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COLLEGE OF LAW AND GOVERNANCE
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SENTENCING OF INCHOATE OFFENCES; FOCUSING ON THE PRACTICE OF HIGH COURTS WITHIN BONGA DIVISION - SOUTH WEST ETHIOPIA

A THESIS SUBMITTED TO JIMMA UNIVERSITY COLLEGE OF LAW AND GOVERNANCE IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE LL.M DEGREE IN HUMAN RIGHTS AND CRIMINAL LAW

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DECLARATION

I hereby declare that, this paper prepared for the partial fulfillment of the requirements for LL.M Degree in Human Rights and Criminal Law entitled '**SENTENCING OF INCHOATE OFFENCES; FOCUSING ON THE PRACTICE OF HIGH COURTS WITHIN BONGA DIVISION'** is my work and that it has not previously been submitted for assessment to another University or another qualification. I also declare that any source used in the paper has been duly acknowledged.

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ABSTRACT

As provided under the FDRE criminal code, inchoate crimes are criminalized and punishable by similar penalties to completed crimes. But the courts may reduce punishment if there is a justified circumstance. It required critical evaluation of facts and circumstances to differentiate the type of inchoate crime that needs equal punishment with the completed crime and needs penalty reduction. Also, the courts are required to properly implement the purposes and principles of punishment while imposing sentences on the defendants who have been found guilty of inchoate crimes. As a result, the purpose of this study is to assess the application of sentencing laws to defendants who are guilty of inchoate crimes. The study has the following objectives; identifying the rules and laws of sentencing and assessing the practical application to inchoate crimes; assessing the application of the principles and purposes of punishment on inchoate crimes, and identifying legal and practical challenges to the proper application of the sentencing laws on inchoate crimes within high courts of SNNPRS Bonga division. The researcher has used qualitative, doctrinal, and non-doctrinal research methods to address such research objectives. Accordingly, the researcher used interviews to gather data from the judges, public prosecutors, private lawyers, and defence counsel, and they were selected based on purposive sampling. And also, the court's decisions that involved inchoate crimes were used as the source of the data and identified based on purposive and random sampling methods. The primary result of the research shows the existence of a limitation on the practical application of laws, purposes, and principles of sentencing for inchoate crimes. The researcher identified the practical and legal challenges to the proper application of sentencing laws and rules. Among others, it includes the gap in the Revised Sentencing Manual, incompetence, lack of supervision and evaluation mechanisms, unbalances of litigating parties, lack of independence of judges, lack of accessibility laws, lack of training, and others. The writer strongly recommended urgent solutions required to solve the problems in the sentencing of inchoate crimes. It includes amendment of the sentencing guidelines, increasing numbers of judges and other legal professionals, adopting supervision and evaluation mechanisms, increasing competence, and others.

Keywords: Inchoate crimes, Sentencing, Bonga division, The Sentencing Guidelines

Acronym

Art. – Article

CPC- Criminal procedure code

FDRE-Federal Democratic Republic Of Ethiopia

FSC - Federal Supreme Court

ICCPR - International Convention on Civil and Political Right

ICESCR - International Convention on Economic, Social and Cultural Rights

SNNPRS- South Nation, Nationality and People Regional State

UDHR - United Nations Declaration on Human Right

Content

CHAPTER ONE

1. INTRODUCTION

1.1. BACKGROUND OF THE STUDY

The process of the criminal justice system begins with the accusation or complaint and ends with the sentencing.[1] It follows the conviction, the pronouncement of the penalty imposed on the convict is the ultimate goal of any criminal justice system.[2] Sentencing is the imposition of a penalty or sanction by a judicial organ on a defendant who has been found guilty or has confessed to a violation of the criminal law, depending on the circumstances.[3] Therefore, sentencing is critical to legitimizing the rule of law and maintaining society's confidence in the justice system.[4]

The imposition of sentencing on defendants who have committed crimes necessitates strong justification.[5] In other words, the courts require imposing sentences or penalties by considering different purposes of sentencing and criminal law. Among others, punishment of offenders, reduction of crime, reform, and rehabilitation of offenders, the protection of the public, and the making of reparation by offenders to persons affected by their offices are some purposes of punishment.[6] There are six contemporary goals of sentencing: deterrence, rehabilitation, incapacitation, desert, social theories, and reparation. In addition to the purpose of sentencing, the courts should also consider sentencing principles, i.e., fairness, equality, proportionality, consistency, predictability, and others.

FDRE criminal code expressly provided the purposes of punishment under article 1

> *The purpose of the Criminal Code of the Federal Democratic Republic of Ethiopia is to ensure order, peace, and security of the State, its peoples, and inhabitants for the public good. It aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective, by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson*

[1]Rabindra Bhattarari, 'principle of sentencing in criminal justice system',(2008) 1Kathmandu Law Review 1avilable at www.asianlii.org/np/journals/KathSLRS/2008/11.pdf
[2]Ibid
[3]Dean Champion , *Sentencing a Reference Handbook Contemporary World Issues* (ABC- CLIO 2008)1
[4]Ibid
[5]Andrew Ashworth, *sentencing and criminal justice* (5th edn., CUP 2010)74
[6]Dean Champion (n 3)

to others, by providing for their reform and measures to prevent the commission of further crimes.[7]

Accordingly, the purposes of punishment in Ethiopian criminal law are deterrence, incapacitation, rehabilitation, and others. Therefore, the courts should impose a sentence in a way to achieve such purposes or goals of punishment. In addition to the purpose of sentencing, the FDRE constitution, criminal procedural law, criminal law, and criminal justice policy incorporated different sentencing principles.

