

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

*Milkii MekuriaYadessa\**

### **ABSTRACT**

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

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*\*LL.B (Haramaya University), MA in Human Rights (Addis Ababa University); Researcher at Oromia Justice Sector Professionals' Training and Legal Research Institute; E-mail: [milkiiw@yahoo.com](mailto:milkiiw@yahoo.com). The writer is indebted to Mr. Fasil Mulatu (Lecturer, Addis Ababa University, Center for Human Rights) and to the anonymous reviewer of this paper for their valuable comments and suggestions.*

## 1. INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

be provided to an accused that does not have counsel where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it. According to the general reading of the ICCPR, the right to counsel applies to all stages of criminal proceedings, including the preliminary investigation and pre-trial detention<sup>37</sup>. The ICCPR also calls on state parties to ensure that in criminal proceedings involving juveniles the procedures should take into account their age and the desirability of promoting their rehabilitation<sup>38</sup>.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

<sup>66</sup>*Ibid*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 6.2. PARTICIPATION OF THE CHILD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 6.4. THE CONFIDENTIALITY OF THE PROCEEDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

Additionally, the court could not create an environment in which counsels have access to sufficient resources. The court has no budget appropriation distributed explicitly to defence service. Thus, the defence office is not self-reliant and is dependent up on the budget and the will of the court for any of its need<sup>158</sup>. The state-funded counsels do not have access to basic office tools such as computer and internet access, secretarial and other support services and the defense counsels share a common room which jeopardises the privacy of clients who may come to their office<sup>159</sup>. Likewise, there is no funding for expert witnesses, forensic labs, etc. It is the child in conflict with the law who is expected to cover these costs when such evidence is required<sup>160</sup>. Similarly, there is no funding for the work the counsels could perform out of court such as visiting the crime scene where it is important to prepare for defence.<sup>161</sup>

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<sup>155</sup>Negera Kenatie, public defender of Adama Special Zone High Court, interviewed, 16/04/2014.

<sup>156</sup>*Legal officer* is a position in the regional court structure to substitute the function of registrar provided by the Civil Procedure Code.

<sup>157</sup>Negera Kenatie, *Supra* note 155.

<sup>158</sup>Negera Kenatie, *Supra* note 155; Adama Special Zone High Court Annual Performance Report, 2014.

<sup>159</sup>Observation of Adama Special Zone High Court Counsel's Office, 17/04/2014.

<sup>160</sup>Chala Diro, *Supra* note 123.

<sup>161</sup>Negera Kenatie, *Supra* note 155.



There are also no set standards for workloads. There is no mechanism to monitor that the workloads should not be excessively high. Even though the workload of the defence office is not so outsized<sup>162</sup>, it is, however, oppressive as it does not match counsel's training and expertise. The state-funded counsels are also busy with the extra works given to them which might even exceed their ordinary work.<sup>163</sup> This extra work has hindered the counsels from having adequate preparation to maintain competence. Moreover, there is no law which enable the counsels to reject an extra work that hinders them from providing effective defence services<sup>164</sup>.

## 6.6. SUPERVISION FOR QUALITY AND EFFECTIVENESS

Remarkably, the court has employed no system to supervise the quality of the state-funded defense service as a whole and of the delinquency representation in particular<sup>165</sup>. This shows that the delivery of defence service did not gain proper consideration in the court. As the Court is drained with its routine judicial activity and gives its premier emphasis on this task, it was not committed to ensure the effectiveness of the state-funded defence service to children in conflict with the law.

Even though most children in conflict with the law feel that their counsels are not meeting the ethical standards, they refrain from presenting their grievances to the court as they do not think that they have recourse.<sup>166</sup> Thus, there was no complaint which came to the court on the service delivered by

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<sup>162</sup>Abuna Alo, *Supra* note 127.

<sup>163</sup>The state-funded counsels are also burdened with other several extra works in the court. These include participation in various teams clustered by the court to carry out various functions including: ethics committee, employee recruiting committee, bidding committee and etc. (Adama Special Zone High Court Yearly Performance Report 2013/14).

<sup>164</sup>Negera Kenatie, *Supra* note 155.

