hojiirraa si dhoorkineerra yookin hojiin waan hin jirreef hayyama sii kennineerra hin dhufiin jechuun afaaniin erga gaggeessanii booda, hojjetaan yeroo deebi'u galmee to'annaa irratti haftee gochuun guyyaa 5 waan hafteef gaggeeffamteetta xalayaa jedhu kennuufiin ni jira<sup>70</sup>. Gochaawwan kunneen ta'e jedhamanii hojjetaa seeraan ala ari'uu fi booda hojjetaan yoo himatu itti gaafatamummaa jalaa bahuuf gochaawwan seeraan ala raawwatamani dha.

### 5.1.3.2. Akeekkachiisa Kennuun Hojjetaa Gaggeessuu

Akka qajeeltootti, hojjetaan hojiirraa kan gaggeeffamu akeekkachiisa kennuun ta'uu akka qabu konveenshinii Dhaabbata Hojjetootaa Addunyaa (ILO) C158 kwt 11 jalatti ibsameera. Haaluma walfakkaatuun, LHH kwt 28 jalattis sababootni hojjechiisaan hojjetaa isaa akeekkachiisa kennuun hojiirraa akka gaggeessu dandeessisan teechifamaniiru. Sababootni kunis: hojjetaan rakkoo fayyaa isa mudateen ykn miidhaa qaamaa irra gaheen guutummaan hojii hojjechuu yoo dadhabe, dhaabbatni hojjechiisaa teessoo hojii yoo jijjiiraatu hojjetaan bakka sana deemuuf yoo fedhii dhabe, gitni hojii hojjetaan irratti hojjetu sababa gahaan yoo cufame, dhiyeessa meeshaawwan dheedhii irratti hanqinni yoo mudate<sup>71</sup>, bu'a qabeessummaa dabaluu adeemsi ykn teeknoolojii haaraan diriiree humni namaa akka hir'atu yoo taasisa fa'i.

Sababoota kanneen keessaa hojiirra oolchurratti qabatamaan rakkooleen kan irratti mul'atan keessaa inni tokko sababa adeemsa haaraa diriirsuun hojjetaan yeroo hojiirraa hir'atu dha. Dhimma DhIMMWO' tiin ilaalamee

<sup>70</sup>Raggaasaa Bayyanaa, Abbaa Murtii, MMA Walmaraa, afgaaffii gaafa 23/4/2007 gaggeeffame.

<sup>71</sup>Gigaa Konistraakshinii (DhIM) fi Tarrafaa Zargaawu (fa'a N-6), Murtii Dh/I/MMWF, Lakk G 41385.

murtii argate keessatti<sup>72</sup> hojjetaan hojii eegumsaa irratti ramadamee hojjetaa ture tokko, hojjechiisaan gita hojii kana sababa dhaabbata *Atilaas Sekiyuuritii* jedhamutti dabarseef ('outsourced' godheef) gaggeeffameera. Dhaddachi Ijibbaataa murtii kenneen '*hojjetaan gita hojii eegumsaa qaama biraaf yoo dabarse iyyuu gitni hojjetaan irra hojjetu kwt 28(1) fi (2)'n kan haguugamu miti*' jechuun gaggeessaan taasifame seeraan ala jechuun murtii jalaa diiguun murteesseera. Rakkoon inni biraa tumaa kanaan walqabatee mul'atu sababa hojjetaan tokko 'gahuumsa hin qabu' jedhuun hojjiirraa gaggeessuun walqabatee rakkoon mul'atu hojjetaan tokko gahuumsa barbaachisu ni qaba moo hin qabu isa jedhu adda baasuu dha. Kunis sirni madaallii raawwii hojii sirnaawaa fi bu'a-qabeessa ta'e jiraachuu dhabuu irraa kan maddu dha<sup>73</sup>.

### 5.1.3.3. Hojjettoota Baay'ee Akeekkachiisa Kennuun Hojjiirraa Gaggeessuu (Hojjetaa Hir'isuu)

Hojjechiisaan sababa jijjiirama caaseffama dhaabbatichaa ykn hojjimaata dhaabbatichaan wal qabatuun hojjettoota baay'ee hojjiirraa gaggeessuu akka danda'u LHH kwt 28(2) jalatti tumamee jira. Hojjettoota hir'isuuf qabxiileen ilaalcha keessa galuu qabanis: sababoota waliigaltee hojii hojjettoota baay'ee yeroo tokkotti addaan kutan, lakkoofsa hojjettoota hir'ifamanii, turtii yeroo hir'ifamanii, tartiiba hojjettoota hir'isuu hordofamuu qaban fa'i.<sup>74</sup> Sababootni hojjechiisaan hojjettoota gareen akka hir'isu dandeessisan LHH kwt 28(2) jalatti tarreeffamanii jiru. Dabalataan, gitni hojii dacha'uun hojjettoota baay'ee hojjiirraa akka gaggeeffaman kan taasisu yoo ta'e, hojjettoota hir'isuun akka danda'amu labsicha kwt 28(3) jalatti tumameera.

<sup>72</sup>Taayyee Dabalee fi *Gaazii Meerifiik Iraan* (Dhaabbata Itti Gaafatamummaan Isaa Murtaa'e), DhIMMWO, Lakk G 134454 (kan hin maxxanfame).

<sup>73</sup>Addunyaa Tasammaa, Raawwataa Hojii Hubannoo fi Leenjii Wa/Dh/H/H/Go/Wa/Bahaa, afgaaffii gaafa 28/4/2007; Biqilaa Maangashaa, I/G Bu/Mi/Hu/Namaa Warshaa Bishaan Albuudaa Amboo, afgaaffii gaafa 20-4-2007 gaggeeffame.

<sup>74</sup>LHH, *Olitti yaadannoo lak. 8*, kwt.28 (2) fi 29.

Haa ta'u malee, kwt 29(3) jalatti hojjetootni hojiirraa kan hir'ifaman sababoota kwt 28(1) jalatti tarreeffaman bu'uura godhachuudhaani jechuun tumameera. Keewwatni 28(1) haala waliigalteen hojjetaa tokkoo itti addaan citu tuma malee waa'ee hojiirraa hir'isuu kan tumu waan hin taaneef tumaa LHH kwt 29(3) jalatti yaadni taa'e dogongora akka ta'e kan hubatamu dha.

Dhimma kana ilaalchisee falmii Boordii Murteessaa Dhimma Hojjetaa Damee Lixa Oromiyaatti ilaalamee murtii argateen<sup>75</sup> hojjetootni hojjechiisaan osoo adeemsa hir'isuu seerri teechisu hin hordofiin seeraan ala nu gaggeesse jechuun himataniiru. Hojjechiisan gama isaan jijjiirama teeki'noloojii haaraa hojii irra oolchuuf bu'uura kwt 28(2)(c)'tiin hojii irraa gaggeessuu ibsa. Sirni hir'isuu hordofamuu qabu akkuma kwt 29(3) jalatti tarreeffamee jiru hojjetoota akkaataa kwt 28(1) tiin hir'ifamani dha malee kanneen akkaataa kwt 28(2) tiin hir'ifaman hin haammatu jedheera. Boordiin kunis kan kwt 29(3) jalatti akkaataa kwt 28(1)'tiin hir'ifaman jechuun kan ibsame dogoggora malee hojiirraa hir'isuun sababoota 28(2) jala jiran ilaallata jechuun hojiirraa hir'isuun kun seeraan ala jechuun murteessera.

## **5.2. BU'AAWWAN WALIIGALTEE HOJII SEERAAN ALA ADDAAN KUTUUN HORDOFSIISU**

Labsiin HH yeroo waliigalteen hojii seeraan ala addaan citu mirgootaa fi faayidaawwan hojjetaan argachuu qabu teechiseera. Waliigalteen seeraan ala kan addaan cite yoo ta'e, hojjetaan kaffaltiiwwan akka boqonnaa waggaa, kaffaltii hojii irraa gaggeessaa (severance pay), kaffaltii beenyaa, kuufama mindaa, itti-gaafatamummaa yakkaa, dirqama hojiitti deebisuu fi kkf teechiseera. Bu'aawwan addaan citiinsa waliigaltee irraa maddan kanneen

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<sup>75</sup>Tasfaayee Kabbadaa (fa'a N-60) fi Itiyoo-Telekoomii, Boordii Dhaabbataa Dhimma Hojjetaa fi Hojjechiisaa Damee Oromiyaa Lixaa, Lakk G BM19-106/386, Lakk.G BM20-81/397 fi Lakk.G BM18-61.

keessaa isaan yeroo baay'ee hojii irratti falmisiisoo ta'an irratti xiyeeffachuun akka itti aanutti ilaalla

### 5.2.1. Kaffaltii Hojii Irraa Gaggeessaa (Severance Pay)

Kaffaltiin hojii irraa gaggeessaa yeroo waliigalteen hojii addaan citu tajaajila hojjetaan kenneef kaffaltii raawwatamu dha. Kanfaltiin bifa kanaa waliigalteen karaa seeraan alaa fi karaa seera qabeessa ta'een yeroo adda citullee haalli itti kanfalamuu danda'u ni jira. Labsii HH kwt 39 jalatti hojjetaan yeroo yaalii xumure kamiyyuu yeroo waliigalteen hojii sababoota 6 keewwaticha jalatti tarreeffamaniin addaan citutti kaffaltii hojii irraa gaggeessaa ni argata jechuun tumee jira. Labsiin 494/98 kwt 2(2) jalatti sababoota kaffaltiin hojii irra gaggeessaa itti kaffalamu sadi tarreessee jira. Walumaa galatti, seera keenya keessatti sababootni kaffaltiin hojii irraa gaggeessaa itti raawwatamu sagal (9) tarreeffamanii jiru. Isaanis: hojjechiisaan sababa kasaareef ykn sababa biraatiif dhaabbatichi itti-fufiinsa haala qabaatuun cufamuu, sababa seeraan alaatiin kaka'umsa hojjechiisaatiin hojjetaan hojii irraa yoo gaggeeffame, hojjetaan bu'uura LHH' tiin ibsameen hojii irraa yoo hir'ifamu, gochi yakkaa waan irratti raawwatameef hojjetaan waliigaltee hojii yoo adda kute, hojjechiisaan nageenya ykn fayyaa hojjetaa irra balaan akka qaqqabuu danda'u osoo beekuu balaan kun akka hin qaqqabneef tarkaanfii fudhachuu dhiisuu irraa kan ka'e hojjetaan waliigaltee hojii addaan yoo kute, sababa miidhaa hojiirratti gaheen hojjechuu dhabuun isaa ragaa mana yaalaan yoo mirkanaa'e, kaffaltii pirovidenti fandii kan hin qabne ykn soorama kan hin qabne umuriin soorama gahee yoo gaggeeffame, sababa dhukkuba HIV/AIDS'tiin gaaffii ofiitiin hojjetaan hojii yoo gadi lakkise ykn yoo xiqqaate hojjetaan waggaa 5 hojjechiisaaf hojjetee dhukkubaan ykn du'aan waliigalteen isaa kan adda cite yoo ta'e, sababa leenjii isaaf kennameetiif dirqama hojiirra turuu kan hin qabne ta'ee fedhii

isaatiin hojii yoo gadi dhiise dha. DhIMMWF labsii HH kwt 39 jalatti haallan teechifamaniin alatti haallan biroo kaffaltiin hojii irraa gaggeessaa itti kaffalamu waliigaltee hojii yookiin waliigaltee gamtaa keessatti hammachiisuun akka danda'amu murtii kenne keessatti kaa'eera<sup>76</sup>.

Itti aansuun sababoota kaffaltiin hojii irra geggeessaa itti kaffalamu keessaa kanneen yeroo hedduu falmiiwwan irratti ka'an muraasa dhimmoota qabatamoon deeggaruun ilaalla. Sababoota kanneen keessaa tokko waliigalteen hojii seeraan ala yoo addaan cite dha. Bu'uura kwt 42'tiin waliigalteen tokko seeraan ala addaan citeera kan jedhamu ulaagaawwan waliigaltee hojii addaan kutuuf LHH yookiin seera biroo rogummaa qaban keessatti ibsaman yoo hin guutne ta'e dha. Dhimma DhIMMWF irratti murtii argate keessatti<sup>77</sup> barsiistuun koollejjii tokko qormaata 'COC' akka fudhattuuf xalayaan beeksifamtee, haalli mijateefi deemtee waan fudhachuu diddeef hojjechiisaan waliigaltee hojii addaan kuteera. Kollejjichi sababa isaa yeroo ibsu qajeelfama mootummaan baaseen barsiisotni dhaabbilee mootummaas ta'e dhuunfaa keessatti barsiisan madaallii gahuumsa ogummaa yoo hin milkoofne barsiisuun kan itti fufuu hin dandeenye ta'uu ibseera. Dhaddachi kunis falmichi dhugaa ta'uu erga mirkaneeffate booda waliigalteen hojjettuu kan addaan cite qajeelfama mootummaa kabajuu sababa diddeeni malee kaka'uumsa hojjechiisaan waan hin taaneef of eeggannoo kennuun hojii irraa gaggeessuun isaa sirriidha jechuun '*kaffaltiin hojii irraa geggeessaa garuu kaffalamuufi qaba*' jechuun murteessera. Waliigalteen kan addaan cite kara seera-qabeessaanidha erga jedhee, sababni dhaddachi kun kaffaltiin hojiirraa gaggeessaa akka kaffalamuuf murteesse ifa miti.

<sup>76</sup>Ayinaalem Hayilee fi Baankii Daldala Itioophiyaa, DhIMMWF, Lakk G 26077, Jiildii 8ffaa.

