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Original Article

## Ensuring the Right to Access to Justice through Free Legal Aid Service: Assessing Challenges and Prospects in the Benishangul-Gumuz Regional State

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### Abstract

*The right to access justice is one of the rights of human beings incorporated in different national and international human rights instruments. The right, when compared to other groups of human rights, is different in many ways. The main difference is that it is a bundle of rights that is vital in the enforcement of the rest of the rights. Absent the right to access to justice, it is hardly possible to ensure the implementation of the rest of human rights. On the other hand, the mere fact that the government makes justice institutions accessible doesn't guarantee the realization of the right to access justice. There are still many factors that limit the members of the community from accessing justice. Economic & physical status, gender, and other different factors can make some members of the society less capable. This research, hence, is aimed at evaluating the challenges and opportunities in the Benishangul Gumuz Region in terms of ensuring access to justice. In particular, the research identifies the extent of demand for free legal aid services in the region and the degree to which these demands are being met. The research identifies available legal frameworks in the provision of free legal aid services to the indigent /vulnerable/ groups of society. Moreover, the research, based on empirical data, will identify factors that have limited the vulnerable group from accessing the service providers as well as factors that limited free legal aid service providers from accessing the beneficiaries.*

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### **1. Background of the study**

*The notion of justice has been a subject of debate among scholars since the times of Plato (428-327 BC) and Aristotle (384-322 BC) to the late 20<sup>th</sup> C John Rawls theory of justice (1921-2002 AC) and even among today's political philosophers. The concept of justice encompasses economic, political and social issues in the political philosophy. It may refer to distributive justice, procedural justice, restorative justice, or retributive justice among others. In these senses, it refers to a fair share of economic resources, fair processes in decision-making, and responsibilities for wrongdoings and restoring offenders to law-abiding lives respectively. For the purpose of this research, when we talk about access to justice or 'justice' in particular, we are referring to legal justice, a concept that embraces all the classifications and implies the individual and group rights of citizens to access an impartial body in a political institution to have their claims heard and decisions made properly.*

*In this sense, there is no concept as important as the concept of the right to access to justice in modern democracies and the contemporary human rights system. The concept is also raised often in almost all global, regional, and national human rights documents as one part of human rights and its instrumentality as a means to the end is*

*indisputably accepted. Yet, the definition of the concept of access to justice is not an easy task and, in fact, one cannot find a universally accepted definition of the notion. Access to justice refers to the system or modus operandi for ensuring the realization of rights for all citizens by alleviating the obstacles thereof. Garth, Bryant G. and Cappelletti, Mauro, in their article entitled "Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective" define access to justice as "the system by which peoples vindicate their rights and/or resolve their disputes under the general auspices of the state."<sup>1</sup>*

*The right to access to justice is part and parcel of the contemporary human rights system and it is embodied in different human rights documents at international, regional, and national levels. Justice is a nucleus of democracies and the rule of law. As a means and as an end per se, access to justice is an important pillar for democracies and the rule of law to exist and persist.*

*The United Nations referred to the right to access to justice as 'a basic principle of rule of law'. It further stated that in the absence of access to justice, people are unable to have their voices heard, exercise their rights, challenge discrimination, or hold decision-makers accountable.<sup>2</sup> The right to access to justice is a procedure and instrumentality through which violations of rights can be*

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<sup>1</sup>Garth, Bryant G. and Cappelletti, Mauro, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective', 1978, vol.27, pp. 181- 289, p.182 available at

<https://www.repository.law.indiana.edu/facpub/1142>. [Here in after referred, Garth, Bryant G. and

Cappelletti, Mauro, Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective]

<sup>2</sup><https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>

*stopped and damages made good. It is a procedure that guarantees individuals to bring their claims before a competent democratic or bureaucratic institution that can offer a binding decision in various spheres of life.*

*On the other hand, the mere fact that the government makes justice institutions accessible to the public doesn't guarantee the realization of the right to access justice. There are still many other factors that limit the public or the members of the community from accessing justice. For instance, economic status, psychological status, gender, and other different factors can make some members of the society less capable thereby paving the way for the prevalence of injustice in the community.*