<sup>165</sup>Chala Diro, *Supra* note 123.

<sup>166</sup>Gelana Tegene, *Supra* note 128.

the counsels. Due to the problems related to the ineffectiveness of the state-funded counsels, there are also children in conflict with the law who waive their right.<sup>167</sup>

## **6.7. THE IMPLEMENTATION OF THE RIGHT AT VARIOUS STAGES OF CRIMINAL PROCEEDINGS**

### **i. The Implementation of the Right During Pre-Trial Period**

Eventhough our criminal policy and the instruments Ethiopia ratified requires appointment of counsel at all stages of the proceedings, no child in conflict with the law is provided with the assistance of counsel during the pre-trial period<sup>168</sup>. The right to state-funded counsel is not available even when the child in conflict with the law is detained. Contacted incarcerated youth, including a 12 years old child, said that they had never met with a counsel until they appear for first hearing in court<sup>169</sup>. Consequently, these children fail to secure their right to bail as most of them even do not claim it due to lack of awareness<sup>170</sup>. As well, the non-appointment of counsel to the children in conflict with the law during this critical period will largely contribute to the deprivation of their right to a fair trial. Because, a lawyer's investigation is likely to be most productive as evidence is still fresh and witnesses are most easy to locate<sup>171</sup>.

Even though, the criminal procedure code requires that police should take instructions from court, during the arrest of a child, as to the manner in which investigations should be carried out, there is no such practice in Adama. The contacted children attest that they were not taken immediately before the nearest court. Some of them were even locked up for weeks

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<sup>167</sup>Chala Diro, *Supra* note 123.

<sup>168</sup>*Ibid.*

<sup>169</sup>Getnet Shiferaw and Anteneh Alemu, *Supra* note 124.

<sup>170</sup>Commander Abebe Teshome, *Supra* note 144;Yohanis Girma, *Supra* note 125.

<sup>171</sup>Negera Kenatie, *Supra* note 155.

without even appearing before court<sup>172</sup>. What is more, most of the children in conflict with the law are compelled to stay in detention with adults during the pre-trial period<sup>173</sup>. Consequently, the liberty interests of children in conflict with the law are being affected as counsel is appointed too late in the process, because, the delay of appointment may have as much an impact on a case as a counsel is not appointed at all.

## ii. The Implementation of the Right During the Initial Hearing and Trial

According to the practice in the court, children in conflict with the law may claim the right to state-funded counsel, as of right, if they are charged with crimes punishable with greater than five years of imprisonment<sup>174</sup>. However, the problem of access to counsel at critical stages, by the children in conflict with law, also continues after their appearance before court. Contrary to the Ethiopian Criminal Procedure Code, the children in conflict with the law are not provided with counsel unless they are charged with serious offence, even if no parent, guardian or other person *in loco parentis* appears to represent them<sup>175</sup>. Some judges in the court state that they appoint counsels for all children charged with crime regardless of the seriousness of the crime with which they are charged<sup>176</sup>; while others say that they provide such rights only for children aged 9-15<sup>177</sup>. Therefore, one may say that, in Adama, providing the child in conflict the law, specially those children aged 15-18, with state funded counsel is at the pleasure of individual judges.

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<sup>172</sup>Yohanis Girma, *Supra* note 125; Commander Abebe Teshome, *Supra* note 144.

<sup>173</sup>Biniyam Mekonnen, detainee in Adama juvenile home (16 years old), interviewed 16/12/2014; Issa Shikur, detainee in Adama juvenile home (16 years old), interviewed 16/12/2014.

<sup>174</sup>Abuna Alo, *Supra* note 127.

<sup>175</sup>Yohanis Girma and Hailemarim Sharo, *Supra* note 125.

<sup>176</sup>Badritemam Umar, *Supra* note 130.

<sup>177</sup>Shimelis Balcha, *Supra* note 130.