Unwarranted disparities are one of the practical challenges in the proper application of sentencing law. These disparities result from differences in the values, beliefs, and personalities of the judges rather than from differences among offenders.[8] There are different mechanisms to minimize unwarranted disparities. Sentencing guidelines offer a means to achieve the objectives of greater consistency and predictability.[9] In other words, sentencing guidelines are a significant legal tool for controlling mechanisms of unjustified sentencing disparities.

In Ethiopia, the Federal Supreme Court has mandated the adoption of a sentencing guideline. Accordingly, the Supreme Court adopted the first sentencing guideline in 2010. Before the adoption of the sentencing guidelines, it was widely believed that sentencing practices in Ethiopia were inconsistent and unpredictable.[10] This perception was shared by the public and legal professionals and ultimately provoked the legislature to create a sentencing guideline.[11] Reducing disparities was one of the principal objectives of sentencing reform in Ethiopia.[12] The second sentencing guideline, which is entitled "The Revised Federal Supreme Court Sentencing Guidelines," tried to rectify some inconsistent parts of the former guidelines.

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[7]The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation no.414/2004, Federal Negarit Gazeta, 9th day of May 2005, art 1

[8]Champion, D. 'Sentencing California:, Reconsidering Indeterminate and Structured Sentencing', Papers From the Executive Sessions on Sentencing and Corrections No. 2, (U.S. Department of Justice Office of Justice Programs National Institute of Justice, ABC – CLIO 2008) 6

[9]Ayenew Sefiew, 'Ethiopian Sentencing Guidelines and Their application: A case study in Federal Courts',(LL.M Thesis, Addis Ababa University 2014)`

[10]Kassahun Molla and Julian Roberts, 'Out Of Africa: Exploring the Ethiopian Sentencing Guidelines',(2019) 30Criminal Law Forum 309–337

[11]Ayenew Sefiew (n-9)

[12] ibid

In the Ethiopian criminal justice system, the practical application of sentencing law (including the guideline) to an inchoate crime is one of the problematic areas. Inchoate means "just begun, incipient, in the early stages."[13] Inchoate crimes can be left unfinished or incomplete.[14] An attempt, incitement, and solicitation are considered inchoate crimes. The rationale supporting punishment for an inchoate crime is prevention, deterrence, and others. If a defendant could not be apprehended until the crime was completed, law enforcement would be unable to intervene and prevent harm to the victim(s) or property. In addition, a defendant who is unable to complete a crime would try, again and again, free from any criminal consequences.

Under the FDRE criminal code, inchoate crimes (attempt, incitement, and accomplice) are criminalized and punishable the same as completed crimes. But the courts may reduce punishment if there is a justified circumstance.[15] This is the source of difficulty in sentencing inchoate crimes because differentiating the type of inchoate crime that needs equal punishment with the completed crime, and which needs penalty reduction requires critical evaluation of facts and circumstances. Most of the time, courts reduce the penalty for an inchoate crime regardless of whether the circumstances justify such a reduction.

1.2. STATEMENT OF THE PROBLEM

Sentencing is one of the critical stages in a criminal proceeding. The courts are bound to apply the penalty provided under the special part of the criminal code or the penal provision of any proclamation following sentencing rules. Such sentencing decisions should be uniform, consistent, predictable, transparent, and should be in the way of achieving the purpose of punishment, i.e., deterrence, rehabilitation, incapacitation, and others. But determining sentencing by the court is not an easy task.[16] It requires compromising of two interests, i.e., the uniformity of sentencing on one hand, and individualization of sentencing on the other hand.[17]

[13]Joel Samaha, *Criminal Law* (10th edn, Wadsworth, Cengage Learning 2011) 236
[14] John Scheb,*Criminal Law* (6th edn, Wadsworth Publishing 2011)81
[15]FDRE Criminal Code(n 7) Art 27-30, 36,37
[16] Belaynesh Achenef, 'Sentencing of Attempted Crimes in Amhara National Regional State Courts: Case Analysis' (LL.M Thesis Bahir Dar University 2019)
[17] ibid

The FDRE criminal code criminalized and stipulated penalties for inchoate crimes (attempt,[18] incitement, [19] and accomplice[20]). In principle, the penalty for an inchoate crime is similar to that of a complete crime. But, the law permits the courts to reduce penalties for such crimes depending on the circumstances.[21] In other words, the court has the discretion to reduce sentences for those who are guilty of inchoate crimes. Under certain conditions, the courts obligate to mitigate penalties without restriction for those found guilty of inchoate crimes. [22] For instance, as provided under Article 31 of the Criminal Code, the courts have wide discretions in the sentencing of inchoate crimes.