*Countries and legal systems design different measures to overcome such factors and to realize access to justice for the citizens. Among the measures taken by legal systems and countries is the creation of the system of pro bono service or free legal aid service given by registered advocates, law firms, CSOs, NGOs, and law professors. These systems practically enhance or increase access to justice, in particular, for the indigent as well as for vulnerable members of the community.*

*Hence, this research assesses the status of free legal aid services in the context of the right to access to justice in the Benishangul-Gumuz Regional State. In particular, it assesses the degree of demand for legal aid, especially from the perspectives of the vulnerable group of the society and it evaluates the challenges and opportunities in the Regional State in terms of ensuring access to justice. The research also identifies*

*key service delivery problems from the side of service providers –institutions and individuals such as the University Law School and practicing lawyers who are given the obligations and responsibilities of providing free legal aid service to the community.*

## **2. Method**

*The study employed qualitative research method. Accordingly, the study relied on international, national, and regional legal and policy documents as well as other primary information from stakeholders gathered through questionnaires, interviews, and observations. Finally, an analysis was made about the existing legal framework, degree of awareness and demand on the side of the citizens as well as the current status of the existing institutions in terms of providing free legal aid service to the deserving segments of the society in BGRS.*

## **3. Legal Frameworks Governing Access to Justice and Provision of Free Legal Aid**

### **3.1 The Revised Regional Constitution of 1995**

*One of the regional legal grounds providing for the right to access to justice is the regional constitution itself. This legal document is a basic document that establishes the regional government by providing for the establishment of the regional executive, legislative, and judiciary organs. The constitution, in a very similar fashion to the federal constitution, enumerates many civil, political, economic, and social rights of the regional states' residents.*

*It is a remarkable achievement to have the provision dealing with the right to access to justice of the citizens in the constitution. One*

*such provision is Article 38 of the Constitution. The provision reads as follows:*

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***Right to Access to Justice***

*1. Everyone has the right to bring a justiciable matter to and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.*

*2. The decision or judgment referred to under sub-Article 1 of this Article may also be sought by:*

*(a) Any association representing the Collective or individual interest of its members; or*

*(b) Any group or person who is a member of, or represents a group with similar interests.*

*The significance of this provision is the recognition of the right to access to justice per se. The basis of free legal aid services is the right to access justice itself. Access to justice is the way that rights are protected and obligations are enforced. Conferring rights or duties doesn't serve any purpose if there is no means to protect and/or enforce them.*

*The exact term with reference to legal support, however, like the federal constitution, is found and relates to 'the right of accused person'. This implies that the provision of legal aid seems to have been given more emphasis in the criminal case. This may have its own justification seen from the lenses of the drafters. However, this shouldn't be interpreted to mean the Constitution doesn't recognize legal aid in civil cases at all.*

**3.2 Regional Proclamations and Laws**

**3.2.1 Benishangul –Gumuz Regional State Courts Establishment Proclamation (Proclamation No 163/2019)<sup>3</sup>**

*This proclamation is one of the latest regional laws that were put in place in 2019 by the regional state council. The very aim of the law is, to use the words of the proclamation, to enable the regional courts to "provide efficient, effective, and accessible judicial service based on the principles of rule of law, transparency and accountability. One of the significances of this proclamation from the perspective of the right to access to justice and free legal aid is that it unequivocally provides for the opportunity of defense lawyers for individuals who cannot afford to hire their own defense lawyers.*

*Article 24 of the proclamation provides as follows:*

*Every person has the right to be presented by a legal counsel;*

*The court shall provide a defense attorney at state expense for indigent defendants where a miscarriage of justice may occur in the absence of a defence attorney.*

*Under Article 18, the proclamation further provides that the defense counsel shall have the duty to provide legal counseling services and plead for indigents whenever required. The proclamation further states that, in consultation with his clients, the defense lawyer can plead or appeal his protests on court orders or decisions rendered against the interest of the accused in accordance with the law.*

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<sup>3</sup>The re-amendment Proclamation of the Benishangul –Gumuz Regional Courts Establishment Proclamation , Proclamation No 163/2019, 25<sup>th</sup> Year, No 163, 2019.

