

Ethiopian Lawyers' Association



Needs Assessment Report on the State of Legal Aid Services:

Assessments on Addis Ababa, Adama,
Assosa, Bahir Dar, Hawassa, Jigjiga and Mekelle

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Research Assistants

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Editor: Elias N. Stebek

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Addis Ababa, Ethiopia

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

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Acronyms

APAP	Action Professionals' Association for the People
ACPF/CLPC	Children's Legal Protection Center
CJP	Child Justice Project
ELA	Ethiopian Lawyers Association
EU	European Union
EWLA	Ethiopian Women Lawyers' Association
EYLA	Ethiopian Young Lawyers Association
FGD	Focus group discussion
GBV	Gender Based Violence
HRC	Human Rights Council
MoJ	Ministry of Justice
NGOs	Non-Governmental Organizations
PALU	Pan African Lawyers' Union
PDO	Public Defender Office
SNNPR	Southern Nations, Nationalities, and Peoples' Region

Executive Summary

This needs assessment report assesses the status of legal aid service in seven towns: Addis Ababa, Adama, Assosa, Bahir Dar, Hawassa, Jigjiga and Mekelle. The assessment is an essential part of the project entitled “*Engaging the Justice Sector for Good Governance: Enhancing Justice Sector Stakeholders’ Capacity on Rights Information, Legal Aid, Resource Centre and Legislative Advocacy to Promote the Rule of Law*” funded by the European Union, EU.

The needs assessment was conducted to (a) identify the beneficiaries of legal aid service and the criteria thereof, if any, (b) assess the relevance and the extent or scope of coverage of the service, (c) examine the adequacy of the service, (d) assess the existence of monitoring mechanisms that can ensure the standards and quality of the service rendered to beneficiaries, and (e) to identify the challenges that are encountered in the course providing legal aid services.

Key informant interviews, focus group discussion and questionnaires were used to collect data on the status of legal aid services in the targeted areas. Participants from courts, the Ministry of Justice (MoJ) and regional justice bureaus, legal aid providers, legal professionals, beneficiaries and prospective beneficiaries of the service drawn from Addis Ababa, Adama, Assosa, Bahir Dar, Hawassa, Jigjiga and Mekelle were involved in the needs assessment.

The findings of the assessment revealed that the provision of legal aid service is crucial in ensuring access to justice for the poor, the disempowered and vulnerable groups. It is also indispensable in conducting fair trial and in preventing miscarriage of justice. The findings of the needs assessment show that legal aid service is vital in realizing the right to access to justice and it indicates that legal aid centers are vehicles to achieve that end. The assessment further reveals that the appearance of the poor at court of law without being represented by an attorney causes repeated adjournments and the consequent delay in court proceedings.

As a result of the needs assessment, many discrepancies have been observed among legal aid service providers in terms of the extent/scope of the service they provide and types of cases they handle. While some of the service providers entertain both civil and criminal matters, others limit their service to criminal cases. Some give only oral advice, and /or prepare pleadings. In

contrast, others offer comprehensive services which range from oral advice and/or preparation of pleadings to representation, mediation and psycho-social support.

The study also showed that despite their efforts, legal aid providers have not done enough in ensuring access to legal aid service to the needy. Compared to the demand on the ground, the service given by the existing legal aid providers is inadequate. As the findings of the needs assessment reveal, there is a glaring difference between the quality of service given by public defenders to an indigent accused person *vis-à-vis* the service provided by private attorneys to a client, thereby revealing the gaps in the effectiveness and quality of public defender services. The findings also show that the majority of legal aid service providers rely on law school students for the service provision which might compromise the quality of the service given to beneficiaries.

In some legal aid centers (such as Bahir Dar University and others) the service is sporadic due to budget constraints. The unpredictability of the service has its own negative bearing on the quality of the service rendered to the needy. The study also indicates that several University Legal Aid Centers are reliant on external funding. If external funding terminates, there is the likelihood that centers might be unable to sustain the services.

The quality of legal aid service partly depends on the strength and efficiency of the monitoring system in place. In the absence of the latter, it is hard to ensure that the service delivered by legal aid providers is up to the required standard. In the absence of a strong supervision mechanism, it will also be highly unlikely to ensure compliance of advocates who are obliged by law to provide *pro bono* services. Consistent with this understanding, the findings of the needs assessment show that despite variations in the levels of effectiveness of the monitoring system in place, almost all agencies that were sites of the needs assessment stated that they have some sort of monitoring mechanisms. Even though robust supervision procedures and processes are designed in some legal aid providers, they are not adequately functional due to understaffing. In practice, agencies responsible for overseeing the enforcement of the 50-hour *pro bono* service of advocates to the indigent (required by law) have done little in terms of ensuring the compliance of advocates.

The needs assessment has identified various problems. They include (a) lack of clarity in legal aid's scope of coverage, (b) lack of clear directives toward the effective implementation of the 50-hour *pro bono* service required of practicing attorneys, (c) the inadequate staffing and budgeting of the Public

Defender's Office, (d) lack of awareness on the availability of the legal aid, (e) financial constraints, (f) absence of objective criteria for eligibility to access the legal aid service, (g) incidences that show gaps in the evidence of pauperism issued by social courts, (h) lack of coordination among legal aid providers, (i) absence of quality assurance standards in the service provision, and (j) lack of supervision mechanisms for tracking the performance of advocates while providing *pro bono* service.

Considering the challenges and gaps identified in the provision of legal aid services, the Needs Assessment Report forwards measures that need to be taken by the relevant executive organs, courts, legal aid providers, universities and donors. Major recommendations include, but are not limited to:

- a) strengthening Public Defender Offices (PDOs) both at the federal and state levels through staffing, allocating adequate budget, furnishing them with different facilities such as vehicles, and equipment;
- b) strengthening existing legal aid centers and expanding the scope and locations of their service;
- c) putting in place effective monitoring systems to ensure the compliance of advocates in providing the legally-required 50-hour *pro bono* service per year, and monitoring schemes for quality and standards in the performance of other legal aid service providers;
- d) setting eligibility criteria for selecting beneficiaries of the service;
- e) the issuance of directives that guide legal aid service providers to determine the beneficiaries who should receive services of oral advice, or preparation of pleadings, or court representation and thereby prevent arbitrary denials in the service provision;
- f) the allocation of adequate budget by universities to university-run legal aid centers;
- g) enhancing the public awareness of beneficiaries of the service regarding their right to legal aid; and
- h) the issuance of policy on legal aid services.

Part One

Introduction

1. 1 Background

The Ethiopian Lawyers Association (ELA), was initially organized in 1965 under the name Advocates' Welfare Association. As the name indicates, the scope of its activities was restricted to engagements in welfare. A year later, in 1966, the Association evolved into Advocates' Association and was registered with the then Ministry of Interior. The Association was renamed the Ethiopian Bar Association in 1967. Following the promulgation of the Charities and Societies Proclamation No. 621/2009, the Association was re-registered as Ethiopian Society under the new name, the Ethiopian Lawyers Association (ELA).

At present, the Association has 528 members (working in various fields, including private practitioners, judges, prosecutors, academics, policy makers) drawn from various regional states and city administrations of Ethiopia. ELA is a founding member of the Pan African Lawyers Union (PALU) whose headquarters is found in Addis Ababa, Ethiopia.

ELA was established with the aim of promoting the interest of its members, the development of the legal profession, upholding the rule of law and the independence of the judiciary, good governance, human rights as well as ensuring the dignity and independence of the profession. Moreover, it works toward upgrading the legal skills of practicing lawyers, and provides legal aid service to the needy. Currently, ELA is implementing a 24-month project entitled “*Engaging the Justice Sector for Good Governance: Enhancing Justice Sector Stakeholders’ Capacity on Rights Information, Legal Aid, Resource Centre and Legislative Advocacy to Promote the Rule of Law*” funded by the European Union, EU.

ELA provides legal aid to the poor and other vulnerable groups, in particular, to the disabled, prisoners, workers living with HIV/AIDS, women and children. The provision of legal aid is one of ELA’s core activities planned for the project implementation period. The Mission Statement of Legal Aid South Africa, for example, refers to “the provision of *accessible, sustainable, ethical, independent and quality* legal services to the poor and vulnerable”.¹

¹ Legal Aid South Africa, Strategic Plan (2012-2017), p. i. See its activities via its website <www.legal-aid.co.za>

The elements of *access, sustainability and quality* of the legal aid services relate to the access and the sustained provision of legal aid services that meet the quality and standards that are required in the service. The last limb of the mission statement indicates that the beneficiaries should be *the poor and vulnerable*.

Legal aid goes beyond “mere representation by a lawyer in a court.”² As Getnet Mitiku notes, legal aid is the “provision of the service of legal nature free of charge or at a discount to those who cannot afford such services”.³ It covers wide range of services including “legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution’.... Furthermore, legal aid extends equally to civil as well as criminal matters”.⁴

The *rationale* of legal aid gains is based on the social policy perspective and a human rights angle. The social policy perspective “recognizes legal aid as vital legally mandated social service essential in maintaining a functioning justice system and promoting equality and justice”.⁵ The human rights perspective, on the other hand, takes for granted legal aid as a vehicle for ensuring “the right to access to justice, fair trial, and equality before the law”.⁶

Since 1991 there has been the relaxation of the regulatory framework towards the establishment, operation and dissolution of associations, and this has paved the way for the emergence of organizations that undertake legal aid services as their core activity. Moreover, this has prompted professional associations to embark on legal aid services. In line with this, advocacy organizations such as Action Professionals’ Association for the People (APAP), Association for the Nationwide Action and Protection Against Child Abuse (ANNPCAN), Children’s Legal Protection Center (ACPF/CLPC), and the Ethiopian Women Lawyers’ Association (EWLA) were engaged in the legal aid services for over a decade thereby serving the poor, children (who were victims of neglect, deprivation of liberty and abuse) and women who were victims of Gender Based Violence (GBV). Most of these advocacy NGOs have, however, shifted to other spheres of

² Uganda: Draft National Legal Aid and Policy, Presented to JLOS, The Governance and Justice Group November, 2011 p. 9.

³ Getnet Mitiku, The Role and Contribution of Civil Society Organization in the Provision of Legal Aid Service *Muhaz Magazine* Vol.1.No.9. Amicus Media Promotion and Communication, August 2012.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

development activities since 2009 due to the enactment of the Charities and Societies Proclamation No. 621/2009.

The emergence of legal aid centers in the law schools of various universities has positively contributed to the provision of legal aid to the indigent. Moreover, the involvement of the Federal Ministry of Justice and Women and Children Offices at Regional Justice Bureaus have significant contributions in legal aid provision. These avenues of legal aid provision were the ones that addressed some part of the gaps that were created in the service provisions due to the sudden termination of advocacy NGO services which adversely affected their activities in the field of legal aid service.