Because of the need to differentiate the type of inchoate crime that needs equal punishment with the complete crime and which needs penalty reduction, it is difficult in sentencing inchoate crimes. It requires a critical evaluation of facts and circumstances. In practice, there were indications that an inconsistent approach has emerged with regards to the sentencing of inchoate crimes, i.e., some courts impose similar penalties for an attempt that specified for the completed crime while others reduce the sentence by applying the circumstances provided by the Criminal Code.[23] Related to a person having been convicted of other inchoate crimes (incitement and being an accessory), a similar problem may arise in the sentencing. Moreover, observation and experience indicate that there are indications of serious inconsistencies and unpredictability in the practice of different courts while imposing sentencing on persons who have been found guilty of inchoate crimes. This undesirable disparity in sentencing between similar cases may a serious problem in the criminal justice system.

The Federal Supreme Court has adopted sentencing guidelines in 2010 and revised them in 2013 to prevent undesirable disparities in sentencing. As provided under article 20 of the First Sentencing Manual, the court is required to mitigate two levels for those defendants who have been guilty of the inchoate crime. For a defendant who committed an attempted crime or participated as an instigator or an accomplice, the sentencing would be two levels of mitigation. The provision was vague and open to abuse. Although the Revised Sentencing Guideline has

[18] FDRE Criminal Code (n 7) art. 27-31
[19] ibid art.36
[20] ibid art.37
[21] ibid art.27(3),36(3), 37 (4)
[22] ibid art.28
[23] Simeneh Desta, ‘‘የወንጀል ቅጣት አወሳሰን መመሪያ ጥቅሞችና ተግዳሮቶች’’, Ethiopian Press Agency (4 December 2018) (cited by Kassahun Molla and Julian Roberts (n 10))

come with many amendments, it was unclear how the calculation related to the inchoate crimes. The current sentencing guidelines remain salient concerning determining the sentencing of the persons who have been guilty of inchoate crimes.

But no research has been conducted to adequately address the legal gap or adequacy in the Sentencing Guideline concerning sentencing on inchoate crimes. Furthermore, no research has been conducted in the study area on the practical application of sentencing laws on defendants who have been found guilty of inchoate crimes. It also needs to study to examine the application of the purposes and principles of sentencing on defendants who have been found guilty of inchoate crimes. In other words, there is no research conducted in study areas to assess whether courts impose a penalty on defendants who have been found guilty of inchoate crimes by considering the principles and purpose of sentencing. Failure to apply sentencing laws correctly may result in an unjust disparity.

The unwarranted disparities in sentencing are contrary to the legal principles of equality before the law. It also harms the rights of the accused, victims, and the criminal justice system in general. To sum up, the researcher intended to address the problems associated with sentencing on inchoate crime in the study area.

1.3. OBJECTIVES OF THE STUDY

1.3.1. General Objective

- To assess the application of sentencing law on defendants who have been found guilty of inchoate crimes within the high courts of the SNNPRS Supreme Court Bonga division.

1.3.2. Specific Objectives

- To explore the practical application of sentencing laws and rules for persons who have been guilty of inchoate crimes in the study area.
- To examine the application of principles and the purposes of sentencing to those found guilty of inchoate crimes in the study area.
- To explore practical and legal challenges in the sentencing of inchoate crimes in the study area.

1.4. RESEARCH QUESTIONS

The main research question for this study is: what is the application of the sentencing laws on defendants who have been found guilty of inchoate crimes within the high court's Bonga division? Thus, the following are the specific questions for this study:

- How do the courts practically apply sentencing rules to those who have been found guilty of inchoate crimes in the study area?
- What is the application of principles and purposes of sentencing while imposing sentences on the persons who have been found guilty of inchoate crimes in the study area?
- What are the practical and legal challenges to the proper application of sentencing laws and rules to a person found guilty of an inchoate crime in the study area?

1.5. RESEARCH METHODOLOGY

1.5.1. Research Approach and Design

A qualitative research method was employed to address the questions and objectives of the study. Qualitative research methods are concerned with qualitative phenomena, i.e., phenomena related to or involving quality or kind. Research in such a situation is a function of researchers' insights and impressions. Such an approach to research generates results either in non-qualitative form or in forms not subject to rigorous quantitative research. It employs research data collection techniques such as participant observation, semi-structured and unstructured interviewing, focus groups, and the qualitative examination of texts, among many others.[24] As a result, such a method is appropriate for addressing the practical application of sentencing law in the inchoate crime study area. That's to say, this method helps to critically examine and assess the practical application of laws, principles, and purposes of the sentencing as well as to explore the existing challenges on the proper application of such laws on persons who have been found guilty of inchoate crimes.