The court also does not appoint counsel to children who appear before it by appeal from the decisions of the inferior courts regardless of the age of the child and seriousness of the offence<sup>178</sup>. This indicates that the judges in the court seem to feel little responsibility and duty to ensure the right to free counsel of children in conflict with the law<sup>179</sup>. The children who appeared before the court without counsel speak that they were very scared on trial. They also think that being nervous during the trial would highly impact their rights<sup>180</sup>. Some children further state that they go across the whole proceeding with silence and that they did not cross-examine the prosecution witnesses and could not present their mitigation circumstances as the court environment is terrifying<sup>181</sup>.

At this phase also, the rights of children in conflict with the law suffer due to poor investigations of law and fact by counsel.<sup>182</sup> The counsels also do not see the police report or other investigative material before their first meeting with the client.<sup>183</sup> The time a counsel can allocate to conduct investigations and learn about a client's case is also insufficient to mount an adequate defense<sup>184</sup>. There are cases in which the investigating police or other

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<sup>178</sup>Chala Diro,*Supra* note 123;Abuna Alo,*Supra* note 127.

<sup>179</sup>However,the Federal Supreme Court Cassation Division has cancelled the decision rendered by an inferior court and remanded the case to be heard again in the presence of counsel for the reason that the defendant was not given the opportunity to be represented by counsel. In this case, the cassation bench stressed that judges cannot disregard their duty to respect and enforce fundamental rights and freedoms of individuals incorporated in the constitution, including the right to counsel. It further stated that the right to counsel of arrested and accused persons should be respected whenever it is likely. According to the bench, any decision that may be given by a court, without ensuring the existence of these requirements, has basic error of law and is thus void (*See Hussien Ali Vs. the Somali Regional State Prosecutor, Federal Supreme Court, Cassation bench, File No. 37050, vol. 9,PI60*).

<sup>180</sup>Hailemarim Sharo, *Supra* note 125;Issa Shikur,*Supra* note 173.

<sup>181</sup>Adane Yesunew, a 15 years old detainee in Adama Juvenile Home, interviewed 13/04/2007;Biniyam Meokonnen, *Supra* note 173.

<sup>182</sup>Chala Diro,*Supra* note 123.

<sup>183</sup>Abuna Alo,*Supra* note 127.

<sup>184</sup>Chala Diro, *Supra* note 123.

detainees encourage the children in conflict with the law to plead guilty telling them that they would be benefited from reduced sentences<sup>185</sup>. Some children even reveal that they were promised by the investigating officers that the latter will let them to go free if they plead guilty before the court.<sup>186</sup> However, those children represented by counsel believe that their counsels have helped them to take informed decisions during the plea entering<sup>187</sup>.

In addition, the self-represented children in conflict with the law are compelled to face lengthy trials as they have no body to push for speedy hearings. For example, a child charged with committing the crime of rape is acquitted after spending three months in prison<sup>188</sup>. In another case, a 12 year old child is in detention for more than 11 months without any prosecution evidence or witness presented against him. This child was also not allowed to be released on bail even though he is suspected with the crime of theft<sup>189</sup>. Including this child, most self-represented children fail to claim their right to bail as they lack information about the right<sup>190</sup>.

Some contacted children in conflict with the law perceive that their being represented by counsels was very useful during cross-examination of prosecution witnesses<sup>191</sup>. Case files observed also hint that the cross-examinations by the counsels are important. There are cases in the court in which the public prosecutor has decided to withdraw his charges against

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<sup>185</sup> Seid Tilmu, detainee in Adama Juvenile Home (16 years old), interviewed 15/12/2014; Abuna Alo, *Supra* note 127.

<sup>186</sup> Biruk Tsegaye, *Supra* note 126.

<sup>187</sup> Gelana Tegene, *Supra* note 128.

<sup>188</sup> Public Prosecutor Vs Birhan Kebede (17 years old child charged for committing rape), Adama Special Zone High Court, File Number 15452.

<sup>189</sup> Getnet Shiferaw, *Supra* note 124.

<sup>190</sup> Abel Abebe, detainee in Adama Juvenile Home (16 years old), interviewed 15/12/2014; Abraham Ketema, detainee in Adama Juvenile Home (17 years old), interviewed 15/12/2014; Negara Kenatie, *Supra* note 155; Hailemariam Sharo, *Supra* note 125.