The recognition given to access to justice under Article 37 of the Constitution of the Federal Democratic Republic of Ethiopia is followed by subsequent efforts toward implementing the constitutional guarantee. The subsequent normative and institutional frameworks include (a) the establishment of the Public Defender's Office at the federal and regional levels, (b) the law⁷ that requires 50-hour *pro bono* services from per annum from advocates, (c) the active involvement of the justice offices and bureaus at the federal and regional levels in providing legal assistance to vulnerable groups such as women and children, and (d) the need for legal aid service providers and their geographical spread across regions. These factors have resulted in a remarkable improvement in the service provision. Notwithstanding these commendable efforts, however, "quality and affordable legal aid service is not available for most Ethiopians".⁸ Given the enormous demand on the ground, accessibility of the service indeed leaves much to be desired.

In view of this, ELA has undertaken needs assessment in sites where its program is operational. The objective of the assessment is to gauge the perceptions of different stakeholders on the status of legal aid and thereupon devise a workable strategy for strengthening existing legal aid providers. The

⁷ According to Article 49 of the Federal Court Advocates' Code of Conduct Regulations No. 57/1999 licensed advocates are required to provide *pro bono* obligations for at least fifty hours per year. The services are provided free of charge or upon minimum payment. The beneficiaries stated in this provision are "(1) persons who can not afford to pay, (2) charity organizations, civic organizations, community institutions; (3) persons to whom court requests legal service; (4) committees and institutions that work for improving the law, the legal profession and the justice system.

⁸ Desalegn R., Akalewold B. and Yoseph E., (2010), CSOs/NGOS in Ethiopia: Partners in Development and Good Governance.

objectives of the needs assessment further include establishing new legal aid centers and providing prompt information on the state of legal aid across the regions.

1.2 Structure of the Report

The report has three parts. *Part One* presents background, while *Part Two* highlights the objective, methodology and organization of the report. *Part Three* comprises five sections and several sub-sections. The first section deals with the beneficiaries of legal aid service and the criteria set for selecting them. Section two presents issues on the relevance and extent/scope of coverage in the provision of legal aid services. The third section looks into the adequacy of the service, and the fourth section assesses the existence and strength of the follow-up mechanisms that are put in place. The last section of Part Three deals with the challenges and gaps in the provision of legal aid services. And finally *Part Four* presents conclusions and recommendations.

Part Two

Objectives and Methodology

2.1 Objectives of the Study

The needs assessment which took place over a period of three weeks has the following objectives:

- a) To assess whether access to legal aid service is a pressing need for the targeted beneficiaries;
- b) To identify gaps in the provision of legal aid service;
- c) To identify impediments to access to legal aid service to the needy;
and
- d) To suggest recommendations toward addressing the identified problems.

2.2 Methodology

Different tools have been used to conduct the needs assessment on the status of legal aid service in the targeted towns. Focus Group Discussion, key informant interviews and survey (questionnaire) techniques were employed to generate relevant data for the study. Consequently, the assessment has gathered a combination of quantitative and qualitative information from legal aid providers, practicing lawyers, judges, prosecutors, persons who benefited from legal aid service as well as prospective beneficiaries.

2.2.1 Focus Group Discussion (FGD)

Focus Group Discussion was conducted during the needs assessment which involved legal aid providers whose offices are in Addis Ababa. Some of these legal aid providers have outreach programs in regions. The FGD involved representatives from the Ministry of Justice (MoJ), the Public Defenders' Office (PDO), the Ethiopian Women Lawyers Association (EWLA), the Human Rights Council (HRC) and the Supreme Court Child Justice Project. The selection was made on the basis of the engagement of these governmental and non-governmental institutions in legal aid service. They are thus in a better position to examine the condition of legal aid service in general, assess the performance of legal aid providers and identify the challenges they often face.

2.2.2 Key informant interviews

Separate interview guides were prepared for judges, prosecutors, public defenders and aid providers. A total of 40 persons participated in the key informant interviews. The participants were judges, prosecutors, public defenders, officers from Women, Children and Youth Bureaus and persons in charge of legal aid centers in the targeted towns and Addis Ababa. While it has been possible to reach almost all representatives of relevant agencies in the targeted towns, only reachable informants were involved in the key informant interviews in some areas such as Jigjiga and Hawassa,.

2.2.3 Questionnaire

Three types of questionnaires were developed - for legal professionals, for persons who were beneficiaries and for prospective beneficiaries of legal aid services. The questionnaires were prepared in Amharic. Series of closed and open-ended questions were provided in the questionnaires. The open ended questions enable respondents to provide more feedback and introduce new ideas. Apart from questions on substantive issues, the questionnaires filled by the beneficiaries and prospective beneficiaries of legal aid service sought information on the respondents' age, gender, employment, family status, number of dependents. The questionnaires directed to legal professionals sought information based on their place of work, the fields in which they are engaged in, and years of experience in addition to the subject matter of the assessment.

The FGD, the key informant interviews as well as the administration of questionnaires were mainly conducted by the staff of the Ethiopian Lawyers Association (ELA) and the Ethiopian Young Lawyers Association (EYLA). While the numbers of beneficiaries who filled out and returned the questionnaire were 33, the number of prospective beneficiaries who completed the questionnaires was 59. The total number of legal professionals who completed the questionnaires was 54.

The tables below show the profile of respondents drawn from beneficiaries, prospective beneficiaries of legal aid and legal professionals who filled out the questionnaires.

Table 1

Profile of the prospective beneficiaries who filled out the questionnaires

Sex		Age		Occupation		Family Status		Dependents	
M	19	<18	4	Full time Employment	20	Married and have children	29	No dependent	11
F	40	19-25	18	Part time Employment	5	Married but have no children	2	1 to 4 dependents	31
		26-38	22	Unemployed	16	Single	20	5 to 10 dependents	12
		39-50	9	Unfit for work	1	Single but have children	5	Respondents who Skipped the question	5
		>50	2	Pension	5	Divorced	2	Skipped the question	
		Skipped the question	4	House maid	4	Skipped the question	1		
				Private business	2				
				Skipped the question	6				
Total			59		59		59		59

Table 2: Profile of the beneficiaries of legal aid service who filled out the questionnaires

Sex		Age		Occupation		Family Status		Dependents	
M	9	<18	2	Full time Employment	13	Married and have children	17	No dependent	4
F	24	19-25	10	Part time Employment	6	Married but have no children	1	1 to 4 dependents	16
		26-38	9	Unemployed	9	Single	5	5 to 10 dependents	10
		39-50	5	Unfit for work	1	Single but have children	6	Respondent who skipped the question	13
		>50	4	Pension	2	Divorced	3		
		Respondent who skipped the question	3	House maid	2	Respondent who skipped the question	1		
				Self employed					
Total	33		33		33		33		33

Table3: Profile of legal professionals who participated in filling out the questionnaires

Place of work		Occupation		Years of experience	
Adama	9	Judge	6	<5 Years	21
Hawasa	13	Public Prosecutor	6	5-10	15
Bahirdar	12	Law Instructor	4	10-20	13
Mekele	10	Attorney	27	Skipped	5
Assosa	5	Lawyer	9		
Gonder	1	Law Student	2		
Jigjiga	1				
Addis Ababa	3				
Total	54		54		54

2.2.4 Selection of Sample Towns

The targeted sites for the needs assessment were selected based on the information contained in the approved project document. Consequently, seven out of nine regional states towns were selected: Adama, Addis Ababa, Assosa, Bahir Dar, Hawassa, Jigjiga and Mekelle.

2.2.5 Selection of Study Participants

Generally, legal aid service brings aboard a wide array of actors having different levels of involvement/participation such as service facilitators, service providers and beneficiaries. In view of this fact, the study team involved participants from courts, legal aid providers (both state and non-state actors), and beneficiaries (who got the service) and prospective beneficiaries (persons who will most likely go to legal aid providers if they face some legal problem because of their economic status) in Adama, Addis Ababa, Assosa, Bahir Dar, Hawassa, Jigjiga and Mekelle.

2.2.6 Process of Data Capture and Analysis

The FGD results, the findings of interviews together with field notes were organized in line with the questions spelled out in the interviews and FGD guides. Thereafter, the text was translated into English. Similarly, the completed questionnaires were returned to the data collectors and checked for completeness. The response for both closed and open-ended questions were listed and tabulated. Data clearing for errors was done. The findings obtained from the FGD, Key informant interviews and the results of the questionnaires were discussed under various themes that emerged in the course of the analysis.

Part Three

Findings and Discussion

3.1 Beneficiaries of Legal Aid Service and the Criteria for Their Selection

3.1.1 The Beneficiaries of the services

FGD participant from Ethiopian Women Lawyers Association (EWLA) disclosed that “95% of the recipients of the service are poor women with children”. Interviewees from Jigjiga University Legal Aid Center stated that “most of the people who come to the center seeking the service belong to the lowest stratum of the society such as pensioners, and workers whose contract of employment is terminated illegally”.⁹ Yet, there was concern on the part of one FGD participant from the Public Defenders’ Office (PDO) who remarked that “as things stand now, we provide the service both for the haves and the have-nots alike” and pointed out that “a person having millions of Birr in his/ her coffer may benefit from the service”. There are defendants whom public defenders know that they are not paupers, but public defenders can do nothing to rectify the problems in this regard other than providing services based on affidavits. This concern shows the risks involved in the absence of clear criteria for the eligibility of the services.

3.1.2 Criteria for Selection of Beneficiaries

The findings of the needs assessment show that most of the legal aid providers do not have objective criteria for the selection of beneficiaries. Others question the wisdom of setting a standard of economic status in the selection of beneficiaries for certain categories of victims. In line with this view, one FGD participant expressed that his organization is committed to give legal aid service to any person irrespective of gender, income or social status provided that they are victims of human rights violations.

As long as the existence of a violation of rights is established, we provide the service to any one irrespective of their economic status. In principle, any person who has grievance may request for legal aid service. The only criterion for benefiting from the service is being victim of human rights violations. We espouse the idea that access to legal aid service should be guaranteed to people coming from all

⁹ Solomon Guade, Jigjiga University Legal Aid Center Coordinator and Melaku Beza Deputy Coordinator.

walks of life. We do not discriminate service recipients on the basis of income or gender, etc. So, on our part the criterion is a bit lax (HRC).

Likewise, a respondent from Adama Legal Aid Center indicated lack of “*clear cut standard for screening beneficiaries*”. The respondent stated that “in most cases whether a person should get the service or not is determined after hearing the case”. According to the respondent, a person may not be able to hire an advocate (and get the service) even if he/she is wealthy” because one “may be in a dire situation to get access to his own property. In such a situation we should support him”. The interviewee, however, underlined that when it comes to securing the service of representation, one should come up with evidence of pauperism from the Woreda Administration”.

Another FGD participant from Child Justice Project (CJP) noted:

We provide the service to those who cannot afford to hire advocates. But again, we do not have objective criteria for screening beneficiaries. Of course, we assess the income level of those who seek free legal aid service. Obviously we deny the service for some claimants based on their personal account and our own observation.

An interviewee from the Somali Regional State Women, Children, and Youth Bureau said “Women from all walks of life, from the poor to the rich come to our office”.¹⁰ FGD participant from EWLA noted, although in the majority of cases gender and income level are cumulatively used to screen beneficiaries of the service, on some occasions the service providers disregard these criteria.

The criteria for screening service recipients are cumulative, being a woman and poor. On occasions, however, we provide support to women with high impact cases (strategic cases) irrespective of their income. If the case brought to our attention is found to be of high impact or is believed to have the potential of educating women and other actors, the case will be pursued regardless of the economic status of the woman who lodges the complaint. The notorious case of Kamilat is a case in point (EWLA).