The researcher also employed both doctrinal and non-doctrinal legal research methods. Engaging in doctrinal legal research assesses the law, in terms of legislation and the application of the law

[24]Alan Bryman. *`Quantitative and Qualitative Research: Further Reflections on their Integration',* in Mixing Methods: Qualitative and Quantitative Research Brannen J. (ed.), (2003),

in contention/case law. Therefore, the doctrinal legal research method is more relevant to answering the research questions: to what extent do the Ethiopian sentencing laws and rules (including the Federal Supreme Court sentencing guideline) and purposes of sentence accommodate the case of inchoate crimes. This helps the researcher to identify and clarify problems and gaps in the law and suggest recommendations for further development of the law. A non-doctrinal method addressed the issues or research questions related to the practical application of sentencing to inchoate crimes. The method helps to examine the practical application of sentencing laws, principles, and purposes on inchoate crimes, and assess the practical challenges on the application of sentencing laws on inchoate crimes.

1.5.2. Data collections methods and sources

Documents (Text) Analysis

The doctrinal section investigated the extent to which sentencing laws and guidelines for inchoate crimes were applied. This involved a thorough documentary analysis of primary and secondary sources. The primary sources include the FDRE Constitution, the Criminal Procedure Code of Ethiopia, the Federal Supreme Court's sentence guidelines, and other laws. Books, journal articles, and articles from the website are secondary sources on which the research chiefly relies. A legal analysis was adopted in conducting this research.

Interview

The non-doctrine part was assessing the practical application of sentencing on inchoate crimes. The researchers used an interview method of data collection to gather relevant firsthand data. The interview method was used as a data-gathering tool to lawyers, prosecutors, judges, defense counsel, and other government bodies on the practical application of sentencing laws for persons who have been found guilty of inchoate crimes. The justification for the use of this method was to gather profound and accurate data to know the actual challenges and limitations in the application of sentencing laws.

Court Records

To address the practical application of sentencing laws to inchoate crimes, selected court records, i.e., cases that involve inchoate crimes were identified and subjected to analysis. Case analysis helps me to address research questions about how the courts in the study area applied the law, purposes, and principles of sentencing to persons who have been found guilty of inchoate crimes.

1.5.3. Study Area and Target Population

The study was conducted in the higher courts and offices found within the SNNNPRS Supreme Court Bonga Divisions, i.e., Bench Sheko Zone, Kaffa Zone, and West Omo Zone. Accordingly, higher courts, zonal public prosecutor offices, and defense attorneys (both private and public) in the listed zones were selected as research areas. These study areas were chosen based on factors such as the researcher's prior knowledge and experience, as well as the researcher's convenience. That to say, the researcher has been working as a public prosecutor at the different levels in the study area. So the researcher has sufficient knowledge and experience about the study area. The target populations were judges, public prosecutors, and defense attorneys (private and government) from such study areas. Researchers believe that the selected study population could give relevant information and share their experience related to the practice of sentencing of inchoate crimes in the study area.

1.5.4. Sampling Techniques

The researchers should carefully select the target population from which they wish to collect data and a sampling strategy to select a sample from that population.[25] As I have discussed above, the method of this study is a qualitative research method. Such an approach, by its nature, and the non-probability sampling design that has been deployed, does not afford any basis for estimating the probability that each item in the population has of being included in the sample.[26] Purposive sampling was employed to gather reliable information about the subject of the research. Accordingly, the sample of criminal bench judges, defense attorneys (both private and public), and public prosecutors was selected by employing purposive sampling. This is because the judgment of the researcher assumes that employing purposive sampling could provide the best information to achieve the objective of the research. Furthermore, the researcher intended to employ such a sampling method is to select those legal actors who are familiar with criminal sentencing, particularly related to sentencing inchoate crimes. Accordingly, the researcher selected the proportional number of the legal actors from each zone who have relevant information and experience about the subject matter. Accordingly, three judges from each high court and a total of nine judges were selected. Moreover, three public prosecutors from each

[25]Bhattacherjee, A., *Social science research: Principles, methods, and practices*. (University of South Florida 2012)
[26] Kothari, C. *Research methodology: Methods and Techniques*. (3rd edn, Willey Eastern ltd 2006)

zone were selected, and a total of nine public prosecutors. Related to the defense counsel, one from each court was selected, a total of three were selected. Finally, four private lawyers working in all areas of study were selected.

The study also involved inspecting court records and decisions of cases that involved inchoate crimes. Cases were selected based on purposive and random sampling techniques. That means, firstly, cases that involve inchoate crimes were selected purposively. This is because the study focused only on cases that involved inchoate crimes. Then, from those identified cases that involve inchoate crimes identified the cases decided after the enactment of the Revised Sentencing Guidelines, then researcher employed a random sampling method to select the cases that went to analysis. Accordingly, the researcher selected 15 dead files related to inchoate crimes from the study areas.

1.5.5. Data Processing and Analysis

Data collected, such as interviews, was transcribed, coded, and categorized before being analyzed. Hence, first, the researcher transcribed the written notes, audiotapes, and semi-structured interviews verbatim in collaboration. The transcription was arranged according to the research questions, and the researcher carefully tried to understand what the transcription would like to explain. Then, the researcher identified the ideas related to each research objective based on the revision of the transcription. Finally, all the obtained through documentaries and interviews were analyzed based on an appropriate data analysis method.

1.6. LITERATURE REVIEW

There is a scarcity of research on the areas of inquiry into the sentencing of crimes in general and inchoate crime in particular. However, there are some attempts to deal with the issues directly and indirectly.