<sup>77</sup>Kollejjii Meedikaalaa Beekaa fi Ababaayyee Taaffasaa, DhIMMWF, Lakk G.135929.

Dhaddachumti kun dhimma biroo walfakkaatu irratti murtii kenneen immoo ejjennoo biraa calaqqisiisee jira. Falmii mana baruumsaa fi barsiisaa tokko gidduutti taasifamaa tureen, manni baruumsichaa bu'uura qajeelfama Biiron Barnootaa baaseen barsiisichi ulaagaa barsiisuuf isa dandeessisu hin qabu jechuun hojiirraa waan ari'eef himata dhiyaateef manneen murtii jalaa barsiisichi seeraan ala ari'ame jechuun hojiitti akka deebi'u ykn beenyaa fi kanfaltiin hojiirraa gaggeessaa akka kanfalamuuf jechuun murteessani. Dhaddachi ijibbaataa MMWO garuu, waliigalteen hojii qajeelfama Biiron Barnootaa baase irratti hundaa'uun kan addaan cite waan ta'eef, murtiin manneen murtii jalaa qulqullina barnootaa kan miidhuu fi waliigalteen hojii seeraan kan addaan cite waan ta'eef, kanfaltiin kanfalamuufii malu hin jiru jechuun murteesseera.<sup>78</sup> Dhimma walfakkaataa tokko irratti, DhIMMWF murtii kenneen haala kanaan waliigaltee hojii addaan kutuun seeraan ala miti jechuudhaan kaffaltiin hojiirraa gaggeeffamaa akka hin kaffalamneef murteesseera<sup>79</sup>.

Sababni biraan kaffaltiin hojii irraa gaggeessaa kaffalamu hojjetaa hir'isuu dha. Hojjetootni sababa mala hojjimaataa jijjiiruuf yookin teekinoolojii haaraa fayyadamuuf jecha hojii irraa yoo hir'ifaman kaffaltii hojii irraa gaggeessaa argachuu akka qaban tumamee jira. Haa ta'u malee, qabatamaan naannoo kanatti rakkoon ni jira. Dhimma MMA Fantaalleetiin galmee lakk.13632<sup>80</sup> ta'e irratti murtii argate keessatti hojjetootni waliigaltee hojii yeroon daanga'e taasifnee osoo hojjennuu hojjechiisaan seeraan ala waan hojii irraa nu hir'iseef kaffaltii hojii irraa gaggeessaa fi beenyaa akka nuu kaffalu jechuun himataniiru. Manni murtichaas murtii kenneen gaggeessaan

<sup>78</sup>Mana baruumsa sadarkaa 1ffaa fi 2ffaa Geetesimaanii fi Dhugumaa Laggasaa, DhIMMWO, Lakk G 179641 (*kan hin maxxanfamne*).

<sup>79</sup>Salaam Tasfaayee fi Alkaan Dh.I.M, DhIMMF, Lakk.G.69125, Jiildii 13<sup>ffaa</sup>.

<sup>80</sup>Haayiluu Gishuu fi Waajjira Ijaarsa Piroojektii Jallisii Bosat Fantaallee, Mana Murtii Aanaa Fantaallee, Lakk G 13631 (*kan hin maxxanfamne*).

taasifame seera qabeessa waan ta'eef, kaffaltii hojiirra geggeessaa argachuu hin qaban jechuun murteesseera. Akka ejjennoo mana murtichaati, hojjetaan yoo seera qabeessaan hir'ifame kaffaltii hojiirra geggeessaa hin argatu jechuu dha. Kunis qajeeltoowwan kaffaltiin hojiirraa geggeessaa maaliif akka kaffalamu hubachuu irratti rakkoon jiraachuu agarsiisa.

### 5.2.2. Hojiitti Deebisuu

Waliigalteen hojii seeraan ala addaan cituun yeroo mirkanaa'e hojjechiisaan hojjeticha gara hojiitti deebisuuf haalli ittiin dirqamuu danda'u akka jiru labsiin hojjetaa fi hojjechiisaa kwt 43(1) jalatti teechiseera. Kunis hojjechiisaan sababoota kwt 26(2) jalatti tarreeffamaniin waliigaltee hojii yoo addaan kute gochaa faallaa seeraa isa bu'uura waan raawwateef fedhii hojjetaa irratti hundaa'uun yeroo hunda gara hojiitti akka deebi'uu murtaa'uu akka qabu teechifameera. Sababoota olitti tarreeffamaniin alatti hojjechiisaan waliigaltee hojii seeraan ala yoo addaan kute hojjetaan gara hojiitti deebi'uu yookiin beenyaan kaffalameefi akka gaggeeffamu murteessuun aangoo qaama falmii hojii dhagahuuf kenname ta'uu LHH kwt 43/2/ irraa hubachuun ni danda'ama. Gama biraaatiin, hojjetaan gara hojiitti deebi'uu kan barbaadu yoo ta'ellee deebi'uun isaa hariiroo hojichaa irratti rakkoo ol'aanaa (serious difficulties) kan fidu ta'uun yoo mirkanaa'e gaaffiin hojiitti deebi'uu kufaa ta'ee hojjetichaaf beenyaan kaffalamee akka gaggeeffamu labsichi kwt 43/3/ jalatti ni kaa'a.

Sababa hojiitti deebi'uu hojjetaatiin rakkoon olaanaa ta'e ni uumama jechuun murteessuuf rakkoon olaanaan kan uumamu ta'uu amanuun qofti gahaa miti. Akkasumas hojjechiisaan ragaa fi sababa gahaa malee rakkoon olaanaan ni uumama jedhee waan falme qofaaf rakkoon olaanaan kun ni uumama jechuun murteessuun seera-qabeessa miti. Rakkoon olaanaan kan dhaqqabu ta'uu isaa sababni gahaan jiraachuu mirkanaa'uu qaba. Sababni

gahaan jiraachuu isaa haala qabatamaa dhimmichaa keessattuu amala hojjichaa fa'a irraa hubachuun kan danda'amu dha. Fakkeenyaaf, bu'uura LHH kwt 27'tiin badii akeekkachiisa malee waliigaltee hojii addaan kutuuf dandeessisu hojjetaan raawwate seeraan ala yoo gaggeeffame yeroo hedduu carraan hojiitti deebi'uu kennamuufi kan hin qabne ta'uu danda'a. Gama biraatiin, bu'uura LHH kwt 28'tiin hojjetaan dhukkubbii yookiin gahuumsa hojiitiin walqabatee seeraan ala gaggeeffamu hojiitti akka deebi'u yoo taasifame rakkoo olaanaa geessisa jechuudhaaf sababa gahaa ta'uu dhiisuu danda'a.

Qabatama jiru yeroo ilaallu, waliigalteen hojii karaa seera-qabeessa hin taaneen yeroo adda citu himannaa dhiyaatu hedduu keessatti kanfaltiiwwan gara garaa akka murtaa'uuf gaafachuun alatti hojiitti deebi'uuf yeroon gaafatamu muraasa<sup>81</sup>. Hojjetootni seeraan ala hojiirraa gaggeeffamanii fi mana murtiitti himannaa dhiyeeffatanis manni murtii hojiitti akka deebistan jechuun yoo murteessellee hojjetaan beenyaa fudhee akkan gaggeeffamu jechuun yeroon gaafatu ni heddummata.<sup>82</sup> '*Sababni gahaan*' hojjetaan seeraan ala hojiirraa gaggeeffame gara hojiitti osoo hin deebi'iin kanfaltii isaaf malu argatee akka gaggeeffamu dirqisiisu ni jira moo hin jiru kan jedhu adda baasuun walqabatees hanqinaaleen hojiirratti mul'atan ni jiru. Fakkeenyaaf, dhaddachi lixaa MMWO<sup>83</sup> murtii dhimma kana ilaalchisee kenne keessatti hojjechiisaan adeemsa seeraa osoo hin eegiin hojimaata dhaabbatichaa jijjiiruun oomishtummaa dabaluuuf hojjetoota hojii irraa hir'ise tokko waliigaltee seeraan ala addaan kuteera jechuun hojjetootni gara hojiitti akka deebi'an murteessera. DhIMMWF immoo gaggeessaan

<sup>81</sup>Yeshiixilaa H/Mikaa'el, Abbaa Murtii MMA Adaamaa, Afgaaffii 14/04/2007 gaaggeeffame

<sup>82</sup>Indaashaw Dassaaleny, Gaggeessaa Oomishaa (Production Manager), Dhaabbata Oomisha Abaaboo Hoolataa Roozis, afgaaffii gaafa 21/04/2007 gaggeeffame.

<sup>83</sup>Itiyoo-telekoomii fi Tasfaayee Kabbadaa (N-60), MMWO Dh/Lixaa, Lakk G 138220.



raawwatame adeemsa hir'isuu waan hin hordofneef seeraan ala ta'ullee amala hojii hojjettoota kanaa irraa ka'uun yoo ilaallu hojjettootni kun erga hojii irraa gaggeeffamanii booda, walitti dhufeenyi isaanii hammaataa waan dhufeef gara hojiitti akka deebi'an gochuun hojii hojjechiisaa irratti *rakkoo ol'aanaa* waan fiduuf beenyaan kaffalamee haa gaggeeffaman jedheera<sup>84</sup>. Murtii manneen murtii kanneenii yeroo ilaallus dhaddachi lixaa MMWO hojjechiisaan hojjettoota kana gara hojiitti akka deebisu jechuun murteessuun dura hojiitti deebi'uun isaanii rakkoon olaanaan hordofsiisu ni jira moo hin jiru kan jedhu xiinxaluuf yaaliin taasise akka hin jirre ni hubatama. DhIMMWF immoo walitti dhufeenyi isaanii hammaataa dhufeera jechuudhaan alatti sababa gahaa yaada kana qabachuudhaaf isa geessise akka hin agarsiifne hubachuun ni danda'ama.

## 6. YAADOTA GUDUUNFAA FI FURMAATAA

### 6.1. YAADOTA GUDUNFAA

Hariiroon hojii jiraachuu adda baasuun dhimmoota hojiirratti rakkisaa ta'anii fi hojimaatni walfakkaataa hin taane irratti mul'atu keessaa isa tokko dha. Daangaa hojiirra oolmaa labsichaatiin walqabatee hojimaatni walfakkaataa hin taane bal'inaan kan mul'atu dha. Falmiilee hojii dhaabbilee amantaa irraa dhufan keessatti hojjetaa kam kamtu hojiin isaa dhimma afuuraatiin walqabata? hojii hojjetaa isa kamiitu dhimma afuuraatiin walhin qabanne kan jedhu irratti hojimaataa fi hubannoo gara garaatu mul'ata. Dhimmoota hoji-gaggeessitoota dhaabbilee hojjechiisaatiin walqabatees manneen murtii keenya hoji-gaggeessaa ta'uu hojjetichaa akkaataa seeraatiin qulqulleessuu irrattii fi hojjetichi hoji-gaggeessaa ta'uu yoo hubatan tarkaanfii fudhataniin walqabatee rakkooleen ni mul'atu.

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<sup>84</sup> Itiyoo-telekoomii fi Tasfaayee Kabbadaa(N-60), DhIMMWF, Lakk G 75619.

Dhaabbilee hojjechiisaa naannoo Oromiyaa keessa jiran keessatti yeroo qacarriin hojjetootaa gaggeefamu mirgi lammiileen heera mootummaa RDFI keessatti ija walqixaan ilaalamuuf qaban kabajamaa hin jiru. Kanaafis sababni inni guddaan, qacarrii hojjetootaa dhaabbilee hojjechiisaa keessatti gaggeeffamu kan bitu sirni ifa ta'e diriiree hin jiru. Waliigalteewwan hojii hojjetaa fi hojjechiisaa jidduutti taasifamanis dantaa fi fedhii hojjechiisaa jiddu-galeessa godhatanii hojjechiisaan kan qophaa'anii dha. Waliigalteewwan afaaniin yeroo taasifaman akkaataa seerri barbaaduun ibsi barreeffamaa hojjetaa hedduuf hin kennamu. Kana malees, dhaabbileen hojjechiisaa hedduun hojjetaa isaaniitiif tarreeffama hojii (job description) hin kennani. Dabalataanis, mirga hojjetaa haala miidhuun yookin labsii HH ykn waliigaltee gamtaa keessatti mirga yookin haala hojjetaaf teecheffamee gadi haala ta'een walta'iinsi yeroo uumamu ni mul'ata. Turtii yeroo waliigaltee hojjiitiin walqabatees rakkooleen ni jiru. Dhaabbilee hedduu keessatti, faallaa qajeeltoo seeraa haala ta'een, hojjetootni hojii amala itti fufaa qabu irratti waliigaltee yeroo murtaa'aatiin yookin waliigaltee yeroo yeroon haaromuun qacaramaa jiru.

Miidhaa hojiirraatiin walqabatee rakkoon jiru tokko ragaa boordii mana yaalaa hanga miidhaa agarsiisuun kan walqabatu dha. Ragaan kun qabiyyee qabatee dhiyaachuu qabu, qulqullinnii fi sirrummaan isaa akkasumas yeroon kennamuu irratti rakkoon ni mul'ata. Manneen murtii biras hanga beenyaa miidhaa qaamaa shallaguu irratti hojimaatni jiru walfakkaataa miti. Dhaabbilee hojjechiisaa hedduu keessatti sababa gahaa malee hojjetootni hojiirraa gaggeeffaman hedduu dha. Sababni gahaan yeroo jiraatullee dhaabbileen hojjechiisaa hedduun waliigaltee hojii addaan kutuuf adeemsota hordofuu qaban hordofaa hin jirani. Hojjechiisaan hedduun hojjetaa afaaniin, waardiyyaadhaan waan hojiirraa gaggeessaniif waraqaa sababa waliigalteen

hojii addaan cituuf ibsuu fi guyyaa waliigalteen addaan citu ibsu kennaa hin jirani.