*Of course, it can be inferred from the law that the role of the fence lawyers is limited to activities in the courts of law. This means their responsibility is to represent the indigent in the court of law when ordered to do so by the court. However, the significance of the availability of such opportunities cannot be undermined in the effort to ensure equal access to justice for everyone.*

### **3.2.2 Benishangul –Gumuz Regional State Attorney General Establishment Proclamation (Proclamation 161/2018)**

*One of the regional laws issued to strengthen the regional justice system is the Regional State Attorney General Establishment Proclamation. The office of the Attorney General is an executive government department that defends the interest of the wider public.*

*The proclamation was issued in 2018 GC with the objective of consolidating the fragmented public defense system under one effective executive attorney institution.*

*In ensuring the right to access justice, the mandate conferred on the office of attorney general is very wide. The task of administration of free legal aid services is given to this office. The defense counsel in the court or in the judiciary is basically administered by the court itself. Whereas the job of setting strategies, follow-up, and administration of free legal aid service by bodies, personnel, and institutions outside the judiciary is given to the attorney general. The Benishangul –Gumuz Regional State Attorney General Establishment Proclamation N<sub>o</sub> 161/2018 under article 6(9)*

*(e) states that the regional office of the attorney general is responsible for drafting free legal support rendering strategies, following the execution, coordinating bodies that engage in the sector and control them.*

*From this provision, we understand that the office has at least three main and broad tasks. The first is that it is responsible for issuing strategies that help to strengthen the free legal aid provision in the region. Second, it is responsible for the execution of those strategies put in place to strengthen the free legal aid services in the region. Third, it coordinates and manages entities and individuals engaged and interested in the provision of free legal aid services in the region.<sup>4</sup>*

*Moreover, this office is responsible for preparing a regional human rights action plan and following the execution of the same. It also has the mandate to issue advocacy licenses to advocates who want to operate in the region.<sup>5</sup>*

### **3.2.3 Mandates of Kebele Social Courts**

*One of the institutions that have been given due attention in the recent past in the Ethiopian modern legal system is the kebele-social courts. The role that the social courts play in the justice system if supported well, is very significant. It is for this reason that the regional states in the Ethiopian Federation are giving more mandate and power to this lowest-level court. On one hand, their proximity to the community compared to woreda and higher courts makes them easily available and accessible to the community. This will have many implications for the poor*

<sup>4</sup>The BenishangulGumuz Regional State Attorney General Establishment Proclamation N<sub>o</sub>161/2018, Article 6(9) (e)

<sup>5</sup>Ibid. , article 6(8) & 6(9)(d)

*and vulnerable members of the community. On the other hand, empowering social courts means easing the load of cases at the woreda level which was a common cause for delay of justice in Ethiopian courts.*

*One of the mandates given to the social courts and significant in the provision of free legal aid service is that they are given the mandate to identify and confirm eligibility requirements to qualify for free legal aid service. Article 24(2) states that the social courts can provide evidence of eligibility for legal aid services by evaluating the living conditions of the applicant. The provision reads as follows in Amharic:-*

*Art 24(2) ማናቸውም ማህበራዊ ፍርድ ቤት በመንግስት አካላት ለሚሠጥ ነጻ አገልግሎት የአመልካቾቹን ትክክለኛውን የኑሮ ሁኔታ አረጋግጦ ማሰረጃ ልሠጥ ይችላል።<sup>6</sup>*

*This could be translated as: ‘Every social court shall have the mandate of providing accurate evidence of living conditions to individuals who seek the verification to get free legal aid service provision*

*This proclamation is important in easing the challenges that free legal providers are facing in terms of identifying the proper individuals who deserve free legal aid services.*