The first document reviewed is the work of Mizan Alemayo [27], with the title "Criminalization and Punishment of Inchoate Offences under FDRE Criminal Code". She tries to investigate and analyze the criminalization and punishment of inchoate offenses under the FDRE criminal code. Her finding indicates that inchoate offenses, particularly conspiracy and instigation, are not

[27]Mizan Alemayo, 'Criminalization and Punishment of Inchoate Offences under FDRE Criminal Code', (2020)IJRAR

criminalized and punished independently of the target crime. She is analyzing the criminalization of inchoate crime, particularly conspiracy and instigation. She did not discuss the legal as well as the practical application of sentencing to inchoate crimes.

The second document reviewed is the work of Kassahun Molla Yilma and Julian V. Roberts[28], under the title "Out of Africa: Exploring the Ethiopian Sentencing Guidelines. The article tried to explore the sentencing guidelines of Ethiopia. "The finding indicates that the Ethiopian sentencing guidelines are currently well-developed on the African continent. But, such an article identifies different problems in the sentencing guideline. Among others, some of the provisions amended the criminal code, the problem of determining the range, the failure to guide on general sentencing issues, and the problem related to the absence of empirical research. The article is focused on exploring the Ethiopian guidelines. It does not analyze the practical application of sentencing in general or the application to inchoate crimes in particular.

The third document is the work of Wondwossen Demissie Kassa,[29] the title of which is "Criminalization and Punishment of Inchoate Conducts and Criminal Participation: the Case of Ethiopian Anti-Terrorism Law." The papers try to analyze the criminalization and punishment of inchoate crimes other than the attempts made under the Anti-Terrorism proclamation. His finding indicates that it is neither appropriate nor supported by major criminal law theories for the Ethiopian Anti-Terrorism Law to criminalize inchoate conduct (other than attempts) and unsuccessful instigation and assistance. He did not discuss in his work the application of sentencing laws to inchoate crimes.

The fourth document reviewed is the work of Sefiew Ayenenw,[30] the title is "Ethiopian Sentencing Guideline and Its Application Case Study of Federal Courts." The thesis focused on exploring whether the Ethiopian Federal Supreme Court sentencing guidelines could tackle the unwarranted sentencing disparities in federal courts or not. His finding indicates that the principles of like cases uniformity of decision have not been realized in many cases; the sentencing guidelines from design to practice reveal that they were unable to stop unwarranted

[28] Kassahun Molla and Julian Roberts, (n-10)
[29] Wondwossen Demissie, 'Criminalization and Punishment of Inchoate Conducts and Criminal Participation: the case of Ethiopian Anti-Terrorism law'
[30]Ayenew, Sefiew (n-9)

disparities in sentencing due to different factors. The lack of clarity in sentencing guidelines, the lack of mutual understanding of the legal practitioners regarding the sentencing guidelines, the lack of supervision and controlling mechanisms of the sentencing guidelines can be considered the root causes of sentencing disparities. He tries to explore the application of sentencing guidelines to all crimes decided at the federal level. He did not go into detail about how such guidelines, as well as general sentence rules on inchoate crimes and their application in regional courts, are applied.

The last reviewed document is the work of Belaynesh Achenef, [31] the title is "Sentencing of Attempted Crimes in Amhara National Regional State Courts: Case Analysis". The main focus of her thesis was to identify the practical problems in sentencing attempted crimes in Amhara regional state courts. The finding indicates that the practice of Amhara regional courts in the sentencing of attempted crimes according to the sentencing principles to achieve sentencing goals is very poor. Even if she tries to analyze the practical application of sentence law in the Amhara region, the scope of her research is limited to the court of the Amhara region and is only focused on attempted crimes.

Despite a thorough review of the literature, none of them have investigated the practical application of sentence law to inchoate crimes in the study areas. This shows the existence of a knowledge gap that this research is going to explore.

1.7. SIGNIFICANCE OF THE STUDY

This research is useful in many ways.

- The research helps to improve my skills in conducting empirical research.
- There is meager empirical research that is directly related to sentencing for inchoate crimes. This research identified the problems associated with the application of sentence laws to inchoate crimes. Hence, this research helps policymakers and judicial organs of the government identify practical problems. As a result, it enables them to take different measures to avert the problems.

[31] Belaynesh Achenef (n-16)

- The research proposes different solutions to avert legal as well as practical problems in the application of sentence law to inchoate crimes.
- The new researchers can use this research to conduct research to address matters not covered herein.
- Finally, this research may serve as reference material for academic purposes.

1.8. SCOPE OF THE STUDY

The research focuses on the inquiry into the sentencing of inchoate crimes. There are different types of inchoate crimes. But the research was limited to an attempt, incitement, and accomplice. And the research analyzed the application of sentencing law on inchoate crime rather than the issues that constitute inchoate crimes. The geographic scope is also limited to Zone offices and Higher Courts found within SNNPRS Supreme Court Bonga division i.e. Bench Sheko Zone, Kaffa Zone, and West Omo Zone.