FGD participant from the MoJ on his part suggested that income is only one but not the sole criterion for the selection of beneficiaries. According to the participant:

¹⁰ Zahra Abdi - Somali Regional State Women, Children, and Youth Bureau Gender Core Process Coordinator.

Although income is one of the criteria for selection, it is not the sole basis for accessing the service. An HIV/AIDS patient or a person who is deprived or disabled is entitled to free legal aid service. Recipients of the service (who state their inability to hire a lawyer) are required to produce evidence of pauperism from the Kebele Administration of their residence to access the service.

FGD participant drawn from the Public Defenders' Office stated that his office has not set the criteria for selecting beneficiaries. The participant also indicated that it does not select its beneficiaries:

The Public Defender Office does not set criteria for the selection of service recipients. It is up to courts to determine who should be entitled to the service. A court assigns defense council if and when it thinks miscarriage of justice will ensue unless a defendant is represented. The verification of the authenticity of defendant's affidavit by courts is the only requirement to access our service.

3.1.3 Discussion

Generally, there seems to be consensus among interviewees as well as FGD participants from legal aid providers, courts and legal professionals with respect to who should be the beneficiaries of the legal aid service. The findings of the needs assessment show that service recipients mostly belong to low income groups although this does not mean that all service providers render their services to identical target groups. While some of the legal aid providers exclusively target women, others render their services to women and children. Still others provide service to the poor who cannot afford to hire advocates irrespective of their age and gender. Moreover, there are legal aid service providers that target people with disability, HIV positives and other vulnerable groups. The Public Defenders' Office on its part provides service exclusively to persons accused of serious crimes. What distinguishes the service of the PDO from other service providers is that its services are not exclusively provided for the poor. Targeting a particular social group or reaching out a wide array of social groups by itself has no problem provided that the service which is meant for the needy and other vulnerable groups is not abused.

Findings from the assessment show that while some service providers set criteria for the selection of beneficiaries, others do not. The findings further revealed that there is no uniform standard even among those who claim to have selection criteria. In line with this, some legal aid providers use age, gender, and inability to hire an advocate as selection criteria for providing legal aid service, while others apply gender as the sole criterion for accessing

the service. As stated earlier, there are also few legal aid providers who uphold the principle that everyone is entitled to legal aid service. The real challenge that needs to be addressed is whether there should be a uniform approach among legal aid providers in rendering the service, and whether the discretion to determine beneficiaries of the service should be left to each legal aid provider based on the respective specific situation of the service providers.

3.2 Relevance and Extent/ Scope of Coverage of Legal Aid Service

3.2.1 Relevance of the Service

Interviews and questionnaires were used to identify the perceptions on the importance of legal aid services. The respondents included judges, persons who benefited from legal aid service and prospective beneficiaries drawn from Adama, Assosa, Bahar Dar, Hawassa, Jigjiga, Mekelle and Addis Ababa. The findings of the assessment and the subsequent discussion are briefly presented below.

It was opined that the poor “face problems from the preparation of pleadings all the way to ignorance of procedure to demand redress/relief”.¹¹ As the interviewees further pointed out:

More often than not, the poor implore persons for the preparation of pleadings. As these persons work for free, they may not give due attention while preparing a pleading. As a result, they may overlook formality requirements or commit an error of law. When the poor file such flawed pleadings their rights or interests will definitely be adversely affected.¹²

According to these respondents:

The ‘*raport tsehafis*’ (memorandum writing service providers) working near courts who help people draft/write applications using certain pre-established formats) do not usually have legal background. In most cases, they prepare pleadings without consulting the relevant provisions of the law. At times, the plaintiffs submit pleadings that are irrelevant to their claims and arguments. If we are convinced that the pleading is detrimental to the right/interest of the plaintiff we will call and tell the *raport tsehafis* to fill the gaps and rewrite the pleadings accordingly.¹³

¹¹ Guade Kebede, Berhanu Maru, and Yeshiwork Debebe- Municipal Court Judges.

¹² Ibid.

¹³ Ibid.

Another informant expressed the gravity of the problem the needy often face. According to this informant:

The problem with the poor is not only money. They usually lack the ability to effectively convey the ideas they have in mind. Consequently, while talking to them we devote sufficient time. We give them direction i.e., where to go and whom to talk to. Of course, we also urge advocates to take time while talking to them. That is the bottom-line.¹⁴

Likewise, a respondent reflected a similar view with the earlier statement. According to the respondent, “unless the needy are represented by advocates, they cannot explain in detail the case they filed to the court and demand the relief they seek. If they do not present their claim properly, they can most likely lose their case”.¹⁵ A respondent from the Amhara Region Supreme Court noted that “the poor fail to produce evidence, or accurately present their case due to ignorance of the law. As a result, they encounter problems and miscarriage of justice”.¹⁶ A Woreda Court President from Mekele had this to say:

When a person litigates at a court of law without legal assistance, the decision will not be fair because the parties may not be on equal footing. A person might fall prey to self-incrimination as a result of lack of legal knowledge. As ignorance of the law is no excuse, persons who lack legal knowledge are more likely to lose their case due to procedural faults or out of sheer lack of knowledge on how the system works. This is not only morally damaging for judges but it also undermines the courts’ legitimacy because the truth in the eyes of the general public may be different from the truth in the eyes of the judges. The public might perceive that the court ruled otherwise by disregarding glaring facts.¹⁷

Similarly, a High Court Judge noted that “whenever a person litigates with a public prosecutor or an attorney without legal assistance, it is hard to give fair decision and the result will be miscarriage of justice”.¹⁸ Another respondent said, “As court administrators, we feel bad to litigate a case with a public prosecutor or an attorney without legal assistance to the litigant. It is not that easy to litigate unequal parties”.¹⁹ The Assosa Woreda Court Judge also admitted the challenge courts face while adjudicating a case in the

¹⁴ Misrak Brehane, Federal First Instance Court 2nd Family Bench Judge.

¹⁵ Habtamu Mekonen Federal High Court Civil Bench Secretary.

¹⁶ Kidist G/Hiwot-Amhara Region Supreme Court Judge.

¹⁷ Mitiku Berhe, Mekele Woreda Court President.

¹⁸ Abreha Berhe, Mekele High Court Judge.

¹⁹ Asha Amin, Adama High Court President.

absence of legal assistance to litigants. “It will be difficult for the court to give fair judgment where a person (even if he is capable of defending himself) has no idea about the *modus operandi* of the court, and is unaware of the impact of participation in court proceedings without being represented by an advocate”.²⁰ As SNNP Region First Instance Court Vice President said,

Although judges observe the violation of the right of pleaders (often poor ones) who are not duly represented by advocates during civil suits, they could do nothing about it except feeling sympathetic. Any legal aid service to the poor should be given before the examination of the merit of the case commences. Once the examination of merit begins, the law prohibits reversal of the process.²¹

Questionnaires have been administered to assess the perceptions of lawyers on the need for legal aid service for the poor who are involved in a civil suit or criminal proceeding. In line with this issue, all respondents (100%) drawn from Bahir Dar concurred that free legal aid service is not a matter of choice but that of necessity. A little over half of the respondents from Bahir Dar (53.8%) justified why the legal aid service is a necessity by arguing that one should not be denied of justice merely because one cannot afford to hire an advocate. In the same way, about a third of the respondents (30.8%) reasoned that legal aid is a means for the realization of the right to access to justice. The rest of the informants answered that there is no need to explain why legal aid is essential because it is apparently very important.

Respondents from Hawassa noted the significance of legal aid service because “it enables people to get justice. It shields the poor from being denied of fundamental rights. It plays a big role in realizing the right to access to justice.” Participants from Assosa also underline the importance of legal aid service. Some of them said that “free legal aid is important because it guards the poor (who do not have money) from being denied of their fundamental rights”. Others reacted, “it is very much useful for beneficiaries who have neither the money nor the knowledge on the law”. Still others responded that legal aid “is crucial especially for women and children”. Respondents from Mekelle gave the following justifications as regards the relevance of legal aid service:

²⁰ MihiretFekadu- AssosaWoreda Court Judge.

²¹ W/o Demekech Dawit -SNNP Region First Instance Court Vice President.

- “Legal aid is important because the poor have neither the money nor the knowledge on the law. Hence it protects them from being denied of justice”;
- “The Constitutional right of access to justice will be protected”;
- “It will bring about justice, peace and security”; and it protects the poor from being “denied of justice simply because they do not have enough money to hire a professional lawyer or legal counsel”.
- “It prevents the occurrence of maladministration as a result of injustice”; and
- It “reduces the workload of other justice organs.”

The results of the assessment conducted on the beneficiaries of the legal aid service provided in Hawassa, Bahir Dar, Adama and Mekelle indicate unanimity among respondents on the importance of legal aid service for the needy. Moreover, the findings based on the responses of prospective beneficiaries of the legal aid service drawn from Hawassa, Bahir Dar, Adama, Mekelle, Assosa and Jigjiga show consensus among the respondents on the importance of legal aid service for the needy.

3.2.2. Extent/Scope of Service Given to Beneficiaries

FGD participant from the MoJ disclosed that the Ministry provides *pro-bono* service both in civil and criminal cases including oral advice, preparation of pleadings, and representation. Similarly, an FGD participant from EWLA explained the type of service the organization provides to its beneficiaries including “mediation, oral advice, preparation of pleadings, representation as well as psycho-social support”. She further noted,

Although women are at the forefront, many cases that involve children come to our organization. As we entertain family matters, we provide mediation services as well. We also represent clients at court of law if the case brought to our attention so requires. For simple/straightforward cases, EWLA organizes general awareness training to beneficiaries so that they can represent themselves at courts of law. As far as domestic violence is concerned, we do not send victims of violence back home. We provide them shelter. However, following the coming into force of the Charities and Socialites Proclamation, we no longer provide such service directly to victims of domestic violence (EWLA).

Interviewees from Jigjiga Legal Aid Center on their part explained the types of cases the Center entertains:

Eviction from Kebele owned houses, family matters (payment of livelihood maintenance costs for spouse or children), inheritance,

issues of filiations’, partition of joint property, issues involving vulnerable groups and rarely, criminal cases are some of the cases that are brought to the attention of the Center.²²

The interviewee also disclosed the extent of the service provided by the Center:

Mostly, we give advisory service... We resolve disputes through mediation and mutual understanding. Particularly, we expedite the determination of maintenance allowance (livelihood expenses) and help spouses sign an agreement.²³

An interviewee from the Hawassa University Legal Aid Center enumerated the types of service the Center provides, notably, “preparing pleadings, giving guidance to the beneficiaries, conferring power of attorney to SNNP and Oromia Regional States’ Courts through referral system and linking beneficiaries to other institutions so that they will be able to access other services”.²⁴ According to this interviewee,

Beneficiaries seek services mostly in areas such as family, succession, property, land issues, and labor disputes. If we disaggregate the type of services by beneficiaries across gender lines, male beneficiaries tend to seek out services related to labor disputes while females lean towards family matters.²⁵

The Coordinator of the AAU Human Right Center at Hawassa on his part observed, “The majority of the cases brought to the attention of the center include criminal offence, family matters, labor disputes, succession and other matters”.²⁶ The Center’s services involve “preparing pleadings, statement of defense, appeal, resolution of disputes through mediation and negotiation to save disputants from incurring avoidable costs”.²⁷ A respondent from Adama University Legal Aid Center stated that the Center provides comprehensive legal aid service, notably, “legal advice, preparing pleadings to courts, representation and mediation.” He indicated that the services include “all matters involving legal issues”. He added:

The Center also resolves cases like family matters through mediation. Based on the memorandum of understanding signed between the

²² Solomon Guade and Melaku Beza, Jigjiga University Legal aid Center Coordinator and Deputy Coordinator.