*The proclamation also provides that the social courts shall have the duty to provide free legal aid services to the indigent members of the community. Article 43(2) of the proclamation provides as follows: -*

*“በዚህ አንቀጽ ንዑስ አንቀጽ 1 ላይ የተደነገገው ድንጋጌ እንደተጠበቀ ሆኖ ማንኛውም የቀበሌ ማህበራዊ ፍርድቤት*

*የከሳሹን ኑሮ ሁኔታ ከግምት ውስጥ በማስገባት ነጻ የፍርድ አገልግሎት ሊሠጥ ይችላል።”<sup>7</sup>*

*This could be translated as: ‘Without prejudice to the provision under sub-article 1, a social court may decide to waive the payment of court fees considering the living status of the plaintiff.*

### **3.2.4 Licensing and Administration of Attorneys who work in the Courts of Benishangul Gumuz Regional State and Private Legal Affairs Proclamation**

*The objective of this proclamation is to set a legal framework for the practice of advocacy services in the region. One of the legal requirements to practice law in a given legal system is permission. Likewise, the BGRS requires permission –an advocacy License – to practice law before its courts.*

*Accordingly, the proclamation provides that any person who wants to provide professional service of attorney should obtain an attorney license registered and issued by the regional justice bureau.<sup>8</sup> In line with this, it provides for two types of advocacy licenses. These are the Main Advocacy License and Special Advocacy License.<sup>9</sup>*

*According to Article 11, a special advocacy license shall be issued to anyone who will provide attorney service toward maintaining the rights and interests of society. The proclamation also recognizes that advocates with the main advocacy license can provide free services to protect the rights and interests of society without a need to obtain a special advocacy license.*

<sup>6</sup>A proclamation Issued to Revise the Power and Duty’s of the Kebele Social Court Establishment Proclamation, Proclamation No 126/2015, 21<sup>st</sup> Year, No 126, 2015 GC

<sup>7</sup>Ibid., article 43(4)

<sup>8</sup>Licensing and Administration of Attorneys who work in the Courts of Benishangul Gumuz Regional State and Private Legal Affairs Proclamation, proclamation No 151/2018 , Article 5

<sup>9</sup>Ibid. , article 8

### **3.2.5 Ambiguities and pitfalls of the proclamation**

*Despite the recognition of the admission of a special advocacy license, this proclamation does not expressly provide for individuals and entities that can apply for a special advocacy license. The Federal Advocacy Service and Administration Proclamation No 1249/2021 expressly provides for such individuals and entities that are eligible to get a special advocacy license. These are persons, organizations, law school instructors, and law schools that provide pro bono service to defend the interest of the public as well as to the indigent members of the community.<sup>10</sup>*

### **3.2.6 Regulation to Licensing and Administration of Advocates and Private Paralegals in Benishangul-Gumuz Regional State<sup>11</sup>**

*This regulation can also be considered part of the recent legal reforms that the region has undertaken. It is one of the legal frameworks that address the issue of free legal aid in many aspects. This regulation provides for, among others: -*

*The requirements and procedures to get the different types of advocacy licenses;*

*The group of people that are eligible for free legal aid services;*

*The duty of advocates is to provide pro-bono service to the indigent members of the community & the effect of the failure to do so.*

### **3.3 Persons eligible for free legal aid service and duty of advocates**

### **3.3.1 Persons eligible for free legal aid service**

*The regulation provides the following individuals as eligible for free legal aid services<sup>12</sup> :*

*Persons living with HIV/AIDS and unable to move from place to place to pursue their cases, Minors who have lost their parents due to HIV/AIDS or aged parents who have lost their children due to HIV/AIDS, Those (members of the community) whose monthly income amount, where the evidence of daily, monthly or annual income resources and the amount they produce is calculated, is below birr 900 (nine hundred), Those who do not have non-fixed and fixed assets which can be considered as surpluses, Persons whom a court at hearing a criminal case require a free legal aid to be rendered*