## 6.2. YAADOTA FURMAATAA

Dhaabbileen amantaa hojjetaan isaanii dhimma afuuraa irratti hojjetu hojjetaa kam kam fa'a akka ta'e akkasumas dhaabbileen hojjechiisaa hariiroo isaanii fi gaggeessitoota hojii jidduu jiru bituuf kan isaan dandeessisu qajeelfama hojii (work rules) baafachuu akka qaban seerri dirqisiisu bahuu qaba. Dhimma kana irratti LHH'tiin qajeelfamni akka bahu ibsame bahuu qaba. Sirni hojjetootni ittiin dorgomsiiifamanii qacaramanii fi faayidaalee gara garaa itti argatan qajeelfama ifa ta'e kan bu'uureffate akka ta'u qaamoleen aangoo seeraa baasuu qaban itti adeemuu qabu. Dhaabbileen hojjechiisaa hedduun hojjetaa isaaniitiif tarreeffama hojii (job description) qopheessuun akka kennan haala dirqisiisuun seerri fooyyaa'uu qaba. Konveenshinoota Dhaabbata Dhimma Hojjetaa fi Hojjechiisaa Addunyaa (ILO) eegumsa hojjattootaatiif barbaachisaa ta'an kan akka mindaa xiqqaa murteessuu fi konveenshinoota biroo biyyi keenya mallatteessite irraa hojjattootni qabatamaan akka fayyadaman seerota baasuu fi qaamota barbaachisan hundeessuu fi kan jiran cimsuun dirqama.

Waajjirri dhimma hojjetaa fi hawaasummaa dhaabbilee hojjechiisaa keessatti nageenyummaa fi fayyummaa ogummaa mirkaneessuuf xiyyeeffannoo olaanaa kennuun hojjechuun isarraa eeggama. Dhaabbilee hojjechiisaa mara keessatti deeggarsi yaalaa sadarkaa duraa akka mijatu dhaabbileen hojjechiisaa marti balaan yookin miidhaan hojjetaa irra yeroo gahu qaama ilaallatuuf dirqama gabaasuu qaban akka bahatan gochuuf qaamni isa ilaallatu hojjechuu qaba. Haala shallaggii fi hanga beenyaa miidhaa qaamaatiin walqabatee seerri jiru ifaa fi haqa-qabeessa haala ta'een fooyyaa'uu qaba.

Waliigalteen hojii yeroo addaan citus hojjetaan mirga dhagahamuu akka qabaatu haala hayyamuun seerri keenya fooyyaa'uu qaba. Turtii yeroo waliigaltee, haala shallaggii fi hanga beenyaa miidhaa qaamaa, sababa gahaa waliigaltee hojii addaan kutan, adeemsa waliigaltee addaan kutuuf hordofamuu qabu, bu'aa waliigaltee hojii addaan kutuu fi kkf irratti abbootii seeraatiif, miseensota boordii fi gaggeessitoota waldaalee hojjetaa fi waldaalee hojjechiistotaaf akkuma barbaachisummaa isaatti leenjiin hubannoo cimsu qophaa'uu qaba. Waldaaleen hojjetaa dhaabbilee hojjechiisaa mara keessatti akka hundaa'anii fi yeroo dhimmi dantaa fi mirga hojjetaa ilaalamuu fi murtaa'u hirmaannaa akka qabaatanii fi fedhii hojjetootaa bakka bu'anii kabachiisuu keessatti dandeettii dhiibbaa uumuu kan qaban akka ta'an qaamoleen gahee qaban marti tumsa barbaachisaa taasisuu qabu.

## THE RIGHT TO COUNSEL OF CHILDREN IN CONFLICT WITH THE LAW: CASE STUDY IN ADAMA

*Milkii MekuriaYadessa\**

### **ABSTRACT**

*The right to counsel is the cornerstone for all other human rights of accused persons. The eminence of the right is even more acute in the case of children in conflict with the law. This necessitated state's duty to deliver legal assistance to children in conflict with the law under international instruments. In Ethiopia, even though there is no domestic law which explicitly deal with the right to counsel of children in conflict with the law, various stipulations at both federal and regional level provide that the state bears the responsibility to appoint state funded counsel when miscarriage of justice would result. In Adama, the 2<sup>nd</sup> most populous town of Ethiopia next to Finfinne, the public defenders' office, which is given the responsibility to represent children in conflict with the law, is established under Adama Special Zone High Court. This paper argues that the office provides a mere representation to children in conflict with the law as the public defenders lack the competencies and the resource needed for the provision of child friendly legal assistance. Moreover, the representation is not sufficiently accessible. Consequently, the children in conflict with the law face substantial prejudice to their rights.*

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## 1. INTRODUCTION

Several international and regional human right instruments contain references to states' obligations to provide legal assistance to children in conflict with the law. Even though delinquency proceedings differ in form and substance from adult criminal trials<sup>1</sup>, these normative instruments do not set forth the unique standards that help to effectively deliver child friendly legal assistance<sup>2</sup>. However, there is a consensus that the assistance provided to children in delinquency adjudication must be flexible enough to take into account a child's capacity<sup>3</sup>. Therefore, counsels of children in conflict with the law have a heightened duty to meet their ethical obligations toward their child-clients. To fulfil these duties, a child counsel may also need the help of other professionals such as social workers and investigators who provide services to advance the attorney's efforts to secure the client's wishes<sup>4</sup>. This paper tries to evaluate the effectiveness of legal assistance provided to children in conflict with the law in Adama town. Further, it reveals the jeopardise that occur to the children in conflict with the law who remain unrepresented or are ineffectively represented.

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<sup>1</sup> Delinquency offense is not considered as a crime. Even though, most aspects of delinquency proceedings closely resemble the adult proceedings, there are dissimilarities in content, form and terminologies used in delinquency and adult proceedings. The criminal justice system utilizes terms that are unique to delinquency cases. For example, 'adjudicatory hearing', 'dispositional hearing' and 'adjudication of delinquency' are the terms used in delinquency hearing to substitute 'trial', 'sentence' and 'conviction' in adult proceedings respectively. Content wise, for example, even though the standards for arresting a child may go parallel with the standards for arresting an adult, delinquency proceeding may require the child to appear before court immediately after arrest. (*Lisa A. Stranger, Conflicts Between Attorneys and Social Workers Representing Children in Delinquency Proceedings*, Fordham Law Review, Vol. 65, No. 3, P.1127).

<sup>2</sup> Thomas F. Geraghty and Diane Geraghty, *Child Friendly Legal Aid in Africa*, UNICEF and UNDP, 2011, P.1.

<sup>3</sup> *Id*, P.2.

<sup>4</sup> Lisa A. Stranger, *Supra note 1*, P.1158.

The article is divided into six sections. The first section begins with a discussion of the conception, importance and models of delivery of the right to state-funded counsel. It then delineates the elements of competent delinquency representation. The second and third sections examine the relevant various international and regional instruments and the domestic laws. Section four identifies the principles for providing effective representation through public defense delivery systems. Section five evaluates the effectiveness of the counsels in carrying out their obligations to execute the right in the particular case of Adama. The paper concludes by indicating the measures that should be employed to minimize or redress the prejudice that happen to children in conflict with the law as a result of being unrepresented or ineffectively represented.

## **2. THE RIGHT TO STATE-FUNDED COUNSEL: CONCEPTION, IMPORTANCE, AND MODELS OF DELIVERY**

### **2.1. THE CONCEPTION OF THE RIGHT TO STATE-FUNDED COUNSEL**

The right to state-funded counsel can be described as the legal responsibility for the government to provide an accused with legal representation<sup>5</sup>. This right ought to be understood to mean that an accused should have access to a competent counsel who has sufficient resource that enables him/her provide effective representation<sup>6</sup>. Therefore, a mere representation by lawyer does not

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<sup>5</sup>Luong Thi My Quynh, *Guarantee of the Accused Person's Right to Defence Counsel*, A Comparative Study of Vietnamese, German, and American Criminal Procedure Laws, Doctoral Dissertation of Law, Ho Chi Minh City, 2011, P.19.

<sup>6</sup>Christie S. Warren (editor in chief), *International Legal Aid & Defender System Development Manual*, 2010, P.85. *The Committee on the Rights of the Child under Its General Comment No.10*, has tried to identify who should represent a child in conflict with the law. According to the comment the legal assistance can be provided by lawyers or any one who have sufficient knowledge and who are trained to work with children in conflict

satisfy the state's responsibility. It should involve guaranteeing the accused to get hold of a successful representation. In case of children, the right refers to the provision of legal assistance that is accessible, age-appropriate, multidisciplinary, and responsive to the range of legal and social needs of the youth<sup>7</sup>.

Various instruments, bodies, and writers concerned with the right to state-funded counsel greatly vary in determining the stages, in the criminal proceeding, to which the right should extend. The UN Human Rights Committee has found that accused persons might have a right to legal assistance even during the pre-trial contact with the criminal justice system<sup>8</sup>.

According to *Singer*, the right to representation is restricted to the critical stages of criminal prosecution process which includes '*those pre-trial procedures that would impair defence on the merits if the accused is required to proceed without legal representation*' or '*any stage of the prosecution where legal representation's absence might derogate from the accused's right to a fair trial*'<sup>9</sup>. The concern of the critical stage assessment is to preserve the accused persons' basic right to fair trial and to facilitate that the accused should benefit from legal representation if substantial prejudice to his/her rights inheres in the particular confrontation and legal representation can help to avoid that prejudice<sup>10</sup>. In the case of children, *Lansdown* pinpoints that any child who is accused of having infringed penal law has the right to be heard, through his/her counsel, during all stages of the

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with the law such as paralegals, social workers (*T. Geraghty and D. Geraghty, Supra note 2, P.3*).

<sup>7</sup>T.Geraghty and D. Geraghty, *Supra note 2, P.1*.

<sup>8</sup>Eileen Skinnider, the Responsibility of States to Provide Legal Aid, Paper prepared for the Legal Aid Conference Beijing, China, 1999, P.9.

<sup>9</sup>Richard G. Singer, *Criminal Procedure*, 2nd ed, 2008, P.243.

<sup>10</sup>James B. Haddad and Gary L Starkman, *Criminal Procedure*, 4<sup>th</sup> ed, 1992, P.670.



judicial process including: 1) during the pre-trial stage; 2) during arrest and police, prosecutor and the investigating judge interview; 3) through the adjudication and disposition process; and 4) in the implementation of any imposed measures<sup>11</sup>.

## 2.2. THE IMPORTANCE OF THE RIGHT TO STATE FUNDED COUNSEL

These days, the legal system in every country is complex and contains so many procedural traps. In such complicated legal systems, the right to be heard would be of little reward if it did not realize the right to be heard by legal representation, because, a lay person accused of a crime lack the technical proficiency required of him to protect his rights<sup>12</sup>. This led the right to legal representation to be considered as the cornerstone for all other human rights of accused persons<sup>13</sup>.

The right to counsel is important to ensure the right to a fair trial. The right to be represented by a lawyer constitutes an integral part of the right to a fair trial which is recognised as part of the customary international law<sup>14</sup>. Therefore, every country is bound to respect this right and arrange its judicial systems accordingly<sup>15</sup>. The right to counsel is also essential to ensure individuals' right to fair hearing. Because, the right to counsel enables child in conflict with the law to get a reasonable opportunity to present his case,

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<sup>11</sup>Gerison Lansdown, Every Child's Right to Be Heard: A Resource Guide on the UN Committee on the Rights of the Child, General Comment No.12, 2011,P.67.

<sup>12</sup>Mark Twain, The law is a system that protects everybody who can afford to hire a good lawyer. Available at: <https://www.schr.org/counsel> <Accessed on 01/01/2014>.

<sup>13</sup>Richard J. Wilson, Principles, Sources, and Remedies for Violation of the Right to Legal Assistance in International Human Rights Law (incorporated in Christie S. Warren, *Supra* note 6, P.17).

<sup>14</sup>International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, A Practitioners' Guide, 2004, P.7. Available at: <http://www.refworld.org/pdfid/4a7837af2.pdf> <Accessed on 14/12/2015>.

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

including his evidence, under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent<sup>16</sup>. Therefore, the right further asserts adequate opportunity to challenge or respond to opposing arguments or evidence<sup>17</sup>. The right to be represented by a counsel will also enable individuals to get access to justice and to be considered as equal before the courts<sup>18</sup>.

The right to counsel is also crucial to realize the due process of law as it affords an opportunity for the parties to participate in a meaningful and effective manner. The right to a meaningful participation includes the right to a fair and public hearing by a competent, impartial, and independent tribunal. These procedural rights can be protected only with competent legal guidance<sup>19</sup>. So, the denunciation of the opportunity to have legal representation in criminal matters goes against the due process. The right to counsel may also play a significant role to realize the right of children in conflict with the law to be presumed innocent, because, the presumption works in practical ways to place burdens of proof on the prosecution, to require the prosecution to produce evidence of guilt and to guarantee protection of the right to liberty of children in conflict with the law before trial<sup>20</sup>. So, it is not easy to credit the presumption of innocence without a prompt provision of a competent lawyer<sup>21</sup>.