²³ Ibid.

²⁴ Admasu Alemayehu - Hawassa University Legal Aid Coordinator.

²⁵ Ibid.

²⁶ Yednekachew Ayalew- AAU Human Right Center Legal Aid Coordinator

²⁷ Ibid.

Oromia Supreme Court and the Center, the latter has got special license to represent the poor at courts of law. In other words, a person assigned by the Center can represent beneficiaries in court. Law students i.e. paralegals are also allowed to assist advocates in courts.²⁸

An informant from the Addis Ababa University Legal Aid Center (in Adama) also disclosed that the Center provides comprehensive service, namely, legal advice, preparation of pleadings and representation”. The interviewee further remarked that “Around 14 volunteer attorneys work with the Center and give representation service whenever there is a need. ... Representation service will also be given by paid attorneys”.²⁹ Surveys have been conducted on legal professionals on the type of service they rendered to beneficiaries. Accordingly, 50% of the respondents from Bahir Dar said they gave some of the services, while the remaining half (50%) said that they gave comprehensive (all types) services to the needy. Similarly, while 73.3% of participants of the study from Hawassa said they only gave legal advice to beneficiaries, 20% of them noted that the type of service they gave to beneficiaries was writing legal briefs. Only 6.7% of them said they represented the needy at courts of law. 57.1% of the respondents from Assosa who were involved in the survey said that they provided legal advice and writing pleadings, while 42.9% gave comprehensive services including legal advice, pleading writing and court representation.

While 41.7 %, of the needs assessment participants from Adama responded that they gave legal advice, 16.7% of them answered that they prepared pleadings. Another 16.7% said they represented beneficiaries at courts of law. 50 % of the lawyers who partook in the needs assessment conducted at Mekelle claimed to have given comprehensive (all types of service including legal advice, writing pleadings and representation). 30% of them said that they represented beneficiaries at court of law with only 20% of them saying that they provided only legal advice.

With regard to suggestions on the scope of legal aid services in the future, 100% of the beneficiaries from Bahir Dar, Adama, and Mekelle as well as 75% of the informants from Hawassa were in favour of “comprehensive service” (legal advice, preparation of pleadings and representation) to beneficiaries. Only 16.7% of the informants from Hawassa suggested both legal advice and pleading writing. 8.3% of the respondents were in favour of

²⁸ Adama University Legal Aid Center.

²⁹ Addis Ababa University Legal Aid Center in Adama.

covering only pleading writing services. 75% of the beneficiaries of the service from Addis Ababa proposed that the service be limited to pleading writing, while the remaining 25% suggested that it should be comprehensive.

The findings of the survey on the perceptions of prospective beneficiaries from Hawassa, Bahir Dar, Adama, Jigjiga, Mekelle and Assosa show relatively similar results. 77.8% of the respondents from Hawassa said that the service should be “comprehensive”, while 11.1% suggested it should be limited to legal advice. Another 11.1% of the respondents said the service should be limited to “pleading writing” only. Similarly, 70% of the respondents from Bahir Dar suggested the service should be “comprehensive”, 20% of them said it should be limited to legal advice, whereas the remaining 10% proposed only “pleading writing” to be given.

83.3% of the respondents from Hawassa recommended that the service should be comprehensive, 3% of the respondents proposed “legal advice” only, and the remaining 8.3% suggested services which include “legal advice” and “pleading writing.” 75% of the respondents from Mekelle proposed that the service should be comprehensive with 25% of them saying the service should be limited to “legal advice only. 75% of the respondents from Jigjiga suggested that the service should be comprehensive, while the remaining 25% said it should be limited to “pleading writing only.”

84.6% of the respondents from Assosa proposed the provision of ‘comprehensive’ services to beneficiaries; 7.7% of the respondents suggested the coverage of legal advice and pleading writing, while the remaining 7.7% of the respondents suggested that only pleading writing should be given as service. 66.7% of the respondents from Addis Ababa suggested comprehensive service and 16.7% of them were in favour of legal advice and another 16.7% suggested that the service should be limited to pleading writing.

3.2.3 Discussion

The findings from the assessment revealed that the problem with the poor is not only related to scarcity of money to cover legal costs. The poor who need legal aid services also lack the ability to convey their ideas, and as a result they do not properly present their claims at a court of law, thereby enhancing the probability of losing their case. As stated earlier, poor plaintiffs have no option but to implore persons with legal knowledge and skills to help them (free of charge) in the preparation of pleadings. Persons who are not paid (while preparing a pleading or statement of defence) may not usually show due diligence and care as compared to the level of diligence and motivation of the lawyers of the other party in the litigation.

The other alternative for the poor will be to pay for *raport tsehafis* (persons with little legal knowledge and experience) for the preparation of pleadings. On occasions, poor plaintiffs may submit pleadings to courts (prepared by *raport tsehafis*) that have nothing to do with the case they want to litigate. This will be double jeopardy for the poor, as they will lose both the case and the meagre money that they have.

What often transpires in practice is the third option whereby the poor appear at a court of law with no legal assistance. The findings of the assessment show that the appearance of the poor without being duly represented by an attorney is a cause for repeated adjournments and the consequent delay in the proceedings. The findings also show that even if judges observe the infringement of the right of pleaders who are not duly represented by an advocate during a civil suit, they can usually do nothing about it. Such state of affairs not only damages the morale of judges but adversely affects the reputation of courts as custodians of fundamental rights and freedoms.

The assessment reveals how legal aid service can be crucial in ensuring access to justice for the poor, the disempowered and vulnerable groups in the society as well as in conducting fair trial and combating incidents of miscarriage of justice. The findings also show that making legal aid service readily available to the needy is a point of consensus among key stakeholders including legal aid providers, beneficiaries and courts. According to the findings of the assessment, the provision of legal aid is an effective strategy to ensure access to justice to the needy and other vulnerable groups. It is clear that a large segment of the society is not in a position to hire advocates. Legal aid centers, thus, play an important role in realizing the right to access to justice. Thus, the existing legal aid service providers need to be reinvigorated, encouraged and further expanded.

The findings from the Focus Group Discussion, interviews conducted and questionnaires administered show substantial discrepancies among legal aid providers in terms of the extent/scope of the service and the types of cases they handle. While some of the service providers entertain both civil and criminal matters, others limit their service only to criminal cases. PDOs, for instance, mostly entertain criminal matters. Some of the legal aid providers only offer oral advice, and /or prepare pleadings, while others provide comprehensive services ranging from oral advice to preparation of pleadings, to representation to mediation and psycho-social support.

It can also be inferred from the same findings that the types of service offered to beneficiaries vary among various providers and locations. The findings show that while legal advice and writing pleadings are common

services among legal aid providers across regions, this is not the case with court representation. The findings suggest that the services given to low income persons, women, children and other vulnerable groups need to be comprehensive covering legal advice, writing pleadings and court representation. This indicates the paramount importance given to comprehensive legal aid service.

3.3 Adequacy of the Service with regard to Availability and Quality

3.3.1 Perception of FGD Participants and Interviewees on Adequacy of the Service

For the purpose of the needs assessment, adequacy refers to the availability of the service *vis-à-vis* the need on the ground, its accessibility to the needy as well as its quality. Since the quality of the service given partly depends on the knowledge and experience of service providers, the latter's qualification has also been probed during the needs assessment. Against this background, the needs assessment looked into the adequacy of the legal aid service in the selected sites.

An FGD participant from the MoJ said,

I do not think the service we provide is adequate. Although there are some attempts to address this issue, I do not think we have done enough and a lot remains to be done in terms of expanding the service. If people are aware of the availability of the service, the turnout will definitely be overwhelming (MoJ).

The respondent noted that regardless of the limitation, “no one goes back home without getting the service so long as he/she meets the basic requirements”(MoJ). An FGD participant from the HRC on his part argued, “we evaluate the adequacy of the turnout of people seeking the service *vis-à-vis* our action plan”. He goes on to say:

In 2009 we did not deliver as per the target set in the annual plan. We faced lots of challenges following the coming into force of the Charities and Societies Proclamation. There was significant staff reduction at the time and a number of branch offices were forced to close. The coalitions formed by organizations that provide legal aid service were also dissolved. Promotional activities were downplayed during the transition period as well. Many people felt that we quitted providing the service altogether. At the national level, I do not think adequate effort has been exerted to reach as many people as possible.

FGD participant from EWLA stated that “in the past, due to the availability of adequate resource, EWLA had many branch offices, but now the service is limited to certain centers due to the financial constraint”. A representative from the PDO complained that although there has been a plan to expand the service to the lowest court structure, this has not materialized”. According to the participant:

Those who are in need of the service do not know about the availability of our service. Likewise, those who should come and benefit from the service have not yet showed up. What’s more, most defendants are unaware, hesitant or reluctant to openly assert their unwillingness to be tried in the absence of defense council.

An Appellate Court Prosecutor from Somali Regional State commented on the availability of legal aid and the adequacy of the service. He noted the following:

Accused persons barely know that they can plead to the court that a public defender be assigned to represent them. Courts do not ask the accused person whether he/she wants a defense lawyer. They do not solicit advocates to provide the 50 hours *pro bono* service imposed on the latter by law. The advocates do not show any interest to represent the accused.³⁰

The respondent further remarked:

There is the Public Defenders’ Office. Yet, when you compare the quality of the service provided by public defenders to the accused vis-à-vis the service rendered by private advocates, you can easily observe the glaring difference between the two. The service given by private defence lawyers and the one given by public defenders cannot be compared. There is a huge gap in terms of diligence and commitment.³¹

The same interviewee assessed the service given by the Jigjiga University Legal Aid Center, and stated that “Jigjiga University has opened a legal aid center. However, its performance is not satisfactory. The service providers do not appear in courts and publicize the legal aid service the Center provides. People do not know the availability of the service”.³²

A respondent from the Somali Regional State’s Women, Children, and Youth Bureau observed the following:

³⁰ Mohammed Hussein- Appeal Court Prosecutor- Jigjiga.

³¹ Ibid.

³² Ibid.