*For those (members of the community) whose monthly income amount, where the evidence of daily, monthly, or annual income resources and the amount they produce is calculated, is below birr 900 (nine hundred and for those who do not have non-fixed and fixed assets which can be considered as surpluses the regulation requires this fact to be approved by social courts.<sup>13</sup> It has to be noted that individuals with an average monthly income of 900 Birrs and above are not eligible for free legal aid services even if they do not have any fixed or non-fixed assets which can be regarded as surpluses. In other words, the requirements cannot be cumulative.*

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<sup>10</sup>The Federal advocacy service and administration proclamation No 1249/2021, year 27, No.42 article 14

<sup>11</sup>Regulation to Licensing and Administration of Advocates and Private Paralegals in

Benishangul-Gumuz Regional State, Regulation No.144/2019

<sup>12</sup> Ibid., Art 15 & Art 18

<sup>13</sup> Regulation 144/2019, Article 18(c)

### **3.3.2 Other costs**

*The law provides free legal aid service opportunities for the indigent members of the community. What is free is the professional service to be provided by the advocate. However, it is obvious that there are other costs that the beneficiary incurs. These are costs related to transport, photocopy, and other similar expenses. The laws expressly provide that these costs are covered by the beneficiary himself/herself.<sup>14</sup> The problem with this provision however is that what if the beneficiary is not in a position to cover such expenses? What alternative does he or she have? This is a challenge that the advocates frequently face in such services.*

### **3.3.3 System of control and Standards of service**

*With regard to the system of control and standards of service, articles 19, 20 & 21 of the regulation are very important. With regard to the system of control, the regional advocates association or offices of the attorney general will register the service seekers and distribute it to the advocates in the region. Article 19 seems to talk about special advocacy licenses when we look at the title. But it talks about advocates with main advocacy licenses as well. It seems to have happened because of poor drafting.*

*The calculation of time provided under Article 17 also is helpful to objectively evaluate whether the 50-hour requirement (for those who hold the main advocacy license) is properly met. For instance, the preparation of a contractual agreement is expected to be completed in one (1) hour. Preparation of an establishment document or*

*a memorandum is expected to be completed in two (2) hours. Preparation of pleadings (statement of claim or defense) is expected to be completed in one and a half hours. Representation of the client in the court of law is determined based on the evidence to be produced by the advocate etc. These are important standards to ensure the proper use of the allocated time obligation.*

### **3.3.4 Ambiguities and pitfalls of the regulation**

*One of the ambiguities under the regulation is found under Article 15. This provision, save the organizational problem as it is, provides for two groups of people who deserve the service. One is Persons living with HIV/AIDS and unable to move from place to place to pursue their cases and the others are minors who have lost their parents due to HIV/AIDS or aged parents who have lost their children due to HIV/AIDS.*

*It is difficult to take the contrary reading of Article 15 as true for granted. What if a person who is HIV/AIDS positive but can move from place to place to pursue his/her case came seeking a free legal aid service? The assumption however seems that if such individuals are capable enough to pursue their cases, saving the threshold of 900 ETB average in terms of income as it is, there is no need to render a free legal aid service.*

*The other shortcoming of this regulation is its failure to expressly include old age as one eligibility ground. Persons of old age are vulnerable groups in the community especially when there is no one to take care of them. It does not seem fair to exclude this*

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<sup>14</sup> Art 21(3) of Regulation No144/2019



*group of people even though they have an average monthly income which is 900 ETB.*

*In general, as mentioned earlier, professional lawyers or firms with special advocacy licenses shall have the obligation to provide a legal service free of any charge devoting all their time.*

*Whereas professional lawyers or legal firms with the main advocacy license do have the obligation to provide a pro-bono service for at least 50 hours per year, Art 32(4)(b) of proc No 151/2018.*