1.9. LIMITATION OF THE RESEARCH

This research was constrained by several factors including the lack of adequate literature related to issues. In addition to this, there was a time and resource constraint.

1.10. ETHICAL CONSIDERATION

The researcher was getting letters from the School of Law at Jimma University. It enabled to appeal to all the concerned justice institutions and individuals to cooperate with the researcher in allowing access to collections and being willing to be interviewed in the course of this study. Generally, the researcher will use the following ethical rules to collect and analyze data:

- Voluntary participation: It informs the participants that participating in the study is voluntary. All data were collected with the permission of individuals or authorities. The researcher will take due care to get permission and to properly preserve the collected data.
- Subject well-being: It was ensured that there was no harm to the reputations or feelings of the participants. The researcher will not use language or words that are biased against persons or the institution.

- Identity disclosure: It was ensured that participants did not disclose their personal information.
- Confidentiality: Participants were informed that their participation in the study was remaining confidential and that the answers for the interview were only be used for research purposes.

1.11. ORGANIZATION OF THE PAPER

The paper assesses the practical application of sentencing to inchoate crimes. To this effect, the paper is classified into five chapters. The first chapter provides background, a statement of the problem, and the objective of the study, along with research questions addressing the significance of the study, research methodology, and limitations of the study. The second chapter assesses the definition of sentencing; the purposes and principles of sentencing; and the sentencing approach. The third chapter is going to assess the determination of sentences for inchoate crimes, the type of inchoate crime, and the justification for punishing inchoate crimes; theories of inchoate crimes; and the laws applied for the sentencing of inchoate crimes in Ethiopia's criminal justice system. The fourth chapter is devoted to assessing the practical application of inchoate crimes in the study area. As a result, the practical application of sentencing procedure, rules on inchoate crimes, evaluation of the practical application of principles and purposes sentencing for those guilty of inchoate crimes, and challenges for the proper application of sentencing law in research areas are discussed. Then, the paper is finalized by drawing conclusions and recommendations.

CHAPTER TWO

2. GENERAL CONCEPT OF SENTENCING

2.1. INTRODUCTION

Sentencing is one of the major procedures in a criminal proceeding. The court requires imposing punishment or sentencing after proving the guilty offenders. This chapter concerns the general concept of sentencing. The first section is devoted to a brief discussion of the definition or meaning of sentencing. Sections two and three concern various purposes or principles of sentencing. These include retribution, deterrence, rehabilitation, incapacitation, and restoration and the goals incorporated into the Ethiopian legal system. While imposing or determining sentencing for those found guilty of crimes, the courts must consider different principles of sentencing in addition to the goal or purpose of punishment. The third section will discuss different principles of sentencing. The fourth section of this chapter will discuss different approaches to sentencing and the approaches adopted under the Ethiopian legal system.

2.2. DEFINITION OF SENTENCING

Sentencing involves the imposition of punishment by a court upon a defendant who has been found guilty of or confessed to a violation of the criminal law.[32] The terms sentence, punishment, sanction, and penalty are all interchangeable.[33] Punishment, on the other hand, is more precise when used in the context of a legal breach or the conduct of some wrongdoing. It refers to legal processes, whereas punishment, sanction, and penalty can be applied to a variety of situations. A sentence is "the punishment imposed by a court of law."

The gerund form of a sentence, sentencing, refers to the process of punishing someone who has been found guilty of breaking the law by a court of law.[34] To put it in other words, sentencing is a legal action taken by a court of law with lawful jurisdiction to deliver a formal pronouncement of the legal consequences of a convict's actions or omissions.[35]Following a conviction for a

[32]James Oleson, 'Sentencing Theories, Practices, and Trends,' in Antje Deckert and Rick Sarre(ed), *The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice* (Springer Nature 2019) 363
[33]Rabindra Bhattarair (n 1)
[34] ibid
[35] Dean Champion (n 3) 2

criminal offense, an offender is sentenced to receive punishment. Punishments may include detention in a prison or jail or placement in community correctional programs.[36]

Therefore, sentencing is a decision that requires the accused to bear the legal consequences of his or her actions or omissions. It refers to the imposition of a penalty on a convicted defendant. As a result, it is a crucial task of a court's administration of justice.

2.3. GOAL OF SENTENCING

2.3.1. REHABILITATION

The goal of rehabilitation is to improve the offender's personality, opportunities, and treatment to assist him or her in becoming a law-abiding member of society.[37] "*Rehabilitation borrows from the "medical model" of criminal law. In this model, crime is a "disease," and criminals are "sick." According to a proponent of rehabilitation, the purpose of punishment is to "cure" criminal patients by treatment."*[38]It is forward-looking in focus for future crime prevention because it is outcome-oriented and based.[39]

It emphasizes themes of re-socializing the offender and withdrawing from society if there is a risk of re-offending from a consequentiality stance. Furthermore, rehabilitation does not address previous criminal behavior; rather, it seeks to avoid future criminal behavior. Although the offense that has already been committed cannot be rectified, it is expected that punishment will deter future offenses. As a result, rehabilitation is focused on preventing recidivism and is geared toward the future rather than the past.[40]