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<sup>16</sup>A Basic Guide to Legal Standards and Practice, Lawyers Committee for Human Rights, 2000, P.12. [http:// www. humanrightsfirst.org/wp-content/uploads/pdf/fair\\_trial.pdf](http://www.humanrightsfirst.org/wp-content/uploads/pdf/fair_trial.pdf) <Accessed on 14/12/2015>.

<sup>17</sup>Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa; available at:[http://www. achpr.org/instruments/fair-trial/](http://www.achpr.org/instruments/fair-trial/) < Accessed on 25/02/214>.

<sup>18</sup>Christie S. Warren, *Supra* note 6, P.18.

<sup>19</sup>*Id*, P.19.

<sup>20</sup>A Basic Guide to Legal Standards and Practice, *Supra* note 16, P.15.

<sup>21</sup>Christie S. Warren, *Supra* note 6, P.20.

In the case of children in conflict with the law, the eminence of the right to counsel is even more acute due to the following major reasons. Justice systems are particularly threatening for children as their complex procedures are difficult for them to understand. Unmistakably, the younger the child, the more difficult it will become for him/her to claim his/her rights without support<sup>22</sup>. The children in conflict with the law may fail to understand the complex legal principles and the court's languages. In that case, it may be crucial for them to get one who can tell them these in an understandable way<sup>23</sup> in a way that is developmentally sound<sup>24</sup>.

### **2.3. MODELS OF STATE-FUNDED DEFENSE SERVICE DELIVERY**

International instruments provide that legal assistance may be given at public expense for indigent persons accused of serious crimes and self-represented children. The strategies and institutional arrangements of the defense providing body, however, vary across jurisdictions. The major models for providing representation in criminal proceedings include: state-funded counsel programs, assigned counsel and contract model. The state-funded counsel model involves lawyers and support personnel who provide legal representation to the accused on a regular basis<sup>25</sup>. The state-funded counsel model is characterized by the employment of staff lawyers to provide

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<sup>22</sup>Anne Grandjean, No Rights Without Accountability: Promoting Access to Justice for Children Legal Empowerment Working Papers, Paper No.10, 2010.

<sup>23</sup>Sue Burrell, *Juvenile Delinquency: The Case for Specialty Training*, Daily Journal Newswire Articles(2010), P.1.

<sup>24</sup>Marty Beyer, *Developmentally-Sound Practice in Family and Juvenile Court*, Nevada Law Journal (2006), Vol.6, P.1215.

<sup>25</sup>Junius L. Al lison, *Rights and Duties Relationship Between the Office of Public Defender and the Assigned Counsel System*, Valparaiso University Law Review(1976), Vol.10, No. 3, PP. 405 & 420.

representation<sup>26</sup>. State-funded counsels provide legal assistance to eligible persons under legislative criteria for mandatory professional representation. The state-funded counsels' office, in such a model, need to be established as an independent government institution<sup>27</sup>.

The assigned counsel model involves the assignment of criminal cases to private lawyers who are either designated merely because they happen to be present in court at the time the assignment is made<sup>28</sup> or according to their respective areas of expertise<sup>29</sup>. The contract model, on the other hand, involves a contract with a lawyer, a group of lawyers, lawyers' association, or a private nonprofit organization that will provide representation in some or all of the indigent cases in the jurisdiction. Often, the contract is designated for a specific purpose within the indigent defense system such as all cases where the state-funded counsel has a conflict of interest, or a certain category of cases for example juvenile dependencies, through either fixed-price or fixed-fee-per-case contracts<sup>30</sup>. The court appointed counsel system is often supported by a legally imposed duty to provide legal aid<sup>31</sup>. The mixed system, which employs more than one of the above mentioned models at a time, is usually recommended as it encourages a greater number of lawyers in private practice to participate in defence and enables more of them to gain experience in criminal trials<sup>32</sup>.

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<sup>26</sup>Robert L. Spangenberg' and Marea L.Beema, *Indigent Defence Systems in the United State*, Law and Contemporary Problems(1995),Vol. 58, No. 1,P.36.

<sup>27</sup>Anchinesh Shiferaw and Ghetnet Metiku, *The Level of Cooperation and Coordination between the Various Actors: An Assessment of Legal Aid Service in Ethiopia*, Center for Human Rights, Addis Ababa University(2013), P.22 (Unpublished).

<sup>28</sup>Spangenberg' and Beema, *Supra* note 26, P.33.

<sup>29</sup>*Ibid.*

<sup>30</sup>*Id.*,P.34.

<sup>31</sup>Anchinesh and Ghetnet, *Supra* note 27,PP.22-23.

<sup>32</sup>Junius L. Al lison, *Supra* note 25,PP.405 and 420.

### 3. THE RIGHT TO COUNSEL OF CHILDREN IN HUMAN RIGHT INSTRUMENTS RATIFIED BY ETHIOPIA

Human rights instruments are not only guidelines for states, but they also create obligations that require governments to reform their policies and practices to realize human rights for all citizens<sup>33</sup>. All of the instruments dealing with assistance of legal representation in criminal matters do so in the context of provisions that state the right to legal assistance as among the minimum guarantees available in the determination of a criminal charge. Accordingly, a state may provide more protection than the instruments, but it cannot provide less<sup>34</sup>.

Although most instruments do not exclusively deal with children's rights, their guarantee of the rights of 'all persons' does not in any way exclude children. In other words, the rights provided for in these covenants effectively apply to children as well. These covenants at certain instances may also refer to children particularly<sup>35</sup>. Subsequently, we will look at some major international and regional instruments which guarantee the right to representation of children in conflict with the law.

*The International Covenant on Civil and Political Rights (ICCPR)* sets out that in the determination of any criminal charge everyone has the right to representation as among the minimum guarantees to which everyone is entitled in full equality<sup>36</sup>. This provision provides that legal assistance should

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<sup>33</sup>Rioux M and Carbert, *A Human Rights and Disability: The International Context*, Vol 10, NO 2, Journal on Developmental Disabilities(2003),PP1-13.

<sup>34</sup>Richard J. Wilson, *Supra* note 15, P.30.

<sup>35</sup>Eric Ngonji Njungw, *International Protection of Children's Rights: An Analysis of African Attributes in the African Charter on the Rights and Welfare of the Child*, CJDHR(2009), Vol.3 No. 1, P.7.

<sup>36</sup>The International Covenant on Civil and Political Rights (hereinafter the ICCPR), entered into force 23 March 1976, article 14 (3). Available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> <Accessed on 14/12/2015>.

be provided to an accused that does not have counsel 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. According to the general reading of the ICCPR, the right to counsel applies to all stages of criminal proceedings, including the preliminary investigation and pre-trial detention<sup>37</sup>. The ICCPR also calls on state parties to ensure that in criminal proceedings involving juveniles the procedures should take into account their age and the desirability of promoting their rehabilitation<sup>38</sup>.

*The Convention on the Rights of the Child (CRC)* also provides that a child shall be provided with the opportunity to be heard in judicial proceedings affecting them either directly or through representatives<sup>39</sup>. It also proclaims that no child shall be deprived of his/her liberty unlawfully. The convention also guarantees that legal remedies for children deprived of their liberty and allows children to appeal against detention<sup>40</sup>.

*The African Charter on Human and Peoples' Rights (the African Charter)* also states that every individual shall have the right to defence, including the right to be defended by legal representation of his choice<sup>41</sup>. This guarantee in the African Charter has a narrower extent when compared to the international instruments<sup>42</sup>. It did not complement the general standards such as: representation where one cannot afford to hire one; representation in all procedural stages, the right to be provided with a reasonable period of time

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<sup>37</sup>A Basic Guide to Legal Standards and Practice, *Supra* note 16, P.18.

<sup>38</sup>ICCPR, *Supra* note 36, Art 14(4).

<sup>39</sup>The Convention on Child Rights (hereinafter the CRC), (Entered into force 1990), Art 12. Available at: <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>. <Accessed on 14/12/2015>.

<sup>40</sup>CRC, Art 39 (a), (b) and (d).

<sup>41</sup>African Charter on Human and Peoples' Rights (OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)), Art.7(3). Available at: [http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf).

<sup>42</sup>Quynh, *Supra* note 5, P.33.

to prepare defense and etc<sup>43</sup>. However, the Charter provides that states parties should ensure the protection of the rights of the child as stipulated in international covenants<sup>44</sup>.

*African Charter on the Rights and Welfare of the Child (ACRWC)* basically guarantees, with few exceptions, all the rights recognized and protected in the CRC. The ACRWC is criticized for it is absolutely silent on guaranteeing the child's liberty. Unlike the CRC, the ACRWC also misses to guarantee that the arrest, detention, or imprisonment of a child shall be used only as a last resort and for the shortest appropriate period of time. The ACRWC also fails to guarantee legal remedies for children deprived of their liberty as it does not allow children to appeal against detention<sup>45</sup>. The ACRWC, under art. 17(2) (d), guarantees the respect for the child's privacy as it prohibits the press and the public from attending the trial of a child accused of having infringed the law.

There are also other international,<sup>46</sup> and regional<sup>47</sup> instruments which call on governments to allocate sufficient funds to ensure an effective and

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<sup>43</sup>*Id.*, PP.40-41.

<sup>44</sup>Njungwe, *Supra* note 35, P.10.

<sup>45</sup>Michael Gose, *The African Charter on the Rights and Welfare Children* (2002), PP.67-68.

<sup>46</sup>Such as the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (General Assembly Resolution 45/113, Annex, Rule 18(1)), United Nations Standard Minimum Rules for the Administration of Juvenile Justice (General Assembly Resolution No. 40/33, annex), United Nations Guidelines for the Prevention of Juvenile Delinquency (General Assembly Resolution No. 45/112, annex), United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (General Assembly Resolution No. 45/113, annex). For example, the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty provides that juveniles should have the right to legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. The rules also explicitly provide that privacy and confidentiality shall be ensured for such communications (*Available at: <http://www.un.org/documents/ga/res/45/a45r113.htm> <Accessed on 14/12/2015>*).

<sup>47</sup>Principles and Guidelines on the Right to A Fair Trial and Legal Assistance in Africa (The principles provide children with additional special protection in addition to the fair trial guarantees applicable to adults. It provides children accused of crime with the right to be

transparent method of delivering legal aid to children in conflict with the law.

#### **4. THE RIGHT TO COUNSEL OF CHILDREN IN CONFLICT WITH THE LAW UNDER DOMESTIC LAWS**

The right to legal representation was constitutionally recognized in Ethiopia, for the first time, in the 1955 revised constitution. Article 52 of the 1955 constitution provides that an accused shall have the right to legal assistance in all criminal prosecutions if he/she is unable to obtain the same by his own funds. The 1987 PDRE constitution also provides that when a person is charged with serious offence and his inability to appoint a legal counsel is established, the state shall appoint one for him free of charge as determined by law<sup>48</sup>.

*The 1995 FDRE Constitution* considered the right to legal representation as the right of all criminally accused persons to be provided with legal representation of their choice at state expense if they do not have sufficient means to pay for it and miscarriage of justice would result<sup>49</sup>. The Constitution has also guaranteed the right to equality and equal protection

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provided by the state with the assistance of a legal representative and/or other appropriate assistance in the preparation and presentation of his or her defence. It also allows the participation of his or her parents, a family relative or legal guardians during the proceedings, if found appropriate and is in the best interests of the child. It also enables youths considered to have infringed the criminal law to have the decision and measures imposed on them reviewed according to law. It further necessitates the privacy of such proceedings to be fully respected at all stages. The principles also dictate that no child below the age of 15 shall be arrested or detained on allegations of having committed a crime (*Christof Heyns and Magnus Killander (ed), Compendium of Key Human Rights Documents of the African Union (Fourth Edition), Principles and Guidelines on the Right to A Fair Trial and Legal Assistance in Africa (2003), 2010, PP.384-389*). *The African Youth Charter* (adopted in Banjul on 2 July 2006, entered into force on 8 August 2009) under Art. 18 also provides that convicted young people should be entitled to lawyer.

<sup>48</sup>The PDRE Constitution, 1987

<sup>49</sup>Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/ 1995, *Federal Negarit Gazeta* (hereinafter the FDRE Constitution), 1995, Art 20(5).



under the law, and it has explicitly prohibited discrimination on any ground<sup>50</sup>. The Constitutions differ on the criterion they establish as regards the kind of offence to which state-funded counsel is appointed. The 1955 revised constitution, unpredictably, is the only Ethiopian Constitution which has explicitly extended the right to all kinds of criminal prosecutions. To the contrary, the 1987 Constitution has unequivocally limited the right to serious offences. The 1995 FDRE Constitution provides that the state bears the responsibility to appoint state funded counsel only if miscarriage of justice would result. This way of putting the standard gives more discretion to the courts to determine when miscarriage of justice is said to occur.

On the other hand, these different constitutions, including the 1995 Ethiopian Constitution are silent as regards the stage to which the right to state-funded counsel applies. However, from the provisions of the FDRE Constitution, one may argue that the right to state-funded counsel is provided only after accusation and lasts only until conviction. The right to legal representation is incorporated in the Constitution under two provisions, articles 20 and 21, which deal with the rights of persons accused and persons held in custody and convicted respectively. It is only in the former provision that the right to state-funded counsel is provided. Therefore, since it is not provided under the latter provision, which declares the rights of persons held in custody and convicted; one may argue that the right to state-funded counsel, under the 1995 FDRE Constitution, does not extend to the investigation and post-trial stages.