The problem is rampant. There are a lot of people who are in trouble and silently endure their pain with no clue as to where to go for legal aid. Lack of awareness is hence a big obstacle. Since the awareness of the people is increasing, the turnout of the people is also increasing.³³

An interviewee from the SNNPR expressed her optimism by saying that “we see some improvement in the quality of services provided to the needy” and she indicated her observation that the service benefits poor communities.³⁴ Another interviewee remarked that “since adequate promotional activities have not been carried out, the turnout of beneficiaries is not as much as we would like to have”.³⁵

Similarly, an interviewee from the Somali Region Justice Bureau stated that the total number of lawyers in the regional state and the number of volunteer lawyers at Jigjiga University –who provide free legal aid service to the needy– is not adequate.³⁶ A respondent from Adama Zone Women and Children Office opined:

We can say that the turnout of clients is so high that it is beyond our capacity. We do not have the capacity in terms of human resource (professionals) to handle huge number of clients. The demand and supply are not comparable. Currently, the number of clients has declined to some extent due to the change of address of our office and the new site is a bit far to beneficiaries. As a result, the community faces accessibility problem.³⁷

Another respondent from Bahir Dar Women, Children and Youth Bureau stated:

There is no clear organizational structure. There are no legal professionals. As a result, it is imperative to refer clients to other institutions. To fill this gap, assigning a professional who will provide legal advice, prepare pleading or represent beneficiaries at a court of law is imperative. Since we do not provide these services, beneficiaries are forced to pay for the preparation of pleadings. Occasionally, the

³³ Zahra Abdi: Somali Regional State Women, Children, and Youth Bureau Gender Core Process Coordinator.

³⁴ W/o Demekech Dawit, SNNP Regional State First Instance Court Vice President.

³⁵ Wegayhu Getu representative of the Regions Administration Violence against Women and Children Response Project.

³⁶ Imran Omar: Document Authentication, Association Regulation and Advocate Licensing Core Work Process leader

³⁷ Shegitu Qabeto Deputy Officer of Women and Children Office of Adama Zone.

justice bureau provides these services based on evidence of pauperism. However, the service does not reach the masses.³⁸

An interviewee working as legal aid provider in the Amhara Region Justice Bureau on his part observed, “owing to lack of awareness and low expansion of accessibility of the service, many people are not benefiting from the service. Moreover, shortage of human resource and the inconvenience created by the locations of service providers have posed additional problems”.³⁹ The Coordinator of the Legal Aid Center at the Bahir Dar University stated the following observations:

The turnout of people is not as expected. The service is given sporadically. In the past, the Center was closed for about six months as we had no secretary. After having promoted the service, the Center has resumed its service afresh. The service is not given to clients on a regular basis. The erratic nature of the service has contributed to the decline of beneficiaries who want to access the service. While the Centers have widespread recognition, its intermittent service has not only posed serious question on the sustainability of the center, but has also impeded the flow of beneficiaries.⁴⁰

Mekele University Legal Aid Center Coordinator on his part stated that the Center has four branches, and he noted their inadequacy in comparison with the demand on the ground.⁴¹

3.3.2 Variation in the Perception of Judges on the Adequacy of the Service

There are different views from judges in their assessment of the adequacy of legal aid services. One respondent, for instance, said, “Only those who have the information ask the court to assign advocates. However, the court assigns public defenders only for defendants accused of homicide. Nothing has been done for persons accused of other types of criminal offences”.⁴² The Adama High Court President W/ro Asha Amin on her part said “occasionally, clients request support from the court”. She further remarked “the existing service is not enough. Service providers are law school students. Sometimes they lack practical knowledge. In addition, the service is not available in all working days.” On the other hand, one respondent said, “we cannot clearly evaluate

³⁸ Interviewee from Women, Children and Youth Bureau

³⁹ Temesgen Melaku Justice Bureau: Legal Aid Service Provider-Bahir Dar.

⁴⁰ Henock Bogale, Lecturer at Bahir Dar University and Coordinator of the Legal Aid Center

⁴¹ Mekele University Legal Aid Center Coordinator

⁴² W/o Kidist G/Hiwot, Amhara Regional Supreme Court Judge.

the outcome of our support but sometimes clients tell us how much they have benefited from the service.”

W/ro Kidist’s observation casts doubt on the adequacy of the service given by PDOs:

I do not think the service provided by public defenders is effective because they meet and talk to defendants in the court premise. They do not empathize with the accused persons while they should have followed-up the case seriously. Let alone giving other support, they frame issues for witnesses here in the court premise after having asked the bench to give them some time to talk to the latter.⁴³

A judge from the Amhara Region First Instance Court Children Bench at Bahir Dar noted that the legal aid service encounters various problems:

Juvenile offenders are not aware of the availability of the service. We judges know the 50 hours *pro bono* service that is required of the advocates, and we request the latter to provide the service. However, many advocates give little attention to their statutory obligation. So we refer clients to Women, Children and Youth Affairs Bureau. The latter asks clients to present evidence of pauperism. When Kebele Administrations fail to provide them the evidence, they come back to the court and complain.⁴⁴

Interviewees from the Bahir Dar Municipal Court pointed out the following:

We have never seen the court’s effort in facilitating access for free legal aid service to the needy. Occasionally, when HIV/AIDS patients and persons with frail health come, we help them in linking with advocates and give them some advice. We also refer them to justice offices. If possible, we request the office to assign advocates to handle their case. In the past, we used to refer them to the Ethiopian Women Lawyers Association, EWLA. Unfortunately EWLA is now no longer operational at Bahir Dar.⁴⁵

A respondent from Assosa on her part noted, “The court tries to persuade advocates to assist the needy”.⁴⁶ She stated that “at times attorneys are willing to support the poor and represent them at a court of law”.⁴⁷ Moreover, Oromia Supreme Court Administrator indicated the difficulty

⁴³ Ibid

⁴⁴ W/o Mulu Mekonen First Instance Court Children Bench Judge.

⁴⁵ Guade Kebede, Brhanu Maru, and Yeshiwork Debebe- Municipal Court Judges, Bahir Dar

⁴⁶ Mihiret Fekadu- Assosa Woreda Court Judge

⁴⁷ Ibid.

they have encountered in relation with the legal aid centers as the Oromia Supreme Court is located in Addis Ababa thereby hampering the support to clients in the Supreme Court. According to the Oromia Supreme Court Administrator, support is only provided in criminal cases “by harnessing the service of public defenders and volunteer attorneys.”

On the other hand, SNNP Region First Instance Court Vice President expressed her optimism by saying, “we are witnessing improvement in the quality of service given to the needy. We are also observing that the poor benefit from service”.⁴⁸ Likewise, Adama High Court President remarked that “the court works together with the nearby legal aid providers. We follow their work and they inform us if they face problems. The court has given them space for the legal aid center”.⁴⁹ The Federal First Instance Court Second Family Bench Judge on her part noted that “the service providers are advocates who are assigned by the MoJ. I would say the service they provide is effective”.⁵⁰

3.3.3 Perception of Beneficiaries on the Adequacy of the Service

Respondents who accessed legal aid services from Bahir Dar, Hawassa, Assosa, Adama and Mekelle were asked to indicate their legal aid service providers, and state the types and relevance of the services they have received. In line with this, all informants (100%) drawn from Bahir Dar said that they “received free legal aid service from Bahir Dar University Legal Aid Center.” As far as the type of service they received is concerned, 83.3% of the respondents said “pleading writing”, while 16.7% of them said they got “legal advice”. Moreover, all respondents (100%) rated the quality of the service as “Very Good.”

Respondents from Hawassa replied that they accessed the legal aid service from Addis Ababa University Legal Aid Center (in Hawassa) as well as Hawassa University Legal Aid Center”. As regards the type of service they received, “50% of the respondents said they received legal advice, while 16.7% of them said they got the service of pleading writing and 33.3% of them said they received both legal advice and pleading writing” services. Regarding the quality of service, 100% of the respondents rated it as “very important.”

Respondents from Adama said, they accessed the service from “Addis Ababa University Legal Aid Center (in Adama) and Adama University Legal Aid

⁴⁸ W/o Demeketch Dawit, SNNP Region First Instance Court Vice President.

⁴⁹ W/o Aisha Amin Adama High Court President.

⁵⁰ W/o Misrak Brehane - Federal First Instance Court Second Family Bench Judge.

Center.” All informants (100%) who participated in the survey claimed that they received “legal advice and pleading writing” services. Besides, 80% of the respondents rated the service “very important”, while the remaining 20% rated the service as “fair”.

All respondents drawn from Mekelle who benefited from the legal aid service said that they got the service from “Mekelle University Legal Aid Center.” The types of service they received include legal advice (33.3%), pleading writing (33.3%), both legal advice and pleading writing (16.7%), and representation (16.7%). While rating the quality of the service they received, 83.3% of the respondents said “very important”, and 16.7% of them rated the service as “fair.”

Respondents drawn from Addis Ababa and who participated in the survey said that they received the service from the Federal Supreme Court Child Justice Project and Bole Sub-city Women, Youth and Children Office. With regard to the type of service they received 50% of them said they got the service of pleading writing while the remaining 50% replied that they got both legal advice and pleading writing. 50% of the respondents rated quality of the service “very important” and the remaining 50% rated it as fair.

3.3.4 Qualification of Service Providers

An interviewee from the Hawassa University Legal Aid Center stated that the Center “engages 4th year and 5th year law school students with excellent academic track record, while academic staff members (holding LLM degree) are assigned to beneficiaries who are given representation services”.⁵¹ Respondents from the Jigjiga University Legal Aid Center said, “Law school students under the supervision of law school teachers provide legal aid service.” They stated that “cases will be given to law school students for their opinions and comments”.⁵²

An interviewee from AAU Human Rights Center in Hawassa on his part remarked, “Currently, 17 paralegals, drawn from 4th year and 5th year law school students, who received proper training, are working in the Center. The Center regularly organizes training to them so that they improve their competence”.⁵³ He further said, “The Center Coordinator is LLM degree holder. In the past five years, he has not only been teaching in the law

⁵¹ Admasu Alemayehu, Hawassa University Legal Aid Coordinator.

⁵² Solomon Guade, Jigjiga University Legal Aid Center Coordinator and Melaku Beza, Deputy Coordinator.

⁵³ Yednekachew Ayalew-AAU Human Right Center Legal Aid Coordinator.

school, but he was also involved in the provision of legal aid service”.⁵⁴ According to Ato Yednekachew, “there is no problem of competence in delivering the service”.⁵⁵

A respondent from Mekelle University Legal Aid Center noted that “the service providers are lawyers having a minimum of LLB degree. There are also law students who are practicing law in the Center”.⁵⁶ Another informant from Adama University Legal Aid Center suggested that “some of the employees of the Center have degree and diploma in law. Law school students working as paralegals give legal advice and prepare legal briefs”.⁵⁷

An interviewee from Bahir Dar University Legal Aid Center stated that “there are three groups of persons involved in the legal aid service provision. The first group consists of law school students who are in their third year and above. The second group comprises fourth year students and 4 month practicum (40-50 persons). They are assigned to provide the service regularly. The third group involves lecturers”.⁵⁸ According to Ato Henock, “each lecturer is duty bound to provide community service. Providing community service is one of the requirements for promotion. So, both lecturers and the administration are highly involved in the provision of legal aid services”. He stated that a two-day training was organized to students by professionals on themes such as handling clients and identifying areas that should be given due attention in the course of providing legal aid services.⁵⁹

In addition to the assessment of perceptions on the qualification of legal aid service providers in the legal aid centers and legal clinic programmes of law schools, assessment was made on the qualification of other legal aid service providers. A respondent from the MoJ remarked:

The Ministry of Justice works with professionals who hold a minimum of first degree in Law. There are also diploma holders with extensive experience. Given their knowledge and experience, I don't think they have a problem with respect to legal knowledge. If at all there is a problem, it could be ethical ones. I would say they are qualified for providing legal aid service.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Mekele University Legal Aid Center Coordinator.