For all types of offenders, rehabilitation is not effective.[41] The court must assess the offender's rehabilitation potential before deciding whether to enroll him or her in a rehabilitation program that matches his or her personality and social features.[42] Assessing the offender's rehabilitation potential necessitates a thorough understanding of the offender's motivations and factors that

[36] ibid
[37] Roger Burke, *Criminal Justice Theory An introduction* (Routledge 2013) 160
[38] Joel Samaha (n 13) 27
[39] Sir Walter Moberly, 'The Ethics of Punishment', (2009) 22SJT 2
[40] Malcolm Davies and others, *Criminal Justice; An Introduction to the Criminal Justice System in England and Wales.,* (3rd edn, Pearson Education Limited 2005)299
[41] Gabriel Hallevy, *The Right to Be Punished Modern Doctrinal Sentencing,* (Springer 2013) 37
[42] Gabriel Hallevy, 'Therapeutic Victim-Offender Mediation within the Criminal Justice Process , Sharpening the Evaluation of Personal Potential for Rehabilitation while Righting Wrongs under the Alternative-Dispute-Resolution (ADR) Philosophy', (2011)16 Harv. Negot. L. Rev. 65

lead to the crime and delinquency in general. These factors and motives may be external to the offender (e.g., social, economic, environmental, etc.) or internal (e.g., mental, behavioral, valent, etc.).

2.3.2. DETERRENCE

Deterrence is the other main purpose or goal of punishment. The theory of deterrence proposes that criminals and potential offenders will be discouraged from committing crimes if they fear the punishments that are associated with these acts.[43] Deterrence describes as 'consequentialist', in the sense that it is forward-looking with aim of to the preventive consequences of sentences.[44] According to this theory, punishment is justified and measured by the utilitarian idea of preventing future offenses.

A person who is found guilty of a crime is punished, "the intention is to deter the offender from committing further offenses, not only during the period of incapacitation but also following his release from confinement."[45] Deterrence is indeed a prospective purpose of punishment, but it relates to only one aspect: the prevention of further delinquency. Deterrence does so by creating, fear and intimidation of expected punishment, including fear of the criminal process itself, which includes humiliation, loss of time, money, etc.

Deterrence could be specific and general deterrence. Specific deterrence focuses on the individual offenders.[46]If an individual thinks that the threat of punishment (such as a prison sentence) is undesirable, specific deterrence implies that that individual will refrain from engaging in unlawful activities.[47] Specific deterrence is limited to a single person. The theory of general deterrence, on the other hand, implies that if people are afraid of the punishments that others receive, they will decide not to engage in similar behaviors because they do not want to risk their punishment.[48]

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[43]Stacy Mallicoat, *Crime and Criminal Justice, Concepts and Controversies* (SAGE Publications 2017) 590
[44]Kent Greenawalt, 'Punishment', (1983) 74 J. Crim. L. & Criminology343 351
[45] Andargachew Tesfaye, *The Crime Problem and Its Correction*, (Addis Ababa University Press 2004) 88
[46] Gabriel Hallevy, *The Right to Be Punished* (n 41) 28
[47] Stacy Mallicoat (n 43) 590
[48] ibid

2.3.3. INCAPACITATION

Incapacitation is considered to be a modern general purpose of punishment. Incapacitation includes preventing society from dangerous criminals through isolating the criminals from society.[49]It is predicated on the notion that, at times, society has no other choice but to physically restrain the offender from reoffending to protect itself from delinquency.[50] Physical prevention entails immobilizing the offender's physical (bodily) capacities to conduct the offense. Preventive measures might vary depending on the sort of offense to be avoided as well as the offender's physical capabilities.[51] The death sentence, long-term jail, amputation of limbs, exile, castration, chemical castration, and other methods may be used.[52]

Incapacitation is a plausible and desirable justification for punishment based on the efficacy of three assumptions: (1) some offenders are recidivists; (2) offenders are not immediately replaced by other criminals after being imprisoned; and (3) prison does not increase crime by changing offenders in ways that outweigh the reductive effects of incapacitation."[53] Incapacitation demands the identification of offenders who are likely to cause grave harm in the future, and it is thus linked to concepts of "dangerousness" and "public risk."

2.3.4. RETRIBUTION

Retributive believed that law-breakers should be punished proportionally to their moral desert, even if this resulted in more harm than good in the long run. The retributive perspective maintains that punishment is just because it is fair, that it achieves a balance of reciprocity, and that it resembles the doctrine of lex talionis, sometimes known as "an eye for an eye, a tooth for a tooth." [54] It is at this moment that proponents and supporters of vengeance as a justification for punishment believe that punishing, maybe harshly, is reasonable, right, and necessary. It is believed to be unfair that a man's grave fault should make no difference in the treatment he receives, and that he should be regarded just as favorably as if he had done no wrong.[55] The premise is that the perpetrator has benefited unfairly and that this advantage may and must be

[49] ibid 597
[50]Gabriel Hallevy, The Right to Be Punished (n 41) 46
[51] ibid
[52] ibid
[53] James Wilson, *Thinking About Crime*(Basic Books 2013) 133
[54] Stacy Mallicoat (n 43)
[55] ibid

taken away by a penalty.[56]It is acceptable to expect others to treat us as we would like to be treated. The basic rationale for punishment, according to this viewpoint, is that offenders deserve to be punished in proportion to the harm they have intentionally inflicted on the victim and society. As a result, the focus is on what the person has done in the past rather than what they might do in the future. If there has been harm, there is a moral need to punish; yet, if there has been no harm, punishment is not required.