*The National Criminal Justice Policy of Ethiopia* has also recognized the need to offer special legal protection to the rights of children in conflict with

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<sup>50</sup>Hussein Ahmed Tura, *Indigent's Right to State Funded Legal Aid in Ethiopia*, International Human Rights Law Review(2013), P.131.

the law. The policy dictates the investigating police officers to explicitly inform arrested persons about the opportunity they have with regard to the right to counsel<sup>51</sup>. The policy has also included that children in conflict with the law cannot be compelled to plead guilty or be subjected to cross-examination. Further more, the policy demands the establishment of special benches to handle cases involving children in conflict with the law, as well as special investigation and prosecution units for monitoring and investigating youth crime<sup>52</sup>. The policy has also indicated that children in conflict with the law should not be subjected to ordinary criminal charges unless it is found important due to the special character or the seriousness of the offence<sup>53</sup>. Unlike other domestic legislations, the policy provides that any person suspected of committing crime can be represented by counsel of his own choice at all stages of the proceedings. It has also included that the competence, independence and impartiality of the counsels should be ensured. The policy repeats the constitutional provision that provides the right to get state funded counsels to indigents where the interest of justice requires<sup>54</sup>. Surprisingly, the criminal policy, unlike most modern legislation, has not guaranteed children in conflict with the law with the unconditional right to state funded counsel.

*The Ethiopian Criminal Procedure Code* has also granted that any person detained on arrest or on remand shall be permitted forth with to call and interview his advocate<sup>55</sup>. Moreover, this law has provided a special procedure in cases concerning children in conflict with the law. It explicitly

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<sup>51</sup> Federal Democratic Republic of Ethiopia Criminal Justice Policy (hereinafter Criminal Policy) (2011), P.41.

<sup>52</sup>Criminal Policy, *Id*, P.48.

<sup>53</sup>Criminal Policy,P.48.

<sup>54</sup>Criminal Policy, PP.41-42.

<sup>55</sup>The 1961 Criminal Procedure Code of Ethiopia (hereinafter Criminal Procedure Code), Art.61.

provides that ‘*the court shall appoint advocate to assist young persons where: (a) no parent, guardian or other person in loco parentis appears to represent the young person, or (b) the young person is charged with an offence punishable with rigorous imprisonment exceeding ten years or with death*’,<sup>56</sup>.

*The Revised Constitution of Oromia Regional State*, like other state constitutions, incorporates a word for word copy of the FDRE Constitution as far as the right to legal representation is concerned. Moreover, there is no law in Oromia which exclusively governs the defense service. However, few provisions applicable to the defense service and state-funded counsels were included in various proclamations, regulations and directives issued to govern the role of courts and judges. The following discussions will present the subsidiary laws in the region relevant to the defense service.

*The Oromia National Regional State Proclamation to Provide for the Re-establishment of Oromia National Regional State Courts, Proclamation No. 141/2008*, stipulates that the court shall assign a legal representation to an individual who is accused of a crime punishable with rigorous imprisonment not less than 5 years<sup>57</sup>. The minimum 5 year period of incarceration set in the proclamation to establish the ‘miscarriage of justice’ standard can be considered as less stringent when compared to the one established in the federal laws, as noted above. However, one may still argue that to satisfy the interests of justice standard, it would not be sound that a person should face serious charges such as capital punishment and life imprisonment.

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<sup>56</sup> Criminal Procedure Code, Art.174.

<sup>57</sup>The Oromia National Regional State Proclamation to Provide for the Re-establishment of Oromia National Regional State Courts, Proclamation 141/2008, Art.17 (2).

*A Regulation to Govern the Code of Conduct of the Judges and Appointees of the Commission, Regulation No. 2/2009*, offers that state-funded counsels may be held responsible for failing to effectively serve the clients<sup>58</sup>. The regulation has also provided that the state-funded counsels may be held liable for non-appearance on work time and non-performing of duties given to him/her without good cause<sup>59</sup>. Failing to keep the confidentiality of client's information is also considered by the regulation as a violation of rule ethics for defence counsels. The regulation also requires the counsels to have background of legal education, fair knowledge and skill of law, high ethical standard. Outstandingly, the regulation has also conveyed that the counsels are not allowed to be a member of political organization<sup>60</sup>. Undoubtedly, this provision aims at ensuring conflict-free representation. The regulation further articulates that defence counsels may be dismissed from work if he/she is proved to lack the necessary knowledge, skill or professional ethics<sup>61</sup>.

## **5. PRINCIPLES FOR PROVIDING EFFECTIVE REPRESENTATION THROUGH PUBLIC DEFENSE DELIVERY SYSTEMS**

### **5.1. GENERAL PRINCIPLES FOR PROVIDING EFFECTIVE DEFENSE SERVICE**

The right to be represented assumes that the representation must be effective. So, the right demands more than placing a warm body with a legal lineage

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<sup>58</sup>Judges and Appointees of the Commission Code of Conduct issued by Oromia Supreme Court, Regulation No. 2/2009 (hereinafter Code of Conduct), Art.11.

<sup>59</sup>*Ibid*, Arts. 35 and 39 respectively.

<sup>60</sup>*Id*, Art. 11.

<sup>61</sup>*Id*, Arts. 55 and 56.

next to a child in conflict with the law<sup>62</sup>. In other words, state-funded counsels are duty bound to deliver efficient, high quality, ethical, conflict-free representation to accused persons<sup>63</sup>. To provide such an effective representation states need to work to ensure the independence of the service, manage workloads, avoid delay of appointment or interruption of representations, ensure effective communications, act with reasonable diligence and zeal.

The public defense functions, including its selection and funding, and etc. should be independent from any influence. Various instruments including the UN Basic Principles on the Role of Lawyers have also recognized that legal assistance needs to be carried out independently<sup>64</sup>. States should not intervene in the defence function unless it is found important to pledge effective assistance where the failure to provide effective assistance is manifested and sufficiently brought to their attention<sup>65</sup>.

To guarantee quality of representation, workloads should also match counsel's experience, training, and expertise. A counsel should accept only those cases that he/she has sufficient time and skills to handle effectively<sup>66</sup>. Legal counsel's workload should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations<sup>67</sup>. The other important thing which helps to ensure the quality of representation is prompt appointment of counsel. Counsel shall be made

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<sup>62</sup>Richard G. Singer, *Supra* note 9,P.251.

<sup>63</sup>Scott Wallace and David Carroll, The Implementation and Impact of Indigent Defense Standards National Legal Aid and Defender Association,A Research Report Submitted to the U.S. Department of Justice (2003), P.11.

<sup>64</sup>International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, *supra* note 16,P.62.

<sup>65</sup>Richard J. Wilson, *Supra* note 13,P.34.

<sup>66</sup>*Ibid*

<sup>67</sup>Wallace and Carroll, *Supra* note 63,PP.17-18.

available at the earliest opportunity<sup>68</sup>. Appointment of legal counsel should be prompt and should occur before trial on custodial interrogations and preliminary hearings<sup>69</sup>.

Effective representation also requires continuous and uninterrupted representation by the same lawyer from initial assignment through the trial and sentencing. Involving different counsels may render the service ineffective as it inhibits the establishment of a lawyer-client relationship and fosters in lawyers lack of accountability and responsibility for the outcome of cases<sup>70</sup>. The existence of effective communication is the other most important thing which helps to realize quality representation. The counsel has the responsibility to keep the client informed as to the progress of the case<sup>71</sup>. The legal counsel, to render valuable assistance, must be able to communicate with the accused in conditions giving full respect for the confidentiality of their communications<sup>72</sup>. In order to enable the lawyer and his/her client to have valuable dialogue and for the full exchange of legal, procedural and factual information between them, they should be provided sufficient time and a confidential space<sup>73</sup>.

Most importantly, lawyers should act with reasonable diligence and zeal to accomplish the clients' objectives. This includes lawyers' commitment to search for any means to defend and promote the interest of their client. Diligence is actively pursuing matters on the client's behalf and avoiding delays and postponements while zeal refers to pressing for every reasonable advantage that should be pursued. Therefore, a lawyer should pursue a

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<sup>68</sup>*Id*,P.16.

<sup>69</sup> *Ibid*.

<sup>70</sup>*Id*,P.14.

<sup>71</sup>Richard J. Wilson, *Supra* note 13, P.34.

<sup>72</sup>*Id*,P.36.

<sup>73</sup>Wallace and Carroll, *Supra* note 63,P.17.

matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and to take whatever lawful and ethical measures are required to vindicate a client's cause or endeavour. Accordingly, a defense lawyer, beyond taking all the decisions that involve tactics and trial strategy, is required to conduct appropriate investigations, both factual and legal, to determine what matters of defence can be developed<sup>74</sup>. The counsel should also apply every measure prescribed by law, to clarify all details so as to prove the innocence of the children in conflict with the law.<sup>75</sup>

## **5.2. DEFENSE SERVICE FOR CHILDREN IN CONFLICT WITH THE LAW**

### **a. The Role of Counsel in the Representation of Children in Conflict with the Law**

The issue of the proper role of the child's counsel is central to and critical in child welfare proceedings<sup>76</sup>. There are three different approaches on the role of the child's counsel in the legal representations. The first approach is the best interests model. The counsel's role in this approach is to determine and express to a court what is in the *best interests* of a particular child in a particular proceeding<sup>77</sup>. In this approach, children are considered to have apparent inability to adequately direct their lawyers<sup>78</sup>. Therefore, in this model, the lawyer advocates for what he/she believes is in the child's best interest, after reviewing objective evidence<sup>79</sup>. In other words, the lawyer

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<sup>74</sup>Junius L. Al lison,*Supra* note 25, P.419.

<sup>75</sup>Luong Thi My Quynh,*Supra* note 5,P.59.

<sup>76</sup>Melissa L. Breger, *Against the Dilution of a Child's Voice in Court*, Ind. Int'l & Comp. L. Rev. (2010), Vol. 20, No.2, P.181.

<sup>77</sup>*Id*,P.182.

<sup>78</sup>Aditi D. Kothekar, *Refocusing the Lens of Child Advocacy Reform on the Child*, Washington University Law Review (2008),Vol. 86, Issue 2, P.493.

<sup>79</sup>*Id*,P490.

steps into the child's position, gathers information from the child and the child's surroundings, and then reaches at his own conclusions as to what is best for the child. This approach is also condemned for allowing the youth's lawyer a wide-ranging and uncontrolled discretion in determining what is in a particular child's best interests<sup>80</sup>.

The second model is the *client-directed approach*. This approach is also known as direct or true advocacy approach. In this model, the lawyers limit themselves to representing the child's *legal interests*. To do this, the lawyer is expected to examine the child in his/her context and investigate his/her unique family and personal environment<sup>81</sup>. The lawyer's role is seen as being the child's mouthpiece and voice in the courtroom. The lawyers, in this approach, try to treat their youth clients in a similar way as they represent an adult client<sup>82</sup>. The lawyers should also follow the directives of their child clients regarding the goals they hope to achieve with representation<sup>83</sup>. The lawyer is required to have faith in the child's wisdom and identity<sup>84</sup>. Therefore, this model focuses on how to advance the child's decision making<sup>85</sup>. This approach aims at helping the client to make informed decisions that the lawyer should then honor.

There is also a third approach known as the *hybrid model* in which a counsel simaltenously plays the roles that the lawyers in the aforementioned models play. Some writers also argue that the dichotomy between client-directed lawyering and best interest lawyering is unnecessary, as it causes role

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<sup>80</sup>Melissa L. Breger, *Supra* note 76, P.183.

<sup>81</sup>*Id*,P.190.

<sup>82</sup>*Id*,P.185.

<sup>83</sup>Suparna Malempati, *Beyond Paternalism: The Role of Counsel for Children in Abuse and Neglect Proceedings*, University of New Hampshire Law Review(2013),Vol. 11, No. 1, P.106.

<sup>84</sup>Melissa L. Breger, *Supra* note 76, P.193

<sup>85</sup>Aditi D. Kothekar, *Supra* note 78, P.483.



confusion and leads to ineffective lawyering<sup>86</sup>. According to the supporters of this idea, lawyers should act as lawyers and should advocate for their clients' counseled positions<sup>87</sup>.

The CRC or other instruments on child rights does not explicitly suggest none of these approaches for youth representation. However, some writers argue that the essence of the CRC is more akin with a client-directed approach as it provides the child the opportunity to be heard in all judicial proceedings affecting their right and that their views be given due weight in accordance with their age and maturity<sup>88</sup>.

#### **b. Specific Principles in the Delivery of Effective Representation to Children in Conflict with the Law**

A lawyer owes to his youth client all the duties that he/she owes to an adult offender. However, the requisite skill set for competent juvenile delinquency defense is considerably broader than the one needed for adult criminal defense<sup>89</sup>. That is why it is indispensable to organize a specialized free defense systems to provide children with competent assistance and to ensure that their right is fully realized<sup>90</sup>. Moreover, it is remarkable to ensure that child friendly legal assistance is of high quality and that it is effective. In other terms, the legal assistance given to children in conflict with the law should be competently performed in accordance with high professional and ethical standards. To be considered effective, the defense counsel services should positively impact the lives of the youth clients. To realize high quality child friendly legal assistance, it is important to establish professional standards for legal assistance providers. The defense service

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<sup>86</sup>Suparna Malempati, *Supra* note 83, P.120.

<sup>87</sup>*Id.*, P.118.

<sup>88</sup>CRC, *Supra* note 39, Art. 12.

<sup>89</sup>Sue Burrell, *Supra* note 23, P.1.

<sup>90</sup>Gerison Lansdown, *Supra* note 11, P.67.

providers also need to have special trainings which focus on the unique needs and maturity of youth clients<sup>91</sup>. The following discussion will try to identify the core extra competencies needed for the provision of child friendly legal assistance.