⁵⁷ Adama University Legal Aid Center.

⁵⁸ Henock Bogale- Lecturer at Bahir Dar University.

⁵⁹ Ibid.

Similarly, an FGD participant from the Public Defenders Office stated that “except two or three persons, all public defenders are degree holders”. An FGD participant from the HRC said,

The educational qualification of service providers in our organization is LLB degree and above. Moreover, nearly all of them have years of experience in the area. When we advertise vacancy, we give preference to women and encourage applications from professionals with experience.

An informant from the Child Justice Project (CJP) noted that in addition to qualified professionals, the office deploys paralegals as legal aid providers.

Service providers are qualified, with LLB degree and above. Most of them have served as judges, prosecutors, and law school lecturers. Final year law school students are recruited by the AAU Human Rights Center and are assigned, among other things, to assist advocates, follow-up cases, and carryout case review.

FGD participant from EWLA said, “in the past we provided *pro bono* services in Bahir Dar, Hawassa, Adama, Assosa, Dire Dawa and, Gambella through paralegals. We used to organize quite a number of skills upgrading training to legal aid providers. We also used to assign law school students under the supervision of practicing lawyers”.

3.3.5 Discussion

The assessment (highlighted above) on the adequacy of the service given by legal aid providers has involved FGD participants, interviewees drawn from courts, prosecutors and questionnaires. The findings show that regardless of the efforts that are underway, legal aid providers have not done enough to ensure access to legal aid service to the needy. The findings reveal that a lot needs to be done in expanding the service.

The findings from the assessment also indicate that there is a problem in the quality of service rendered by legal aid providers. The findings reveal a glaring difference between the service given by public defenders to an accused person on the one hand and the service provided by a private attorney to a client on the other. As stated earlier, public defenders meet and talk to defendants in the court premise, and this creates doubt on the effectiveness and quality of service given by public defenders. There is yet another problem inherent in the service of Public Defenders Office which constitutes one of the findings of the needs assessment, i.e., in most of the sites where the assessment has been conducted, courts usually assign public defenders only for those who are accused of homicide. This clearly indicates

lack of legal aid services to other indigent defendants who are indicted of other kinds of offences.

The findings from the assessment also show that the performance of some of the legal aid centers is not satisfactory. Although a considerable number of beneficiaries of the legal aid service who participated in the survey rated the service as “very good”/“very important”, these views are forwarded by persons who have been able to get the services, and refer to their assessments of the specific services they had received.

The service is plagued by a number of challenges. Some of the challenges spelled out in the findings of the needs assessment are: *first*, most of the legal aid centers provide legal advice, pleading writing or both; and they rarely give court representation service which is crucial for beneficiaries. *Secondly*, some legal aid centers are solely located in the university campuses while they should have been able to be located in proximity with courts (or in court compounds) where there is overwhelming need for the service. *Thirdly*, some service providers do not disseminate their services to the general public which is largely unaware of the legal aid services.

As indicated earlier, the quality of services given to the needy partly depends on the qualification and experience of persons assigned to provide them. In line with this, the needs assessment has appraised the competence of personnel deployed by the legal aid providers. The findings of the needs assessment indicate that most of the legal aid providers are legal professionals with a minimum of LLB degree, while a few of the service providers stated that they assign diploma holders with extensive work experience together with degree holders.

The findings show that the majority of the service providers rely on paralegals, notably, law school students. In other words, in many legal aid centers, service providers are law school students. Obviously, lack of practical experience and knowledge has its own toll on the quality of services given. Moreover, the findings show that in some legal aid centers the service is intermittent due to budget constraint.

3.4 Follow-up Mechanism

3.4.1 Views of FGD Participants and Interviewees

The following paragraphs assess whether service providers have put in place a system that helps them track the status of the case and whether the system in place is robust. FGD participants and interviewees drawn from legal aid centers of universities, the MoJ, justice bureaus, PDOs and NGOs have

extensively discussed the monitoring mechanisms that are put in place in their respective agencies in the context of legal aid. In line with this, one FGD participant from HRC gave the following account of the experience of his organization:

There is a follow-up system that aims at tracking the status of cases at courts. After having prepared pleadings to clients, someone from the Court-Follow-Up Department will monitor the case. Throughout the trial, the Department tracks the manner of presentation of evidence, testimony of witnesses as well as the entire court proceeding until the case is concluded. For each pending case, we have a court-follow-up file where the profile of the client and the status of the case are recorded. The organization assigns a person who regularly appears at court of law and report. Moreover, the Court-Follow-Up Department tracks the trials of high profile cases such as terrorism charges.

There were similar remarks from FGD participant from the MoJ:

Although it has gaps with regard to efficiency, a follow-up mechanism is in place to supervise advocates assigned to provide *pro bono* service. The Department responsible for licensing and disciplining advocates tracks the status of the case and by extension the performance of assigned advocates by collecting reports from the latter. The department also entertains grievances of clients as the latter are given a chance to put forward their complaints on the performance of an assigned advocate.

The informant also said that “while robust controlling mechanism has been designed, the system in place is understaffed. Consequently, there is no well-organized and functioning monitoring system” As far as the supervision of prosecutors –who provide legal aid service for women, children and other vulnerable groups in civil cases– is concerned, the same respondent from MoJ remarked that prosecutors “undergo performance evaluation like all other civil servants.”

FGD participant from EWLA shared the following practice in her organization with respect to follow up:

EWLA has developed a form to be filled out by persons who provide the legal aid services concerning the service they provide to clients. They report on a regular basis. Beneficiaries give feedback by filing out forms which help us monitor the satisfaction of clients. Moreover, EWLA keeps records of landmark cases and it follows up court cases that involve violence against women. There is also a bi-annual and annual reporting mechanism. Previously, there was a mechanism for

tracking cases brought to our office. At present, tracking the legal aid service has become part of the Executive Director's portfolio.

One FGD participant from PDO, said, "Case follow-up system is in place to track cases handled by our office. A follow up form has been developed and implemented." According to the participant, "a Public Defender is required to document or record the status of the case in a form upon every court appearance and at all stages of the trial. The status of cases handled by public defenders at circuit courts in regions such as the ones at Assosa and Dire Dawa can also be tracked."

The same FGD participant from PDO further remarked:

A monthly report by a public defender is submitted to the office. Monthly, quarterly, bi-annual and annual performance reports are submitted to the Federal Supreme Court by the Public Defenders' Office. The report submitted by a public defender to PDO comprises the service provided from the commencement of the trial to the stage where it reached, the type of service provided by the assigned public defender and what is lacking as well as other activities carried out by assignees including visit paid to the defendant in prison. Since each case handled by PDO is documented, the form contains a section that helps trace the stage of the proceeding; and this enables any public defender to take up and proceed with the case.

A respondent from the Child Justice Project (CJP) explained the follow-up system in place and how it is working:

There is a follow up mechanism. We classify cases brought to our center at three levels. The first cluster embraces those who are accessing the service in the head office and other two centers. The second relates to clients whose pleadings have been submitted to courts or other administrative bodies, and the third involves beneficiaries whose cases are closed and no longer seek legal aid services.

She further stated that "CJP records the status of the case and the stage it has reached. If advocates are assigned, CJP tracks the progress of the case through reporting." Moreover, she indicated that CJP will track the progress of cases through telephone "if advocates are not assigned but pleadings are filed in courts or other administrative bodies". It was also stated that CJP makes a call to beneficiaries at least once even after the case is closed.

A respondent from the Somali Regional State Public Defenders Office remarked that although "the office does not have special follow-up mechanism, the number of cases handled by the office at zonal and regional

levels are known.” He stated that “the number of cases that are won and lost are recorded and reported every three months to the Regional Supreme Court”.⁶⁰ The respondent further stated that the office conducts supervision in addition to periodic reporting.

We appear in court to observe the performance of public defenders and easily identify their shortcomings. We also get feedback from courts whether the assigned person provides quality service, or is in attendance in court on the day scheduled for hearing, or whether the pleading or appeal is submitted within the time prescribed by law”.⁶¹

An informant from Hawassa University Legal Aid Center stated the follow-up mechanisms that are employed. He stated that the Center “makes calls to beneficiaries. If the case involves representation, the assigned advocates are required to submit report to the Center on the status of the case”.⁶²

Similar statements were made by an informant from Adama University Legal Aid Center who stated that, ‘files are opened for each beneficiary where all relevant information is recorded so that the case can be easily tracked by referring to the document. Moreover, the Center follows up the case *via* phone calls.” The Center further requests beneficiaries “to provide information on the progress of the case so that the Center can support them at every stage of the case.”

Likewise, an interviewee from the Tigray Region Justice Bureau indicated that the office “follows up the case at court after having provided the legal aid service (advice or preparing pleadings) to the needy”.⁶³ With regard to representation, he stated that “a case recording system is in place so as to track the progress of a case from day one. Clients also brief the office about the status of the case”.⁶⁴ On the other hand, the coordinator of Mekelle University Legal Aid Center stated the lack of “much developed follow up system” and indicated the expectation that “clients themselves come back to brief the Center about the status of the cases.” The coordinator noted that “if clients do not appear, it will be presumed that they have succeeded in their court case”.⁶⁵

⁶⁰ Abdwali Jama Ibrahim, Public Defenders Office.

⁶¹ Ibid.

⁶² Admasu Alemayehu, Hawassa University Legal Aid Center Coordinator.

⁶³ Goytom H/Mariam-Tigray Region Justice Bureau Head.

⁶⁴ Ibid.

⁶⁵ Mekele University Legal Aid Center Coordinator.

3.4.2 Discussion

The quality of legal aid service partly depends on the strength and efficiency of the monitoring system in place. In the absence of effective monitoring, it is hard to ensure whether the service delivered by legal aid providers is up to the required standard. Under such circumstances, it is also difficult to ensure the compliance of advocates who are required by law to provide *pro bono* services. Consistent with this understanding, the findings of the needs assessment show that regardless of difference in the robustness of the system in place, most of the agencies involved in the needs assessment have some sort of monitoring mechanism.

The findings from the assessment indicate that some legal aid providers (Jigjiga PDO) do not have special follow-up system in their office other than the customary periodic reporting and supervision of public defenders in courts. Others like the HRC use a court follow-up system to track the status of a case. Still others, like the PDOs, at the federal level, have introduced a case follow-up system to track cases handled by their office. NGOs like EWLA, on their part, stated that the organization has developed and implemented a form to be filled out by persons who provide the legal aid services regarding the service rendered to clients. Moreover, they have conducted assessments on client satisfaction by letting the latter fill out questionnaires to get relevant feedback.

Some legal aid centers said they have a dossier for each client who comes to the center for legal aid service and the files record all relevant information to easily track the status of cases by referring to the documents. Others like the MoJ stated that the department responsible for licensing and disciplining advocates is in charge of tracking the status of a case and by extension the performance of the assigned advocates through a reporting system.