#### **4. Findings from empirical data**

*To assess and identify the key challenges and opportunities in ensuring the right to access to justice through free legal aid service in Benishangul-Gumuz regional state we have used different data collection tools. We have used both primary and secondary data. We have consulted International, National, and Regional Policy and Legal frameworks with relevance to access to justice and free legal aid services. We have also mainly used a questionnaire to address a representative number of respondents including from remotest areas of the region. Accordingly, First-hand information was gathered from 109 community members and civil society organizations from our sample areas - Assosa, Bambassi, Homosha, Kurmuk, Oda, Yasso, Kamash , Mandura& Bullen. We have also included 107 Judges, public prosecutors, and police officials from the region. Information was also gathered from 6 Advocates, 11 Law school professors, 3 NGOs, 5 government offices, 1 higher education institution, and 1 independent government organization. Two focus group discussions among the stakeholders from the region were also held and the findings of this*

*research will be presented in this chapter in a brief way.*

#### **4.1 Legal Awareness**

*One of the questions we raised was whether our respondents have had enough legal knowledge or legal awareness about their human rights and duties. About 52% of our respondents responded that they do not have a legal awareness of their human rights and duties. Perhaps, the fact that we have collected the information from community leaders and known community members had an effect on this result. We believe that if data is collected randomly the percentage will increase. Because there are obviously there are many opportunities for such members of the community to get legal awareness. 52% yet is a significant number to demonstrate how legal awareness is still important to the community.*

*Regarding their status as to whether they can afford to hire their own lawyer in cases of violations of rights or claims for the same, 91% of them responded that they cannot afford it. This indicates the high demand for free legal aid services and the low economic status of the community. The other question we raised is whether they have information about the existence of free legal aid providing individuals and institutions. 55% of our respondents responded that they do not have know-how about the existence of such schemes.*

#### **4.2 Availability of institutions and professionals**

*We have also tried to identify whether free legal aid-providing institutions and individuals are available around our sample areas. 63% of our community member respondents responded that they do not have*

*free legal aid provided to individuals and institutions in their locality. Given the fact that we have collected data from very few areas that we can access easily, the figure demonstrates how bad the situation could be in the remotest woreda's and kebeles.*

*With respect to the sufficiency of free legal aid provision in the study area, our data suggest that there are a great majority of members of the community who are left without legal remedies in cases of violations. Among the research respondents from judges, public prosecutors and police which are 107 in number, fifty-four of them (i.e., 50.46 percent) answered that they see vulnerable groups were left without legal remedy in cases of human rights violation by different actors. Sixty of them or 56.07 percent of the respondents responded that there are no free legal aid centers available to work on the protection of rights of the vulnerable group in their locality.*

#### **4.3 Need for legal aid services**

Among the institutions operating in the region with the main or subsidiary purpose of providing free legal aid service, 1 institution directly provides the service, 1 institution provides the service while also supporting others who/ provide the service, and 4 institutions support those who/ provide the service.

*Similarly, more than 99% of our respondents from the community expressed that they highly need the availability of free legal aid schemes in their locality. This figure corresponds with the result of a similar question presented to our free legal aid-providing individuals and institutions. 100% of our respondents from both NGOs and government institutions believe that there is a high need for free legal aid service schemes in society. 100% of them also believe that the legal aid service being provided in the region is not sufficient.*

*A hundred percent (100%) of practicing lawyers who are engaged in the advocacy service in BGRS and included in our sample responded that there is a great need for free legal aid services in the study area. They observed in their engagement that too many victims of human rights violations were left without a remedy.*

#### **4.4 Factors that affect or affected the provision of free legal aid service in the region most**

*In this research, we have also measured factors that affect or affect the provision of free legal aid services in the region. The result is presented in the following table: -*

<b>Variables</b>	<b>Measurements</b>			
	<b>H (%)</b>	<b>M (%)</b>	<b>L (%)</b>	<b>VL (%)</b>
<i>Few numbers of FLAS Providers</i>	89.47	5%	0%	0%
<i>Low performance among the FLAS providers</i>	78%	21%	0%	0%
<i>Lack of awareness about FLAS among the community</i>	74%	21%	0%	0%
<i>Lack of awareness about basic human rights concepts</i>	47.36	42%	10%	0%
<i>Inaccessibility and poor infrastructure</i>	68.42%	26.31%	5%	0%

**Table 1:1 Data from responses of stakeholders**

The finding indicates the inadequacy of the number of free legal aid service providers and underperformance among the institutions and organizations engaged in free legal aid services. Lack of awareness about basic human rights concepts and the availability of free legal aid service schemes for the indigent and vulnerable groups of the community is also very significant. Moreover, inaccessibility which is mainly attributable to the existing poor

infrastructure in the region is also significant.