*Interviewing child clients* is among the most significant competence that a delinquent youth counsel should have. Interviewing aims at enabling the child to participate in his/her own proceedings. To realize this, hearings of a child in conflict with the law should be conducted behind closed doors<sup>92</sup>. This may also include enabling any reports to be handled privately. Such an approach may help to limit the awkwardness that may occur to youth clients from court involvement and to build a relationship of trust between client and the counsel. A youth counsel need to have the ability to interview and counsel children which heavily relies on his or her ability to communicate in a developmentally appropriate way. Youth counsel should be familiar with a child's cognitive and emotional capacity<sup>93</sup>. Youth counsel should also be aware that clients need not hear diagnoses they would not understand<sup>94</sup>. Moreover, the counsel must have the skills to explain complex legal principles to their clients in an understandable way<sup>95</sup>. It is also impossible for a youth counsel to win greater trust unless they spend more time with their clients because youth feel that they are ignored or overlooked when their contact with their lawyer is loose.<sup>96</sup> Therefore, counsel should frequently

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<sup>91</sup>T. Geraghty and D. Geraghty, *Supra* note 2, P.16.

<sup>92</sup>Gerison Lansdown, *Supra* note 11, P.68.

<sup>93</sup>T. Geraghty and D. Geraghty, *Supra* note 2, P.21.

<sup>94</sup>Judith B. Jones, Access to Counsel, *Juvenile Justice Bulletin*(2004), P.15.

<sup>95</sup>Sue Burrell, *Supra* note 23, P.1.

<sup>96</sup>Theresa Hughes, *Professional Responsibility for Children's Advocates*, St. John's University Legal Studies Research Paper Series(2007), Paper 06-68, P.562.

contact his young client between court dates because youth need such contacts mainly as they are developmentally immature<sup>97</sup>.

*Ability to perceive and appropriately address a young client's fears and anxieties* is very important for defense counsels to work effectively with the client.<sup>98</sup> Adolescents have immature thinking and their decision-making is also believed to be compromised when they are scared.<sup>99</sup> Youth have a significantly poorer understanding of their role in their legal proceedings and have lower cognitive capacities particularly in stressful situations than adults.<sup>100</sup> Youth counsel need to have the skill to treat such fears to ensure high-quality representation.

*Ensuring the client's and his/her family's participation in the representation* is youth lawyers' primary responsibility.<sup>101</sup> Counsels of young clients must be aware of impairments which could impact client-attorney communication such as speech and language impairments and/or other disabilities which may directly or indirectly influence the client's ability to meaningfully participate in his or her defense. These impairments could affect the youth's competence to stand trial and ability to assist counsel.<sup>102</sup> The juvenile proceedings also require counsel to engage youth families. Participation of parents is most effective when counsel explains and maintains clear role boundaries.<sup>103</sup> However, counsel may not involve the client's parent and

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<sup>97</sup>Viljoen & Roesch,*Supra* note 97,P.723.

<sup>98</sup>Peter E. Leone et al., Understanding the Over-representation of Youths with Disabilities in Juvenile Detention(1995),P.389.

<sup>99</sup>Marty Beyer,*Supra* note 24, P.1227.

<sup>100</sup>Theresa Hughes,*Supra* note 96,P.565.

<sup>101</sup>*Ibid.*

<sup>102</sup>Michele LaVigne & Gregory Van Rybroek, *Breakdown in the Language Zone: The Prevalence of Language Impairments Among Juvenile Adult Offenders and Why It Matters*, U.C. Davis J. Juv. L. & Pol'y (2011) , Vol 15, P.37.

<sup>103</sup>Sue Burrell,*Supra* note 23,P.1.

other third parties when such a relation causes conflicts of interest<sup>104</sup> or significantly impacts a youth's ability to make decisions<sup>105</sup>.

Elements necessary for quality counsel also includes the access to experts who can help them with youth development issues such as social workers and child psychologists.<sup>106</sup> These experts will support the counsels in making valid assessments about treatment, education, social services, alternatives to incarceration and other options that they should recommend to judges.<sup>107</sup> The juvenile defense counsels should also play important roles at different stages of criminal proceedings. The discussion which follows presents the major extra roles that youth counsels should play at different phases of delinquency proceedings.

*During the pretrial phase*, the youth counsel is duty-bound to do his utmost to keep the case in the juvenile court and to resist any claim which requests the transfer of the juvenile's case to be heard in criminal/adult court<sup>108</sup>.

*During the interrogation process* counsel should attend the investigatory actions including in the collection and preservation of evidence. This will give special protection to the youth clients and promotes the observance of their constitutional rights<sup>109</sup>. The need to provide the special protection arises from the fact that young people are more susceptible to coercion than adults<sup>110</sup>.

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<sup>104</sup>Cynthia Godsoe, *All in the Family: Towards A New Representational Model for Parents and Children*, Geo. J. Legal Ethics (2011), Vol. 24, P.303.

<sup>105</sup>Barbara Fedders, *Losing the Guiding Hand: Ineffective Assistance of Counsel in Juvenile Delinquency Representation*, Lewis & Clark L. Rev. (2010), Vol 14, P.771.

<sup>106</sup>Judith B. Jones, *Supra* note 94, P.15.

<sup>107</sup>*Ibid.*

<sup>108</sup>*Id.*, P4.

<sup>109</sup>Randy Hertz *et al.*, Trial Manual for Defense Attorneys in Juvenile Court (1991), P.55.

<sup>110</sup>Kaitlyn McLachlan *et al.*, *Examining the Role of Interrogative Suggestibility in Miranda Rights Comprehension in Adolescents*, Law & Hum. Behav. (2011), Vol. 35, P.165.

*During the plea entering*, the counsel is required to ensure that the client makes a carefully considered choice in accepting or rejecting the plea<sup>111</sup>. Counsel should enable their youth clients to plead guilty only after understanding its implications<sup>112</sup>. Counsel should ensure that the young client know the inherent collateral consequences of a delinquency adjudication and how an investigation may help the case. For this purpose, the counsel is required to deliver a balanced description of potential benefits and risks of pleading guilty<sup>113</sup>.

*During the disposition hearing*, youth counsel is required to recommend the most appropriate sanctions and rehabilitative services for his clients. The counsel is expected to articulate all aspects of each disposition option to the client in order to guide the client toward an informed decision<sup>114</sup>. Youth counsel should also maintain regular contact with the client prior to the hearing to avoid the anger that befalls their client by the decision on disposition<sup>115</sup>.

The counsel may provide different evidences to the court on his youth client's educational, medical and other status which he/she thinks can influence the court's decision.<sup>116</sup> The counsel should help the client to opt for a disposition plan that is the least restrictive.<sup>117</sup> As many juvenile delinquents face a complex set of problems that go beyond legal issues, the involvement

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<sup>111</sup> Abbe Smith, *The Challenges in Counseling Young People Facing Serious Time*, Rutgers L. Rev. (2007), Vol. 60, P.11.

<sup>112</sup> Judith B. Jones, *Supra* note 94, P. 5.

<sup>113</sup> Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities be Notified?* N.Y.U. L. Rev. (2004), Vol. 79, P.520.

<sup>114</sup> Tom R. Tyler, *What Is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures*, Law & Soc'y Rev. (2005), Vol. 22, PP.103-135.

<sup>115</sup> Judith B. Jones, *Supra* note 94, P.5.

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

<sup>117</sup> Angela Irvine, 'We Have Had Three of Them': *Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System*, Colum. J. Gender & L. (19) (2010), P.675.

of social workers is critical.<sup>118</sup> Children require the assistance of the social workers as they may have long histories impaired social functioning caused by psychological, neurological and family problems. Because of their training and education in areas such as human behavior and social welfare, social workers are better than attorneys to provide services such as evaluating and determining the child client's needs and referring clients to appropriate agencies<sup>119</sup>. Moreover, the counsel should work to enable his youth client to get the opportunity to appeal against the decision when he/she is adjudicated delinquent<sup>120</sup>. The youth counsel should represent the client after disposition to ensure that the client receives the disposition and services ordered by the court<sup>121</sup>.

## **6. THE IMPLEMENTATION OF THE RIGHT TO STATE FUNDED COUNSEL FOR CHILDREN IN CONFLICT WITH THE LAW: CASE STUDY IN ADAMA**

According to the 2007 census, Adama has 220,212 population. From this, 39,652 people are aged 0-5. Youth population who are from 10-19 years old are 55,138, people more than 19 are 125, 422<sup>122</sup>. This shows that children who can have criminal responsibility account for not less than 25% of the total population of the town. This fact presupposes the presence of strong youth defence system, so that these large numbers of underprivileged people who reside in the Zone are not blocked from using the legal systems

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<sup>118</sup>Lisa A. Stranger, *Conflicts between Attorneys and Social Workers Representing Children in Delinquency Proceedings*, Fordham Law Review, Vol 65, No 3, P.1131.

<sup>119</sup>*Id.*, P.1133.

<sup>120</sup>Gerison Lansdown, *Supra* note 11,P.68.

<sup>121</sup>Sandra Simkins,*Out of Sight, Out of Mind: How the Lack of Post-dispositional Advocacy in Juvenile Court Increases the Risk of Recidivism and Institutional Abuse*, Rutgers Law Review(2007), Vol. 60, P.207.

<sup>122</sup>The 3<sup>rd</sup> Ethiopia National Population and Housing Census, 2007, P.561.

effectively and appropriately. To realize this, Adama Special Zone High Court has set up a child friendly bench which aims at entertaining cases in which children are involved either as alleged criminals or as victims of crime. The child friendly bench has employed a social worker and it engages judges and counsels who work on the regular criminal bench of the court. In other terms, the regular criminal bench judges and counsels, by default, serve the child friendly bench in resolving cases of children in conflict with the law. The state-funded counsels' office involves 2 defense counsels who are assigned to handle cases in the discretion of the bench<sup>123</sup>. The following discussion will demonstrate the implementation of the right to counsel in Adama Special Zone High Court Child-Friendly Bench.

## **6.1. THE RIGHT TO BE INFORMED ABOUT THE RIGHT TO COUNSEL**

At odds with the duties provided by the Ethiopian criminal policy and international instruments to which Ethiopia is a party, the investigating police officers do not explicitly inform the children in conflict with the law about the opportunity they have with regard to the right to counsel<sup>124</sup>. Courts similarly fail to inform the children about the right to state funded counsel<sup>125</sup>. Consequently, some children in conflict with the law hire a private lawyer,

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<sup>123</sup>Chala Diro, Adama Special Zone High Court President, Interviewed 18/12/2014.

<sup>124</sup>Getnet Shiferaw, detainee in Adama Juvenile Home (12 years old), interviewed 14/12/2014;Anteneh Alemu, detainee in Adama Juvenile Home (14 years old), interviewed 14/12/2014.

<sup>125</sup>Yohanis Girma,detainee in Adama juvenile home (14 years old), interviewed 11/12/2014; Hailemarim Sharo, detainee in Adama juvenile home (14 years old), interviewed 12/12/2014. However, in one case, the Federal Supreme Court Cassation Division has stated that judges cannot disregard their duty to respect and enforce fundamental rights and freedoms of individuals incorporated in the constitution, including the right to counsel. According to the cassation bench, the right to counsel also includes the right to be informed about the right. This imposes on the judges the duty to explicitly inform arrested and accused persons about the right to counsel and to take actions when it finds that the counsel is incompetent(See *Hussen Ali Vs the Somali Regional State Prosecutor, Federal Supreme Court, Cassation Bench, File No. 37050, Vol. 9,P160*).

with excessive hardship, as they lack the awareness as to the presence of state-appointed counsel<sup>126</sup>. While large number of them is forced to navigate the complexities of the justice system without the help of counsels<sup>127</sup>.

## 6.2. PARTICIPATION OF THE CHILD

The basic role and responsibilities of counsels who represent children in conflict with the law remain unclear. The children lack the power to monitor their counsels' representation. The children represented by the counsels declare that the counsels do not provide them a clear explanation of the role of both the client and counsel<sup>128</sup>. This, obviously, has allowed for excessive discretion by the counsel in the representation. However, the counsels try to encourage the participation of the children in conflict with the law in certain phases. For example, a child in conflict with the law can decide whether to plead guilty or not, after consultation with the counsel<sup>129</sup>. In short, the counsels fail to encourage the client's full participation, especially, during the prosecution and defense witness hearings.

The counsels, in most cases, feel that they can determine the best interest of the child themselves and are not determined to get the expressed interests of their clients to reach at conclusions<sup>130</sup>. Beyond deciding the method and manner of conducting the defense, the counsels are also exercising a wide-ranging discretion in determining what is in a particular child's best interests<sup>131</sup>. The counsels also do not discuss options available to their child

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<sup>126</sup>Biruk Tsegaye, detainee in Adama Juvenile Home (15 years old child charged for committing the crime of rape), interviewed 15/12/2014.

<sup>127</sup>Abuna Alo, Adama Special Zone High Court state-funded counsel, interviewed 18/12/2014; Chala Diro, *Supra* note 123.

<sup>128</sup>Gelana Tegene, detainee in Adama juvenile home (13 years old child charged for committing rape), interviewed 18/12/2014;.Anteneh Alemu, *Supra* note 124.

<sup>129</sup>Anteneh Alemu and Gelana Tegene, *Supra* note 124 and 128 respectively.

<sup>130</sup>Shimelis Balcha, Judge at the Adama Special Zone High Court, interviewed 19/12/2014; Badritemam Umar, Judge at the Adama Special Zone High Court, interviewed 19/12/2014.