The findings of the assessment revealed that both government and non-governmental legal aid providers need effective monitoring systems which should be put in place. They also reveal that although a robust supervision mechanism has been designed in some agencies like the MoJ, it is not as functional as it is expected to be due to the problem of understaffing. Consequently, its leverage to enforce the 50-hour *pro bono* service of advocates as required by the law has been debilitated. The findings also show that most of the justice bureaus that participated in the needs assessment have experienced similar challenges.

3.5 Challenges of Legal Aid Service

3.5.1 Perception of Legal Aid Providers on the Challenges of Legal Aid Service

There are major challenges that impede various offices to properly deliver legal aid services. According to FGD participant from PDO, one of the challenges relates to “lack of awareness among the general public regarding the availability of the service.” The participant indicated the failure “to allocate adequate budget for the Public Defenders’ Office” as another major challenge. The respondent indicated that the Public Defenders’ Office “does not even have a single vehicle.”

FGD participant from the Ministry of Justice identified three major problems that adversely affect the provision of proper legal aid services. He indicated lack of clarity in the scope of legal aid services.” The *second* challenge identified by the informant is that “organizations, driven by their respective interest, undertake the service in isolation. Little effort has been made among organizations to collaborate and create synergy.” The *third* problem raised by the same respondent refers to the “significant decline of legal aid activities carried out by NGOs after the coming into force of the Charities and Societies Proclamation.”

The participant expressed his dismay that “there has been little effort on the part of NGOs to overcome the newly imposed legal impediments and resume the provision of legal aid as before.” In this regard, he invoked the experience of the African Child Policy Forum which “negotiated with the government and got the permission to work on legal aid.” According to the participant, other NGOs could have explored possible avenues to get permission and continue providing legal aid services.”

A Public Prosecutor from Adama mentioned that the main challenge impeding beneficiaries from accessing legal aid is “lack of information on the existence of the service and inaccessibility of the existing service to the potential beneficiaries who reside especially in rural areas”.⁶⁶ Another challenge raised by a participant from the Assosa Women, Youth and Children Office relates to shortage of legal professionals:

There is only one LLB holder in this office ... There are a number of backlog cases. Grave crimes committed against women and children are rampant in the region. There are also harmful traditional practices such as early marriage and abduction. Human trafficking is also another challenge. Children, in particular, are victims of child

⁶⁶ Gurmesa Befuta, Public Prosecutor, Adama.

trafficking, drug trafficking and child labor. Compared with the serious crimes pervasive in the area, the number of lawyers is inadequate.⁶⁷

Respondents from Jigjiga noted that “the all-encompassing problem in the region is the visible gap in legal knowledge.” They also stated that “cases that do not fulfil the formality requirements are presented to courts by the Registrar”, and mentioned the gaps in the competence of judges.⁶⁸ Another informant from Bahir Dar questioned the authenticity of evidence of pauperism issued by social courts, and he compared the delay in judicial performance with a snail’s pace.⁶⁹ He stated that “there are no standard selection criteria for screening beneficiaries”⁷⁰ and further noted that various Social Courts in Bahir Dar –that “are run by volunteers” – issue “evidence of pauperism arbitrarily” which at times “may involve bribery.” According to the informant, another challenge relates to the inadequacy of attention given by private attorneys to their obligations of *pro bono* free legal aid services.

The coordinator of Bahir Dar University Legal Aid Center identified the challenges that are encountered by the center:

Our problem is shortage of human resource. We do not have full time staff. Although the university employs secretaries on a contractual basis, they frequently resign. We do not have permanent legal professional staff. What is worse is that the university does not allocate budget for the legal aid program. The Center has also been plagued by problems of institutional arrangement.⁷¹

Budgetary constraints and staff shortages were stated as major challenges by the coordinator of Mekelle University Legal Aid Center who indicated that “the center is understaffed as the size of the staff and the number of beneficiaries who come to the center is not proportional, and on occasions, it runs out of stationary and supplies”.⁷² He also indicated “lack of awareness about the existence of the service” as one of the challenges of legal aid service. He remarked that “although the Mekele University Legal Aid Center is performing well, it is short of budget”.⁷³

⁶⁷ Asmamaw Alemayehu, a lawyer at Women, Youth and Children Office-Assosa.

⁶⁸ Solomon Guade, Jigjiga University Legal Aid Center Coordinator and Melaku Beza, Deputy Coordinator.

⁶⁹ Getahun Hunde, Public Prosecutor, Bahir Dar.

⁷⁰ Ibid.

⁷¹ Henock Bogale- Lecturer at Bahir Dar University and Coordinator of the Legal Aid Center.

⁷² Mekele University Legal Aid Center Coordinator.

⁷³ Tigray Region Justice Bureau Public Prosecutor.

3.5.2 Perception of Courts on the Challenges of Legal Aid Service

A considerable number of informants drawn from regions reflected on the underlying problems of the *pro bono* service. Vice President of SNNP Region First Instance Court, noted that “the major challenge encountered by courts is the absence of a clear directive to determine the 50-hour *pro bono* service”.⁷⁴ She further stated that “when the case is referred to the Federal Supreme Court through Appeal or Cassation, courts have no mandate to force advocates to handle a case as it is outside their jurisdiction”.⁷⁵ Apparently, these gaps have adverse impact on the legal aid that should be given to beneficiaries.

A regional Supreme Court judge has a similar view. According to Ato Solomon, “while advocates are obliged to provide the 50-hour *pro bono* service, they do not –in practice– do that as there is no supervisory body”.⁷⁶ Another regional Supreme Court judge indicated that the Justice Bureau has failed to track “the enforcement of the 50-hour *pro bono* service”.⁷⁷ The views of Bahir Dar Municipal Court judges substantiate the foregoing statements regarding the gaps in the enforcement of the *pro bono* services required of advocates. According to Ato Guade, Ato Berhanu and W/o Yeshiwork, “advocates are asked about the status of the case they handle only when they appear to Justice Bureau for license renewal. They simply submit the name of clients. This problem is pervasive among advocates as well as justice office staff. It would have been helpful if advocates are required to show the status of the case in some way”.⁷⁸

Absence of criteria in the selection of beneficiaries is identified by various respondents as among the challenges that adversely affect ongoing legal aid services. Vice President of SNNP Region First Instance Court noted “the unreliability of evidence of pauperism”. She stated that “persons who produce evidence of pauperism from the Kebele Administration are in various instances found to be persons who can afford to hire advocates”.⁷⁹ Likewise, a Regional Supreme Court Judge expressed his concern in this regard indicating that “there are no objective criteria for eligibility of accessing the service. For instance, a person who seeks the service may be required to produce evidence of pauperism from the Kebele. However, the

⁷⁴ W/o Demekech Dawit, SNNP Region First Instance Court Vice President.

⁷⁵ Ibid.

⁷⁶ Solomon Goraw Regional Supreme Court Judge.

⁷⁷ W/o Kidist, Regional Supreme Court Judge.

⁷⁸ Guade Kebede, Berhanu Maru, and Yeshiwork Debebe- Municipal Court Judges, Bahir Dar.

⁷⁹ W/o Demekech Dawit - SNNP Region First Instance Court Vice President.

reliability of the evidence and the criteria they apply to select beneficiaries is unclear”.⁸⁰

The problem of understaffing in the Public Defender’s Office is one of the challenges identified in the preceding sections of this needs assessment. Judges who participated in the Focus Group Discussion and in the interviews hold similar views. Acting President and Cassation Bench Judge at the Assosa Regional Supreme Court noted that the Public Defender’s Office is understaffed as “there are very few public defenders in the Region”.⁸¹ Another interviewee also raised the problem of inadequate staffing particularly with respect to public defenders “as one of the challenges in the provision of legal aid services”.⁸²

Lack of awareness on the availability of legal aid service is stated by a considerable number of respondents as one of the major challenges that impede the effective provision of legal aid services. Assosa Woreda Court Judge, for instance, attributed the low turnout of people in accessing legal aid services to lack of awareness about the existence of legal aid providers.⁸³ A High Court Judge from Mekele also regarded “lack of awareness about the existence of the service” as one of the challenges that hinder clients from accessing legal aid service”.⁸⁴ 2nd Family Bench Judge of the Federal First Instance Court shares the same view and she says, “lack of awareness is the reason for the low turnout of beneficiaries, because the latter do not, in most cases, know about the existence of institutions that provide free legal aid service”.⁸⁵ According to a respondent from the Federal First Instance Court:

There are people who do not even know whether they should admit or deny the alleged charge, or what to say at the closing stages of a proceeding as well as during plea for mitigation of penalty. Some do not have the faintest idea about whether they should rebut the evidence brought against them. Even if they know that they should rebut the evidence brought against them, they do not have the skill to do that.⁸⁶

Acting Regional Supreme Court President and Cassation Bench Judge opined that in view of the illiteracy rate in Ethiopia, many indigent defendants “know little about their rights”, and –in the absence of effective

⁸⁰ Solomon Goraw, -AmharaRegion Supreme Court Judge.

⁸¹ Negimedin Almahadi, Assosa Regional Supreme Court Acting President and Cassation Bench Judge.

⁸² Kidist G/Hiwot- AnharaRegion Supreme Court judge.

⁸³ MihiretFekadu- AssosaWoreda Court Judge.

⁸⁴ Abreha Berhe-Mekele High Court Judge.

⁸⁵ W/o Misrak Brehane -Federal First Instance Court 2nd Family Bench Judge.

⁸⁶ Haleluia Ayzoeh, Coordinator at the Federal First Instance Court Kolfe Keranio Bench.

representation– they are not capable of defending themselves at court of law.⁸⁷ He stated that “lack of awareness and the absence of legal aid centers” are some of the challenges that impede beneficiaries from accessing free legal aid service”.⁸⁸

Another challenge that was identified by judges as impediment to the enhancement of legal aid services relates to the problems encountered by students from law school legal aid centers in relation with licence. Ato Solomon stated that “students who represent clients do not have license, and courts naturally require license when a legal aid provider represents a client”. With regard to the challenge of accessibility, he noted that “the service providers are not in close proximity to courts”.⁸⁹

3.5.3 Discussion

As the foregoing sub-sections indicate, various problems are identified including lack of clarity in the scope of coverage of legal aid, the absence of a clear directive to implement the 50-hour *pro bono* service, the inadequate staffing of the Public Defender’s Office, lack of awareness on the availability of the legal aid, financial constraints, absence of objective criteria for the eligibility of accessing legal aid, gaps in the reliability of evidence of pauperism issued by social courts, lack of coordination among legal aid providers, the absence of standard for quality assurance in legal aid service provision and gaps in effective supervisory mechanisms for tracking the performance of advocates while providing *pro bono* services.

The needs assessment has also revealed a number of challenges that impede the effective delivery of legal aid service to the needy. The low turnout of beneficiaries is attributable to lack of awareness (due to absence of publicity) on the availability of legal aid service. This is considered as a major challenge that obstructs the provision of legal aid service at a wider coverage. A considerable number of respondents have raised this challenge. Awareness creation is recognized as a vital tool to inform the public on the availability of the legal service. The findings of the needs assessment showed that adequately popularizing the availability of legal aid services among the general public –more specifically among the needy– is an important strategy to increase the turnout of beneficiaries of the service. While some respondents admit that they have never done promotional activities, others stated that they publicize the availability of the service to the general public

⁸⁷ Negimedin Almejadi, Assosa Regional Supreme Court Acting President and Cassation Bench Judge.