**4.5 Challenges and opportunities available in the law school**

One of the immense potentials in the provision of free legal aid services is available with law schools of higher education institutions. Accordingly, we have tried to measure challenges and opportunities in the law school of one higher education available in the region which is Assosa University Law School. The finding was presented as follows: -

Variables	Measurements			
	H (%)	M (%)	L (%)	VL (%)
Incentives (transport, top-up, recognition, etc)	100%	0%	0%	0%
Workload and other teaching-related tasks	100%	0%	0%	0%
Poor infrastructure, logistics, and hard weather	85.7%	14.28%	0%	0%

**Table 1:2 Data from responses of Law School instructors**

The finding indicates that the incentives from the university to the law school professors in their legal aid service provision are affecting their engagement. At the same time, the workload the professors have in relation to teaching and research is also affecting the engagement in the free legal aid provision. Moreover, poor infrastructure, poor logistic availability, and hard weather are also factors that are highly regarded as barriers to the full engagement of the school staff members.

**4.6 FGD**

Two focus group discussions (FGD) that engaged different stakeholders at the regional level were also conducted as part of this research. The FGD included the justice bureau, women, children and youth affairs bureau, regional courts, NGOs, and Civic Society Organizations operating in the region.

The issues raised by the participants during the FGDs are presented under two categories as follows.

#### **4.6.1 Participants from the justice sector and legal aid providers**

Though there are promising beginnings there is no coordination and cooperation among the stakeholders to the required degree;

There is a forum to coordinate and bring together the different stakeholders for the better delivery of the service by sharing available resources;

Lack of training for the service providers on the free legal aid programs;

Lack of advocates association in the region that will help and facilitate the implementation of pro bono duty;

Lack of sufficient awareness in the community on free legal aid services and basic human rights issues;

Disparity between the growing demand on the part of society and free legal aid provision capacity;

Failure of the free legal aid providers to organize information and documents related to cases handled through free legal aid service;

Lack of diligence on the part of free legal aid service providers- Especially ones who believe that the 50 hours requirement was met, lawyers turn to give less attention irrespective of the status of the case;

Challenges related to evidence of poverty (how and where to get the evidence as well as challenges related to issuing of evidence to undeserving individuals);

Ignorance of evidence of the client by the free legal aid providers

Intimidation of clients to share the results of the litigation;

Challenges related to indirect costs such as copy, stamp fee for agency agreement, etc.

Lack of defense lawyers at many of the woreda courts;

Insufficient defense lawyers and lack of supportive staff at high and supreme court levels;<sup>15</sup>

Weak chain of communication among the defense lawyers at high and Supreme Court levels;

Lack of training for the legal aid providers at all levels;

Lack of sufficient attention to the service by the university administration to the free legal aid service as part of community engagement;

Incentives for university professors from the university to provide free legal aid services which limited the opportunity of using professors and students in the scheme;

#### **4.6.2 Participants from the civic society and community leaders**

The main problems raised by civic society and community leaders are: lack of sufficient information regarding the existence of free legal aid programs, Lack of trust in free legal aid provision systems, inaccessibility of the free legal aid service in the rural and remotest cities of the region, lack of consistency and sustainability in the provision of the service.