<sup>191</sup> Gelana Tegene, *Supra* note 128.

children represented by state funded counsel as prosecution witnesses are critically cross-examined<sup>192</sup>. The self-represented children also think that they have completely failed to cross-examine prosecution witnesses. Some express that they could not forward questions to the witnesses and chose to keep silent as they do not know how to cross-examine witnesses<sup>193</sup>. The counsels also perceive that the self-represented children face considerable difficulty primarily at this stage<sup>194</sup>.

Some contacted children think that their trial was equivalent to being tried in absence (*ex parte* proceeding) because they do not as they do not understand the working language of the court<sup>195</sup>. Surprisingly, some of these children say that they have heard their sentences from police while they are being taken to prison<sup>196</sup>. Contacted children also consider that their right is at peril during the disposition. Because, some children in conflict with the law assert that they even do not answer to the court's call to present mitigating circumstances because they do not know how and what to respond<sup>197</sup>.

For those children whose ages are from 9 to 14 and who are adjudicated delinquent, the counsels do not raise the appropriate disposition alternatives as provided in the criminal law<sup>198</sup>. The counsels have never proposed to the court the disposition options provided in the criminal code, such as school or home arrest, admission to curative institution, supervised education, fine and

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<sup>192</sup>Public Prosecutor Vs Misganew Dessalegn (16 years old child charged for participating in an act of robbery), Adama Special Zone High Court, file number 19543.

<sup>193</sup> Abdurezak Detamo, a 16 years old detainee in Adama Juvenile Home, interviewed 15/12/2014; Adane Yesunew, *Supra* note 181; Biniyam Mekonnen, *Supra* note 173.

<sup>194</sup> Abuna Alo, *Supra* note 127.

<sup>195</sup> Adane Yesunew, *Supra* note 181; Issa Shikur, *Supra* note 173.

<sup>196</sup> Hailemariam Sharo, *Supra* note 125.

<sup>197</sup> *Ibid*; Biniyam Mekonnen, *Supra* note 173; Seid Tilmu, *Supra* note 185.

<sup>198</sup> Anteneh Alemu and Gelana Tegene, *Supra* note 124 and 128 respectively.

etc.<sup>199</sup> Instead, the counsels sometimes claim for the suspension of sentences<sup>200</sup>.

### iii. The Implementation of the Right After Sentence or Disposition

Post-disposition support is totally ignored by the counsels. There is no counsel provided to children in conflict with the law at appeal stage. Therefore, the children adjudicated delinquent are compelled to appear before the appellate court unaided.<sup>201</sup> Moreover, the counsels do not try ensure that the client's needs are met after the dispositional measures are taken. To take an example, children detained in the juvenile home in Adama do not have educational facilities.<sup>202</sup>

Some children serving detention in Adama were imprisoned with adults for several months before joining the juvenile home.<sup>203</sup> As the juvenile home cannot accommodate more than 23 children, there are many adjudicated delinquents who serve detention in East Shewa Zonal Prison with adults.<sup>204</sup> Besides, female children in conflict with the law are entirely sent to the Zonal Prison as the juvenile home accepts only male delinquents.<sup>205</sup> The counsels do not have contact with the juvenile home at all. They also do not feel that they are responsible to follow up detainees after adjudicated

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<sup>199</sup>Abuna Alo, *Supra* note 127.

<sup>200</sup>Badritemam Umar, *Supra* note 130.

<sup>201</sup>Chala Diro, *Supra* note 123;Gelana Tegene, *Supra* note 128.

<sup>202</sup>Commander Abebe Teshome, *Supra* note 144;Biniyam Mekonnen, *Supra* note 173.

<sup>203</sup>Commander Abebe Teshome, *Supra* note 144;Getnet Shiferaw, *Supra* note 124;Adane Yesunew, *Supra* note 181; Seid Tilmu,*Supra* note 185.

<sup>204</sup>Commander Abebe Teshome, *Supra* note 144.