⁸⁸ Ibid.

⁸⁹ Solomon Goraw- Amhara Region Supreme Court Judge.

on a regular basis. Few informants, however, indicated that they intentionally refrained from publicizing their legal aid services as a precaution against being overwhelmed by surging demands for the service.

The findings of the needs assessment also revealed that many of the universities neither own the legal aid program nor allocate budget for the legal aid centers. Financial constraint has thus remained a major challenge for the legal aid centers of universities. Several universities seem to be reluctant to recognize that the legal aid centers are engaged in community servicing which constitutes one of the three pillars in the mission of universities, i.e. teaching, research and community services. On top of the community service dimension, the legal aid clinics in the law schools enhance the learning opportunities of students by enabling them to apply what they have learned in class. Legal aid services in law schools also enable students to exercise voluntarism which is a very significant element in a lawyer's professional career in the course of *pro bono* services.

Most of the centers suffer from understaffing and under-budgeting. In some legal aid centers, the staff is disproportionately small when compared with the number of beneficiaries that seek services from the center. As a result, in some of the university-run legal aid centers, the service is sporadic. Although the problem of understaffing and budgeting seems grave among university-run legal aid centers, other legal aid providers also suffer from similar problems. The findings from the needs assessment indicate that understaffing is one of the inherent problems of the Public Defender's Office which is one of the major legal aid providers.

The assessment has shown lack of objective criteria for eligibility to legal aid service. Moreover, the authenticity of evidence of pauperism issued by certain social courts has been found doubtful. If there are persons who produce evidence of pauperism from the Kebele Administration while they can afford to hire advocates, this becomes a challenge against fair and equitable access to legal aid services. The risk of allowing legal aid services to those who can afford to hire a lawyer avails the meagre services of the Public Defenders' Office to those who are not needy. The delay in securing evidence of pauperism is also problematic.

The findings of the needs assessment have shown the absence of directives that can effectively implement the 50- hour *pro bono* service required of advocates. In this regard, there is lack of clear directive when the count up for the 50-hour begins and when it ends. The needs assessment has revealed that in practice, agencies that are responsible for overseeing the enforcement

of the 50-hour *pro bono* service of advocates have done little in terms of ensuring compliance.

Courts have encountered problems in enforcing the *pro bono* service rendering duties of advocates (when a case is referred to the Federal Supreme Court through appeal or cassation) because ordering advocates to handle a case falls outside their jurisdiction. The problems mentioned above thus require clarity with regard to the 50 hour *pro bono* service of advocates and there should also be monitoring schemes that can efficiently and effectively implement the *pro bono* service obligations of advocates.

The needs assessment has identified lack of coordination among legal aid providers as a problem in harmonized legal aid service provision. It is indicated that coordination among legal aid providers could have solved some of the problems and challenges that are encountered in the course of legal aid services.

The absence of a standard for quality assurance in the service provision is a challenge that has been identified in the findings of the needs assessment. The role to be played by paralegals, law school students and professionals should also be clearly delineated. Absence of standards compromises the quality of service, and as a result, it adversely affects the quality and outcomes of legal aid services to the poor. In the absence of clear and uniform standards on the quality of service to be delivered by legal aid centers, service provision that lacks the requisite quality and standards may harm the poor even where the providers of such services are helping the needy with good intention.

Part Four

Conclusions and Recommendations

The findings of the needs assessment show that service recipients are mostly in the low income group although all service providers do not share identical targets. While some service providers set criteria for the selection of beneficiaries, others do not. Doubt has also been cast on the authenticity of evidence of pauperism issued by social courts. For the most part, there are no objective criteria for eligibility to access legal aid services. Accordingly,

- 1) uniform eligibility criteria that binds all legal aid providers should be issued for the selection of beneficiaries;
- 2) courts should use additional methods other than affidavit to make sure that public defenders can be assigned to defendants who are needy; and
- 3) there should be guidance that binds all legal aid providers to effectively deter the misuse of the legal aid service that is meant for the poor and other vulnerable groups.

As the findings of the assessment reveal, the provision of legal aid service is crucial in ensuring access to justice for the poor, the disempowered and vulnerable groups. It is also indispensable in conducting fair trial and protecting citizens from the miscarriage of justice. The appearance of the poor at court of law without being represented by an attorney causes repeated adjournments and delay in judicial services. Legal aid centers thus play an important role in the realization of access to justice. Accordingly,

- 4) the government as well as donor agencies should encourage and reinvigorate the existing legal aid service providers; and
- 5) they should provide an all-out support for the expansion of legal aid service.

There are discrepancies among legal aid service providers in terms of the extent/scope of the service they provide and types of cases they handle. While some of the service providers entertain both civil and criminal matters, others limit their service to criminal cases. Some give only oral advice, and /or prepare pleadings. Others offer comprehensive services ranging from oral advice and the preparation of pleadings to the services of representation, mediation and psycho-social support. The needs assessment indicates the need for:

- 6) widening the services given to low income persons, women, children and other vulnerable groups so that they can be comprehensive thereby covering legal advice, writing pleadings, court representation, etc; and
- 7) the issuance of directives that guide service providers in identifying the kind of services to the respective beneficiaries (i.e., the settings in which oral advise, or preparation of pleadings, or both, and the service of court representation should be given) in order to curb arbitrariness in the service provision.

With regard to the adequacy of the service given by legal aid providers, the findings of the needs assessment show that regardless of their effort, legal aid providers have not done enough in ensuring access to legal aid service to the needy. Compared to the demand on the ground, the service given by the existing legal aid providers is inadequate. Governmental and non-governmental bodies should thus expand the legal aid services. To achieve this end, Resident Charities and the government should take the following steps:

- 8) Ethiopian Resident Charities who used to provide legal aid service prior to the coming into force of the Charities and Societies Proclamation should be engaged in discussion with all relevant government bodies for a special permit to carry out legal aid service; and,
- 9) The relevant government institution should consider granting special permit to the former legal aid providers as well to the new ones that aspire to involve in legal aid service in the interest of access to justice and being mindful of the significance of legal aid service to the needy.

The findings of the study revealed that there is a glaring difference between the service given by public defenders to an accused person as compared to the service provided by private attorneys to their clients. The findings also showed that there is doubt on the effectiveness and quality of service given by the former. The limitations mentioned above are attributable to case load, inadequate facilities, remuneration for public defenders and other factors. To address these problems, concerned bodies at the federal and regional states should:

- 10) allocate adequate budget for the recruitment of additional public defenders;
- 11) review the salary scale to retain the existing staff and make the job more attractive to competent professionals; and

- 12) provide the PDOs at the federal and regional states with equipment and vehicles to facilitate their work.

The findings show that majority of the service providers are reliant on paralegals, notably, law school students for the service provision. This might affect the quality of services given to the beneficiaries of the service. To ensure the quality and standards of the service given by the legal aid centers:

- 13) *Guidelines* should be issued to clearly define the role and responsibilities of practicing lawyers, law school students and other paralegals; and
- 14) legal aid providers should ensure that law school students or paralegals that give voluntary service in the legal aid centers carry out their tasks under the strict supervision of practicing lawyers.

In some legal aid centers (e.g. Bahir Dar University and others) the service is sporadic due to budget constraint. The unpredictability of the service has its own negative bearing on the quality of the service rendered to the needy. The study also indicated that legal aid centers have created opportunities for law school students to practice what they have learnt in class and nurture voluntarism. In the domain of resources, a considerable number of university legal aid centers are reliant on external funding. This necessitates due attention to the sustainability of the services so that they do not come to an end when external funding dries up. Accordingly,

- 15) universities should expressly recognize that running legal aid centers is required under one of the three missions they are established for (teaching, research and services);
- 16) allocation of adequate budget is not only a prerequisite to effectively run the centers and provide quality service to their beneficiaries, but it also relieves the centers from absolute dependence on external funding thereby ensuring the continuity of legal aid services to indigent citizens;
- 17) there should be respect for the autonomy of the Centers; and
- 18) the location of legal aid centers should go beyond university campuses and should include outreach programs where the demand for the service is rife.

The quality of legal aid service partly depends on the strength and efficiency of the monitoring system in place. In the absence of the latter, it is hard to ensure whether the service delivered by legal aid providers is up to the required standard. In the absence of a strong supervision mechanism, it will

also be highly unlikely to ensure compliance of advocates who are obliged by law to provide *pro bono* service.

All agencies involved in the needs assessment claimed to have some sort of monitoring mechanism in spite of variation in effectiveness and consistency. Although a robust supervision mechanism has been designed in some legal aid providers, it is not functional as one might expect it to be due to the problem of understaffing. In practice, agencies responsible for overseeing the enforcement of the 50-hour *pro bono* service imposed by law on advocates have done little in terms of ensuring their compliance. Thus,

- 19) both government and non-governmental agencies have to formulate and implement an effective monitoring system; and
- 20) agencies empowered by law to oversee the compliance of advocates obliged to provide the 50-hour *pro bono* service should formulate and implement a robust monitoring mechanism.

The findings of the needs assessment have revealed lack of clarity regarding the 50-hour *pro bono* service required of advocates. There is no clear directive on the starting and ending points of the count up for the 50-hour *pro bono* obligations. Regional state courts also encounter problems in enforcing the *pro bono* service obligations of advocates (when a case is referred to the Federal Supreme Court through appeal or cassation) as they lack the jurisdiction to assign advocates. Thus,

- 21) Directives should be issued that clarify all the ambiguities surrounding this law.

It is indicated that the low turnout of beneficiaries of legal aid is partly attributable to the absence of awareness creation activities. Accordingly,

- 22) legal aid providers should undertake general public awareness creation activities regarding the availability of the legal aid service to increase the turnout of beneficiaries of the service.

Lack of coordination among legal aid providers is identified as a problem in the course of legal aid service provision. Accordingly,

- 23) legal aid providers should forge some kind of coordination, mutual support schemes and harmonization among themselves to avoid duplication of efforts and to create synergy.

The needs assessment has identified various problems in legal aid services including (a) lack of clarity in the scope of coverage of legal aid, (b) absence of a clear directive to implement the 50-hour *pro bono* service and lack of effective supervisory mechanisms for tracking the performance of advocates

while providing *pro bono* service, (c) inadequate staffing of the Public Defender's Office, (d) lack of awareness on the availability of the legal aid, (e) financial constraints, (f) absence of objective criteria for eligibility of accessing the service, (g) doubtful evidence of pauperism issued by social courts, (h) lack of coordination among legal aid providers, and (i) absence of standards for quality assurance in legal aid service provision. In order to address these challenges and gaps:

- 24) a comprehensive Legal Aid Policy should be formulated and implemented.
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Annex

Participants of Focus Group Discussion

Date: April 16, 2014

Venue: Ethiopian Lawyers Association

Ethiopian Lawyers Association

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Participants

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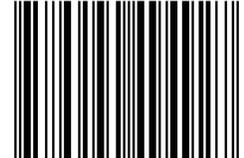
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