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<sup>15</sup> Report of the regional attorney general presented on the FGD, December 4, 2014 EC

#### **4.7. Organizations engaged in the free legal aid service provisions**

The assessment made in terms of identifying the stakeholders that are engaged in the provision of free legal aid services indicates that the following organizations and individuals are engaged in the provision of free legal aid services in different ways:-

Regional Bureau of Justice, Regional Courts (from the supreme court to kebele /social/ courts), Advocates who are operating in the region, Women's, Children and Youth Affairs Bureau, EWLA (Ethiopian Women Lawyers Association), Boro-Shinasha Development Association, IRC Assosa field office with a particular interest on GBV, Assosa University, and Ethiopia, Ethiopian Human Rights Commission.

#### **4.8 Summary of the key challenges in the region in terms of provision of free legal aid services**

The following key challenges are identified: Low level of awareness about basic human rights concepts, Lack of adequate information as to the existence FLAS and protection for Vulnerable groups, Lack of comprehensive legal frameworks governing access to justice and free legal aid service, Poor infrastructure in the region , Resource constraints , Low diligence and commitment on giving of the service on the FLAS providers, The non-existence of well-defined uniform incentive mechanism for the instructors who engages in the provision of FLAs in the form of community service, The low salary for legal officers who is employed at FLAC, Teaching and research related work load for professors in the school of Law, Lack of trust on the quality of free legal aid service by the service seekers ,Lack of frameworks

for cooperation and coordination among the legal aid providers, Lack of strong professional lawyers association in the region, Weak follow-up and reporting system in the provision of free legal aid service, Low literacy level in the rural areas in particular.

#### **5. Conclusions**

Ensuring the prevalence of justice is important for welfare of the society. It is with this conviction that international, regional, and national legal systems unequivocally recognize the right to access justice as one pillar of human rights and human rights systems. Free Legal Aid service is one of the main tools through which we can address and correct the irregularities in the justice system in particular for the indigent and vulnerable members of the society.

The regional legal framework for free legal aid service, though there are many limitations still, could be seen as one of the opportunities in the region in the provision of free legal aid service. The existing legal framework at least recognizes the right to access justice and tries to pave the way for free legal aid services to the indigent and vulnerable members of the community.

In this research, one of the main challenges observed is the lack of awareness among the community. The commitment on the part of institutions directly and indirectly engaged in ensuring the right to access to justice was also found limited and insufficient. Especially, the available government higher education institutions should give due emphasis to the free legal aid service as part of their community service engagements. The underserved infrastructure development was also found an obstacle to legal aid in the region.

## **6. Recommendations**

Ensuring the right to access to justice needs strengthening the mechanisms and tools that are instrumental to ensure access to justice. Ensuring the right to access to justice, as opposed to other civil and political rights, needs positive interventions and resources on the part of the government. Though the primary duty bearer still is the government, cooperation and coordination among the stakeholders is vital to realize access to justice of every citizen.

Based on the findings of this research we recommend the following measures to be taken by all the concerned bodies at the regional level:-

- The regional government, particularly the Attorney General, should introduce strict monitoring mechanisms and frameworks to ensure that the provision of pro-bono service is really given in the required quality for the indigent and vulnerable segment of society.
- The Regional Bureau of justice should facilitate and help the establishment of lawyers associations operating in the region.
- A very strong system of cooperation and coordination or network among the free legal aid providers within the region is important and needs to be established.
- The regional Advocacy Service Licensing and Administration Proclamation should be amended to expressly include that law school professors and the law school can provide free legal aid services.
- The Regional Advocacy Service Licensing and Administration Proclamation should allow professors of laws to get advocacy licenses in line with the federal government and other regional states' practices.
- Awareness creation campaign for the service seekers, indigent, and vulnerable groups of societies is highly needed.
- The available government higher education institutions should strengthen the effort that is being made by the school of law to provide free legal aid services. Professors need to be provided with sufficient incentives in their initiative to provide FLAS.
- As much as possible, the BGRS government should have to solve infrastructure problems as a priority.
- The regional legal aid system should use paralegals to access more beneficiaries, especially in the remotest and rural parts of the region. Paralegals have proved their significance in improving access to justice in many countries.
- Measures have to be taken jointly by different stakeholders to avoid undue delay and there has to be a mechanism to check the quality of the service.