<sup>205</sup>Emebet Haile, *Supra* note 137. The court also writes detention order to the Zonal prison so that it admits delinquents. For example, in the case of *Public Prosecutor VsHamdiya Siraj*, a 15 years old girl, charged for committing an attempted homicide was sent by the court in a similar manner (Adama Special Zone High Court, file number 16352).

delinquent nor do the counsels require reports from the detention homes on the client's progress.<sup>206</sup>

## 7. CONCLUSIONS

The right to counsel presupposes the right to get successful representation. It assumes access to counsel who has the skill and necessary resource. Extraordinarily, the representation of children may even require a lawyer to have several specialized skills. Among other things, a child counsel should have a knowledge of delinquency-specific ethical rules, adolescent development and dispositional services. In Adama, the counsels who represent children in delinquency adjudication are not equipped with these specialized skills. Moreover, the counsels are not assisted by investigators, social workers etc. The defense office also suffer from low funding, large extra-jobs, lack of in-service trainings, low access to support staff and facilities, poor controlling mechanisms etc. Consequently, the counsels provide only nominal representation that significantly compromises the due process interests of the youth. Additionally, contrary to the normative standards that demand the right to begin during the pre-trial, the representation of the children begins on first appearance before court. As a result, children who undergo the delinquency adjudication suffer from longer pre-trial detentions. On the other hand, even though the right to counsel is required to extend to all critical stages of criminal prosecution process, representation of children is in effect only until dispositional hearing/sentence.

Besides, the defence service in the court is inadequate. As a result, children including those below age of 15 may appear before the court without

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<sup>206</sup> Abuna Alo, *Supra* note 127; Commander Abebe Teshome, *Supra* note 144.



representation. Those children whose age exceed or equals to 15 may get representation only in a similar manner to adult defendants. The counsels also do not represent the children below age of 15 when the latter are charged at *Woreda Court*. The self-represented children commit several significant and recurrent errors which result in threats to their rights at different stages of proceedings. Consequently, the liberty interests of children in conflict with the law is at stake. For example, they make uncounselled guilty pleas, they fail to secure their constitutional right to bail, and etc. Post-disposition support is also totally ignored by the counsels. There is no counsel provided to children in conflict with the law at appeal stage. Moreover, the counsels do not try to ensure that the client's needs are met after the dispositional measures are taken. Consequently, some children are imprisoned with adults, while no child in the detention home has access to schools.

In a nut shell, children's self-representation or incompetent representation at different stages of delinquency adjudication in Adama has jeopardized the integrity of the justice system as a whole and the liberty of the children in particular. Thus, there is a great need for state assistance and technical support to help fashion solutions tailored to the needs of delinquency representation. Therefore, the writer offers the following points to be considered by concerned bodies.

Minimum qualification standards for counsels of children need to be established and enforced. There should be mechanisms in place to guarantee that the abilities of the counsels match the complexity of the cases to which they are assigned. Trainings should be given to the state-funded counsels in areas that require special expertise. The state-funded counsels should also have meaningful access to adequate counsel-office staffing, including social

workers, investigators, and other support services. Courts should also ensure that the children in conflict with the law are represented at all critical stages of litigation including at the pre-trial and post disposition stages. Maximum period within which the responsible body shall assign and notify counsel of his appointment should be set. There should also be mechanisms to control whether the counsels conduct in depth interviews with the client, meet the witnesses, or visit the crime scene when necessary, before they appear in court with children in conflict with the law.

There should be a system which enables children in conflict with the law to be informed during the pre-trial stage, as of right, about their right to get representation by state funded counsel. The court should also develop mechanisms to ensure that the counsels have regular communication and give personal attention to their youth clients.

Because rehabilitation is the central objective in child proceedings, judges in the court should give consideration while they decide disposition measures and should opt for other appropriate forms of disposition than detention unless there is an indicator that treatment in a secure facility is required. There should also be a mechanism which enables courts to monitor that the counsels and their child clients' meetings occur in the detention centers. The court should adopt and promote a system which can ensure the responsibility of the state-funded counsels. Procedures should also be developed to guarantee the possibility of retrial in cases where a child has unwillingly undertaken delinquency adjudication unassisted or where the representation is proved to be critically ineffective.