<sup>131</sup>Chala Diro, *Supra* note 123.



clients nor do they try to explain them legal issues which they cannot understand<sup>132</sup>. Moreover, the counsels do not involve the child clients' parent and other third parties<sup>133</sup>. Some contacted children said the counsel did not require working with the children's parent even though their parents were available in courts during the hearings<sup>134</sup>. The counsels also admit that they work jointly with the client's parent only when the initiation comes from the latter<sup>135</sup>.

### **6.3. COMMUNICATION BETWEEN COUNSELS AND THEIR CHILD CLIENT**

The counsels do not consider the maturity of their child clients while communicating them<sup>136</sup>. Even though the court has a social worker who can assist the counsels in this regard, there is no teamwork among these professionals to provide effective service to the child clients. The court has engaged the social worker to assist only the children who are victims of crime and she does not have any role in the delinquency hearings<sup>137</sup>. There are children in conflict with the law who could not understand the working language of the court, but the counsels do not work to overcome such barriers that constrain their clients from fully understanding the judicial proceedings by requiring the court to appoint interpreters<sup>138</sup>.

Moreover, the counsels do not conduct a full-scale interview with the child client upon first meeting. In most cases, the counsels meet the children in conflict with the law and try to acquire information from them in the court

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<sup>132</sup>Anteneh Alemu and Gelana Tegene, *Supra* note 124 and 128 respectively.

<sup>133</sup>Shimelis Balcha and Badritemam Umar, *Supra* note 130.

<sup>134</sup>Anteneh Alemu and Gelana Tegene, *Supra* note 124 and 128 respectively.

<sup>135</sup>Abuna Alo, *Supra* note 127.

<sup>136</sup>Chala Diro, *Supra* note 123.

<sup>137</sup>Emebet Haile, Adama Special Zone High Court social worker, interviewed 11/12/2014; Chala Diro, *Supra* note 123.

<sup>138</sup>Anteneh Alemu and Emebet Haile, *Supra* note 124 and 137.

room<sup>139</sup>. The counsels try to represent their child clients having such a little information which is insufficient to mount an adequate defense<sup>140</sup>. Only in rare cases, the counsels may request the court, when they fail to understand the situation of the case, to allow them to have discussions with his client outside the court room<sup>141</sup>.

The contacted children also say that counsels do not maintain regular and sufficient contact with them. In most cases, the counsel will meet his child client only on plea entering, witness hearing, and at sentence or dispositional hearing<sup>142</sup>. Apparently, this greatly undermines their confidence in the quality of counsel's representation. Also, the counsels do not contact their child clients, prior to court hearings, to remind them the objectives of the hearing and the expectations of the client and counsel at the hearing<sup>143</sup>. However, few children released on bail have come to the counsels' office, by their own motive, to consult the counsels before trial. Those children who live in the juvenile home have no chance to have such an interaction with their counsels. The court does not feel that it has responsibility to arrange either phone contacts or other face-to-face meetings for children under detention<sup>144</sup>.

The counsels, sometimes, fail to provide continuous representation in their child client's proceeding even though the majority of cases are handled continuously by a state-funded counsel<sup>145</sup>. It was observed from case files in

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<sup>139</sup>Gelana Tegene, *Supra* note 128;Anteneh Alemu, *Supra* note 124.

<sup>140</sup>Shimelis Balcha and Badritemam Umar, *Supra* note 130.

<sup>141</sup>Abuna Alo, *Supra* note 127.

<sup>142</sup>Anteneh Alemu, *Supra* note 124.

<sup>143</sup>Gelana Tegene, *Supra* note 128;Anteneh Alemu,*Supra* note 124.

<sup>144</sup>Abebe Teshome (Commander), Adama Juvenile Home, Prisoners' Rehabilitation Core Process Owner, interviewed 05/04/2007; Abuna Alo,*Supra* note 127.

<sup>145</sup>Chala Diro,*Supra* note 123.

the court that various lawyers handle a child client's case interchangeably<sup>146</sup>. Some contacted children tell that different counsels represent them from initial assignment through the trial and sentencing,<sup>147</sup> while there are also others who were represented by the same counsel throughout the proceedings<sup>148</sup>. Besides, the documentation may not be clear and up-to-date to permit a successor counsel to easily locate all information<sup>149</sup>.

#### 6.4. THE CONFIDENTIALITY OF THE PROCEEDINGS

The counsels do not contend to keep any reports or delinquency proceedings to be private.<sup>150</sup> Contacted children also reveal that their hearings were conducted in court rooms where their parents<sup>151</sup> or other people<sup>152</sup> attend. Moreover, the children say that the counsels do not clarify them that their private conversations with counsel are protected from disclosure to anyone<sup>153</sup>. There is also no confidential space within which the children in conflict with the law can meet with their counsel in courts and in detention places<sup>154</sup>.

#### 6.5. TRAINING, RESOURCE AND CASELOADS OF THE COUNSELS

Eventhough training is an important ingredient for increasing the knowledge and skills of child counsels, this study finds that such trainings rarely take place. The intermittent on-job trainings they get also do not give attention to

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<sup>146</sup>Public Prosecutor Vs.Birhan Kebede (17 years old), Adama Special Zone High Court, File Number 15452.

<sup>147</sup>Gelana Tegene, *Supra* note 128.

<sup>148</sup>Anteneh Alemu, *Supra* note 124.

<sup>149</sup>Chala Diro, *Supra* note 123.

<sup>150</sup>Shimelis Balcha and Badritemam Umar, *Supra* note 130.

<sup>151</sup>Gelana Tegene, *Supra* note 128.

<sup>152</sup>Anteneh Alemu, *Supra* note 124.

<sup>153</sup>Abuna Alo, *Supra* note 127.

<sup>154</sup>Observation of Adama Special Zone court room and the juvenile home, 18/12/2014.

the skills of counsels and on how to provide effective delinquency representation<sup>155</sup>. Furthermore, there are cases in which the court has employed other staff members who are not appointed as state-funded counsels. When the state-funded counsels are not available, the court employs *legal officers*<sup>156</sup> to substitute the state-funded counsels. As the legal officers are not trained in the profession, it is clear that they may carry out only nominal representation<sup>157</sup>.

Additionally, the court could not create an environment in which counsels have access to sufficient resources. The court has no budget appropriation distributed explicitly to defence service. Thus, the defence office is not self-reliant and is dependent up on the budget and the will of the court for any of its need<sup>158</sup>. The state-funded counsels do not have access to basic office tools such as computer and internet access, secretarial and other support services and the defense counsels share a common room which jeopardises the privacy of clients who may come to their office<sup>159</sup>. Likewise, there is no funding for expert witnesses, forensic labs, etc. It is the child in conflict with the law who is expected to cover these costs when such evidence is required<sup>160</sup>. Similarly, there is no funding for the work the counsels could perform out of court such as visiting the crime scene where it is important to prepare for defence.<sup>161</sup>

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<sup>155</sup>Negera Kenatie, public defender of Adama Special Zone High Court, interviewed, 16/04/2014.

<sup>156</sup>*Legal officer* is a position in the regional court structure to substitute the function of registrar provided by the Civil Procedure Code.

<sup>157</sup>Negera Kenatie, *Supra* note 155.

<sup>158</sup>Negera Kenatie, *Supra* note 155; Adama Special Zone High Court Annual Performance Report, 2014.

<sup>159</sup>Observation of Adama Special Zone High Court Counsel's Office, 17/04/2014.

<sup>160</sup>Chala Diro, *Supra* note 123.

<sup>161</sup>Negera Kenatie, *Supra* note 155.

There are also no set standards for workloads. There is no mechanism to monitor that the workloads should not be excessively high. Even though the workload of the defence office is not so outsized<sup>162</sup>, it is, however, oppressive as it does not match counsel's training and expertise. The state-funded counsels are also busy with the extra works given to them which might even exceed their ordinary work.<sup>163</sup> This extra work has hindered the counsels from having adequate preparation to maintain competence. Moreover, there is no law which enable the counsels to reject an extra work that hinders them from providing effective defence services<sup>164</sup>.

## 6.6. SUPERVISION FOR QUALITY AND EFFECTIVENESS

Remarkably, the court has employed no system to supervise the quality of the state-funded defense service as a whole and of the delinquency representation in particular<sup>165</sup>. This shows that the delivery of defence service did not gain proper consideration in the court. As the Court is drained with its routine judicial activity and gives its premier emphasis on this task, it was not committed to ensure the effectiveness of the state-funded defence service to children in conflict with the law.

Even though most children in conflict with the law feel that their counsels are not meeting the ethical standards, they refrain from presenting their grievances to the court as they do not think that they have recourse.<sup>166</sup> Thus, there was no complaint which came to the court on the service delivered by

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<sup>162</sup>Abuna Alo, *Supra* note 127.

<sup>163</sup>The state-funded counsels are also burdened with other several extra works in the court. These include participation in various teams clustered by the court to carry out various functions including: ethics committee, employee recruiting committee, bidding committee and etc. (Adama Special Zone High Court Yearly Performance Report 2013/14).

<sup>164</sup>Negera Kenatie, *Supra* note 155.

<sup>165</sup>Chala Diro, *Supra* note 123.

<sup>166</sup>Gelana Tegene, *Supra* note 128.

the counsels. Due to the problems related to the ineffectiveness of the state-funded counsels, there are also children in conflict with the law who waive their right.<sup>167</sup>

## **6.7. THE IMPLEMENTATION OF THE RIGHT AT VARIOUS STAGES OF CRIMINAL PROCEEDINGS**

### **i. The Implementation of the Right During Pre-Trial Period**

Eventhough our criminal policy and the instruments Ethiopia ratified requires appointment of counsel at all stages of the proceedings, no child in conflict with the law is provided with the assistance of counsel during the pre-trial period<sup>168</sup>. The right to state-funded counsel is not available even when the child in conflict with the law is detained. Contacted incarcerated youth, including a 12 years old child, said that they had never met with a counsel until they appear for first hearing in court<sup>169</sup>. Consequently, these children fail to secure their right to bail as most of them even do not claim it due to lack of awareness<sup>170</sup>. As well, the non-appointment of counsel to the children in conflict with the law during this critical period will largely contribute to the deprivation of their right to a fair trial. Because, a lawyer's investigation is likely to be most productive as evidence is still fresh and witnesses are most easy to locate<sup>171</sup>.

Even though, the criminal procedure code requires that police should take instructions from court, during the arrest of a child, as to the manner in which investigations should be carried out, there is no such practice in Adama. The contacted children attest that they were not taken immediately before the nearest court. Some of them were even locked up for weeks

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<sup>167</sup>Chala Diro, *Supra* note 123.

<sup>168</sup>*Ibid.*

<sup>169</sup>Getnet Shiferaw and Anteneh Alemu, *Supra* note 124.

<sup>170</sup>Commander Abebe Teshome, *Supra* note 144;Yohanis Girma, *Supra* note 125.

<sup>171</sup>Negera Kenatie, *Supra* note 155.

without even appearing before court<sup>172</sup>. What is more, most of the children in conflict with the law are compelled to stay in detention with adults during the pre-trial period<sup>173</sup>. Consequently, the liberty interests of children in conflict with the law are being affected as counsel is appointed too late in the process, because, the delay of appointment may have as much an impact on a case as a counsel is not appointed at all.

## ii. The Implementation of the Right During the Initial Hearing and Trial

According to the practice in the court, children in conflict with the law may claim the right to state-funded counsel, as of right, if they are charged with crimes punishable with greater than five years of imprisonment<sup>174</sup>. However, the problem of access to counsel at critical stages, by the children in conflict with law, also continues after their appearance before court. Contrary to the Ethiopian Criminal Procedure Code, the children in conflict with the law are not provided with counsel unless they are charged with serious offence, even if no parent, guardian or other person *in loco parentis* appears to represent them<sup>175</sup>. Some judges in the court state that they appoint counsels for all children charged with crime regardless of the seriousness of the crime with which they are charged<sup>176</sup>; while others say that they provide such rights only for children aged 9-15<sup>177</sup>. Therefore, one may say that, in Adama, providing the child in conflict the law, specially those children aged 15-18, with state funded counsel is at the pleasure of individual judges.

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<sup>172</sup>Yohanis Girma, *Supra* note 125; Commander Abebe Teshome, *Supra* note 144.

<sup>173</sup>Biniyam Mekonnen, detainee in Adama juvenile home (16 years old), interviewed 16/12/2014; Issa Shikur, detainee in Adama juvenile home (16 years old), interviewed 16/12/2014.

<sup>174</sup>Abuna Alo, *Supra* note 127.

<sup>175</sup>Yohanis Girma and Hailemarim Sharo, *Supra* note 125.

<sup>176</sup>Badritemam Umar, *Supra* note 130.

<sup>177</sup>Shimelis Balcha, *Supra* note 130.

The court also does not appoint counsel to children who appear before it by appeal from the decisions of the inferior courts regardless of the age of the child and seriousness of the offence<sup>178</sup>. This indicates that the judges in the court seem to feel little responsibility and duty to ensure the right to free counsel of children in conflict with the law<sup>179</sup>. The children who appeared before the court without counsel speak that they were very scared on trial. They also think that being nervous during the trial would highly impact their rights<sup>180</sup>. Some children further state that they go across the whole proceeding with silence and that they did not cross-examine the prosecution witnesses and could not present their mitigation circumstances as the court environment is terrifying<sup>181</sup>.

At this phase also, the rights of children in conflict with the law suffer due to poor investigations of law and fact by counsel.<sup>182</sup> The counsels also do not see the police report or other investigative material before their first meeting with the client.<sup>183</sup> The time a counsel can allocate to conduct investigations and learn about a client's case is also insufficient to mount an adequate defense<sup>184</sup>. There are cases in which the investigating police or other

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<sup>178</sup>Chala Diro,*Supra* note 123;Abuna Alo,*Supra* note 127.

<sup>179</sup>However,the Federal Supreme Court Cassation Division has cancelled the decision rendered by an inferior court and remanded the case to be heard again in the presence of counsel for the reason that the defendant was not given the opportunity to be represented by counsel. In this case, the cassation bench stressed that judges cannot disregard their duty to respect and enforce fundamental rights and freedoms of individuals incorporated in the constitution, including the right to counsel. It further stated that the right to counsel of arrested and accused persons should be respected whenever it is likely. According to the bench, any decision that may be given by a court, without ensuring the existence of these requirements, has basic error of law and is thus void (*See Hussien Ali Vs. the Somali Regional State Prosecutor, Federal Supreme Court, Cassation bench, File No. 37050, vol. 9,PI60*).

<sup>180</sup>Hailemarim Sharo, *Supra* note 125;Issa Shikur,*Supra* note 173.

<sup>181</sup>Adane Yesunew, a 15 years old detainee in Adama Juvenile Home, interviewed 13/04/2007;Biniyam Meokonnen, *Supra* note 173.

<sup>182</sup>Chala Diro,*Supra* note 123.

<sup>183</sup>Abuna Alo,*Supra* note 127.

<sup>184</sup>Chala Diro, *Supra* note 123.



detainees encourage the children in conflict with the law to plead guilty telling them that they would be benefited from reduced sentences<sup>185</sup>. Some children even reveal that they were promised by the investigating officers that the latter will let them to go free if they plead guilty before the court.<sup>186</sup> However, those children represented by counsel believe that their counsels have helped them to take informed decisions during the plea entering<sup>187</sup>.

In addition, the self-represented children in conflict with the law are compelled to face lengthy trials as they have no body to push for speedy hearings. For example, a child charged with committing the crime of rape is acquitted after spending three months in prison<sup>188</sup>. In another case, a 12 year old child is in detention for more than 11 months without any prosecution evidence or witness presented against him. This child was also not allowed to be released on bail even though he is suspected with the crime of theft<sup>189</sup>. Including this child, most self-represented children fail to claim their right to bail as they lack information about the right<sup>190</sup>.

Some contacted children in conflict with the law perceive that their being represented by counsels was very useful during cross-examination of prosecution witnesses<sup>191</sup>. Case files observed also hint that the cross-examinations by the counsels are important. There are cases in the court in which the public prosecutor has decided to withdraw his charges against

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<sup>185</sup> Seid Tilmu, detainee in Adama Juvenile Home (16 years old), interviewed 15/12/2014; Abuna Alo, *Supra* note 127.

<sup>186</sup> Biruk Tsegaye, *Supra* note 126.

<sup>187</sup> Gelana Tegene, *Supra* note 128.

<sup>188</sup> Public Prosecutor Vs Birhan Kebede (17 years old child charged for committing rape), Adama Special Zone High Court, File Number 15452.

<sup>189</sup> Getnet Shiferaw, *Supra* note 124.

<sup>190</sup> Abel Abebe, detainee in Adama Juvenile Home (16 years old), interviewed 15/12/2014; Abraham Ketema, detainee in Adama Juvenile Home (17 years old), interviewed 15/12/2014; Negara Kenatie, *Supra* note 155; Hailemariam Sharo, *Supra* note 125.

<sup>191</sup> Gelana Tegene, *Supra* note 128.

children represented by state funded counsel as prosecution witnesses are critically cross-examined<sup>192</sup>. The self-represented children also think that they have completely failed to cross-examine prosecution witnesses. Some express that they could not forward questions to the witnesses and chose to keep silent as they do not know how to cross-examine witnesses<sup>193</sup>. The counsels also perceive that the self-represented children face considerable difficulty primarily at this stage<sup>194</sup>.

Some contacted children think that their trial was equivalent to being tried in absence (*ex parte* proceeding) because they do not as they do not understand the working language of the court<sup>195</sup>. Surprisingly, some of these children say that they have heard their sentences from police while they are being taken to prison<sup>196</sup>. Contacted children also consider that their right is at peril during the disposition. Because, some children in conflict with the law assert that they even do not answer to the court's call to present mitigating circumstances because they do not know how and what to respond<sup>197</sup>.

For those children whose ages are from 9 to 14 and who are adjudicated delinquent, the counsels do not raise the appropriate disposition alternatives as provided in the criminal law<sup>198</sup>. The counsels have never proposed to the court the disposition options provided in the criminal code, such as school or home arrest, admission to curative institution, supervised education, fine and

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<sup>192</sup>Public Prosecutor Vs Misganew Dessalegn (16 years old child charged for participating in an act of robbery), Adama Special Zone High Court, file number 19543.

<sup>193</sup> Abdurezak Detamo, a 16 years old detainee in Adama Juvenile Home, interviewed 15/12/2014; Adane Yesunew, *Supra* note 181; Biniyam Mekonnen, *Supra* note 173.

<sup>194</sup> Abuna Alo, *Supra* note 127.

<sup>195</sup> Adane Yesunew, *Supra* note 181; Issa Shikur, *Supra* note 173.

<sup>196</sup> Hailemariam Sharo, *Supra* note 125.

<sup>197</sup> *Ibid*; Biniyam Mekonnen, *Supra* note 173; Seid Tilmu, *Supra* note 185.

<sup>198</sup> Anteneh Alemu and Gelana Tegene, *Supra* note 124 and 128 respectively.

etc.<sup>199</sup> Instead, the counsels sometimes claim for the suspension of sentences<sup>200</sup>.

### iii. The Implementation of the Right After Sentence or Disposition

Post-disposition support is totally ignored by the counsels. There is no counsel provided to children in conflict with the law at appeal stage. Therefore, the children adjudicated delinquent are compelled to appear before the appellate court unaided.<sup>201</sup> Moreover, the counsels do not try ensure that the client's needs are met after the dispositional measures are taken. To take an example, children detained in the juvenile home in Adama do not have educational facilities.<sup>202</sup>

Some children serving detention in Adama were imprisoned with adults for several months before joining the juvenile home.<sup>203</sup> As the juvenile home cannot accommodate more than 23 children, there are many adjudicated delinquents who serve detention in East Shewa Zonal Prison with adults.<sup>204</sup> Besides, female children in conflict with the law are entirely sent to the Zonal Prison as the juvenile home accepts only male delinquents.<sup>205</sup> The counsels do not have contact with the juvenile home at all. They also do not feel that they are responsible to follow up detainees after adjudicated

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<sup>199</sup>Abuna Alo, *Supra* note 127.

<sup>200</sup>Badritemam Umar, *Supra* note 130.

<sup>201</sup>Chala Diro, *Supra* note 123;Gelana Tegene, *Supra* note 128.

<sup>202</sup>Commander Abebe Teshome, *Supra* note 144;Biniyam Mekonnen, *Supra* note 173.

<sup>203</sup>Commander Abebe Teshome, *Supra* note 144;Getnet Shiferaw, *Supra* note 124;Adane Yesunew, *Supra* note 181; Seid Tilmu,*Supra* note 185.

<sup>204</sup>Commander Abebe Teshome, *Supra* note 144.

<sup>205</sup>Emebet Haile, *Supra* note 137. The court also writes detention order to the Zonal prison so that it admits delinquents. For example, in the case of *Public Prosecutor VsHamdiya Siraj*, a 15 years old girl, charged for committing an attempted homicide was sent by the court in a similar manner (Adama Special Zone High Court, file number 16352).

delinquent nor do the counsels require reports from the detention homes on the client's progress.<sup>206</sup>

## 7. CONCLUSIONS

The right to counsel presupposes the right to get successful representation. It assumes access to counsel who has the skill and necessary resource. Extraordinarily, the representation of children may even require a lawyer to have several specialized skills. Among other things, a child counsel should have a knowledge of delinquency-specific ethical rules, adolescent development and dispositional services. In Adama, the counsels who represent children in delinquency adjudication are not equipped with these specialized skills. Moreover, the counsels are not assisted by investigators, social workers etc. The defense office also suffer from low funding, large extra-jobs, lack of in-service trainings, low access to support staff and facilities, poor controlling mechanisms etc. Consequently, the counsels provide only nominal representation that significantly compromises the due process interests of the youth. Additionally, contrary to the normative standards that demand the right to begin during the pre-trial, the representation of the children begins on first appearance before court. As a result, children who undergo the delinquency adjudication suffer from longer pre-trial detentions. On the other hand, even though the right to counsel is required to extend to all critical stages of criminal prosecution process, representation of children is in effect only until dispositional hearing/sentence.

Besides, the defence service in the court is inadequate. As a result, children including those below age of 15 may appear before the court without

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<sup>206</sup> Abuna Alo, *Supra* note 127; Commander Abebe Teshome, *Supra* note 144.

representation. Those children whose age exceed or equals to 15 may get representation only in a similar manner to adult defendants. The counsels also do not represent the children below age of 15 when the latter are charged at *Woreda Court*. The self-represented children commit several significant and recurrent errors which result in threats to their rights at different stages of proceedings. Consequently, the liberty interests of children in conflict with the law is at stake. For example, they make uncounselled guilty pleas, they fail to secure their constitutional right to bail, and etc. Post-disposition support is also totally ignored by the counsels. There is no counsel provided to children in conflict with the law at appeal stage. Moreover, the counsels do not try to ensure that the client's needs are met after the dispositional measures are taken. Consequently, some children are imprisoned with adults, while no child in the detention home has access to schools.

In a nut shell, children's self-representation or incompetent representation at different stages of delinquency adjudication in Adama has jeopardized the integrity of the justice system as a whole and the liberty of the children in particular. Thus, there is a great need for state assistance and technical support to help fashion solutions tailored to the needs of delinquency representation. Therefore, the writer offers the following points to be considered by concerned bodies.

Minimum qualification standards for counsels of children need to be established and enforced. There should be mechanisms in place to guarantee that the abilities of the counsels match the complexity of the cases to which they are assigned. Trainings should be given to the state-funded counsels in areas that require special expertise. The state-funded counsels should also have meaningful access to adequate counsel-office staffing, including social

workers, investigators, and other support services. Courts should also ensure that the children in conflict with the law are represented at all critical stages of litigation including at the pre-trial and post disposition stages. Maximum period within which the responsible body shall assign and notify counsel of his appointment should be set. There should also be mechanisms to control whether the counsels conduct in depth interviews with the client, meet the witnesses, or visit the crime scene when necessary, before they appear in court with children in conflict with the law.

There should be a system which enables children in conflict with the law to be informed during the pre-trial stage, as of right, about their right to get representation by state funded counsel. The court should also develop mechanisms to ensure that the counsels have regular communication and give personal attention to their youth clients.

Because rehabilitation is the central objective in child proceedings, judges in the court should give consideration while they decide disposition measures and should opt for other appropriate forms of disposition than detention unless there is an indicator that treatment in a secure facility is required. There should also be a mechanism which enables courts to monitor that the counsels and their child clients' meetings occur in the detention centers. The court should adopt and promote a system which can ensure the responsibility of the state-funded counsels. Procedures should also be developed to guarantee the possibility of retrial in cases where a child has unwillingly undertaken delinquency adjudication unassisted or where the representation is proved to be critically ineffective.

## **Ergama, Mul'ata, Toorawwan Xiyyeeffannoo, fi Duudhaalee Inistiitiyuutii Leenjii Ogeessota Qaamolee Haqaa fi Qo'annoo Seeraa Oromiyaa**

### **Ergama**

Leenjii ogeessota qaamolee haqaa itti fufiinsaan kennuun gahumsaa fi qulqullina ol aanaa gonfatanii sirna heeraa fi seeraa kabajanii fi kabachiisan horachuu, gahumsa ogeessota seeraa mirkaneessuu fi rakkoowwan sirna haqaa irratti qorannoo fi qo'annoo gaggeessuun yaada haaraa burqisiisuun fooyyaa'insi sirna haqaa itti fufiinsaan akka jiraatu dandeessisuu dha.

### **Mul'ata**

Bara 2012tti gahumsa hojii leenjii fi qorannoo seeraa fi haqaatiin Inistiitiyuuticha sadarkaa biyyaatti filatamaa, akka Afirikaatti beekamaa gochuu dha.

### **Toorawwan Xiyyeeffannoo**

1. Gahumsa Ogeessota Qaamolee Haqaa
2. Qo'annoo fi Qorannoo

### **Duudhaalee Ijoo**

- Gahumsa
- Iftoomina
- Maamila Giddu galeessa godhachuu
- Kalaqummaa fi
- Dursanii yaaduu

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Oromia Law Journal (OLJ), a journal hosted by Oromia Justice Sectors Professionals Training and Legal Research Institute is published at least once annually. It accepts and publishes submissions fulfilling the following criteria upon revisions by the editors and approval by the Preparatory Board.

1. Submissions should be articles (not published elsewhere) related to legal, economic, political and social issues arising in relation to Oromian, Ethiopian, and other related International Laws. Contributions could also be other works such as essays, comments on legislation, book reviews, court cases (with or without comments).
2. Contributions may be submitted in Afan Oromo, English or Amharic
3. Submissions shall be computer typed, 1.5 space, in 12 font, Times New Roman; footnotes in 10 font, 1.0 space, Times New Roman (for Afan Oromo & English). These considerations also work for Amharic submissions except that the font size for footnote is 9.
4. The length of a contribution shall not exceed 30 pages for articles and essays. Other contributions like book reviews, case comments, etc shall range from five to ten pages.
5. The contribution should be organized into title page, abstract, introduction, body and conclusion.
6. Footnotes should be numbered consecutively with superscript Arabic numerals in the text.

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