2.3.5. JUST DESERT

Desert theory, like retributivism, is a modern retributive philosophy that comes in a variety of colors and tints.[57] The major distinction between desert and retribution theories is that the latter inflicts punishment on the lawbreaker for moral reasons, whilst the former does so for utilitarian reasons.[58] As a result, proponents of retributive want punishment because they believe the perpetrator deserves to be punished and that a wrong should not be treated the same as a right. Just deserts proponents, on the other hand, are a product of disillusionment with retribution, and punishment is not inflicted in their case because of moral obligation. But out of utility, punishing law-breakers maximizes good.

Just deserts' is thus based on the proportionality principle, to ensure consistency with penalties that are proportional to the seriousness of the unlawful activity as measured by the harm produced by the act and the blameworthiness of the perpetrator. As a result, just deserts focus on the crime rather than the perpetrator, their circumstances, known history, or what might happen in the future.

2.3.6. RESTORATION

The ideas of restoration are one of the most recent purposes of punishment. Restorative justice, as an alternative to conventional punishment philosophies (such as retribution, incapacitation, and rehabilitation), fundamentally challenges our understanding of crime and justice. Although the global victims' rights movement is a recent phenomenon, the broad roots of restorative justice may be traced back to Western Europe's early legal systems, ancient Hebrew justice, and pre-colonial African communities.

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[56]ibid
[57]Andrew Ashworth, *sentencing and criminal justice* (n 5) 88
[58]ibid

Restorative justice entails the process of restoring all parties involved in or impacted by the initial misconduct to their prior state, including victims, offenders, the community, and possibly the government.[59] The perpetrator accepts full responsibility for the wrongdoing and begins restitution to the victim under this punishment theory. The victim and the offender are brought together to create a mutually beneficial program that assists the victim's recovery while also minimizing the offender's chance of re-offending.

2.4. GOAL OF SENTENCING UNDER ETHIOPIAN LAW

As discussed above offenders are punished for different reasons such as deterrence, reform, prevention, and retribution. In the FDRE Criminal Code, there is an express stipulation that punishment aims to achieve different goals. Article 1 expressly provided that

> *The purpose of the Criminal Code of the Federal Democratic Republic of Ethiopia is to ensure order, peace and security of the State, its peoples, and inhabitants for the public good. It aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective, by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson to others, by providing for their reform and measures to prevent the commission of further crimes.*[60]

The first goal of punishment expressly provided under criminal law is deterrence. The law's aim is intended to dissuade offenders and other members of society from committing additional crimes. Punishment, in this sense, has the goal of reducing the number of crimes committed in the future. The criminal code incorporated both specific and general deterrence. Second, the goal of punishment is to rehabilitate criminals. Individuals may commit crimes as a result of problems they are experiencing, whether external or internal. As a result, the Criminal Code allows for the application of reformative sentences since they may be able to solve their problems through punishment. The third goal of punishment expressly provided under criminal law is incapacitation. They can be used to prevent the commission of further crimes, and this can happen where there is an indication to the effect that a crime will be committed. However,

[59]Terance Miethe and Hong Lu , *Punishment: A Comparative Historical Respective*,(Cambridge 2005) 23
[60]FDRE Criminal Code (n 7) art. 1

because all available sentencing rationales are intended to apply to all types of crimes, it is up to a specific court to select and apply the rationale it believes appropriate to punish offenses.[61]

In practice, however, Ethiopian courts do not do much more than reciting in broad terms the legal rationales.[62] Related to the retribution goal of punishment, the new criminal code is silent. The 1957 Penal Code was incorporated retributivism in sentencing rationale in addition to other goals of punishment. In referring to retribution, the code stated its aim as 'providing for the punishment of offenders.[63] But the criminal law by limiting the goals of punishment to deterrence (particular and general), rehabilitation, and incapacitation, the Criminal Code appears to have tacitly precluded the retribution rationale of sentencing.[64]

2.5. PRINCIPLES OF SENTENCING

2.5.1. TRANSPARENCY

Transparency is the cornerstone of effective justice administration.[65]The legal foundations requiring transparency of court procedures can be found in a series of international human rights norms. More specifically, two related rights have an impact and generate obligations on the transparency of the judiciary: the right to information[66]and the right to a fair trial.[67] The transparency principle of sentencing has a significant role in combating arbitrary disparities in sentencing.[68] As indicated above, it also became a human rights requirement in modern society.

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[61]Tadesse Simie, 'Punishing Core Crimes in Ethiopia: Analysis of the Domestic Practice in Light of and in Comparison, with Sentencing Practices at the UNICTS and the ICC', (2019) 19ICLR1,160-190 https://doi.org/10.1163/15718123-01901007 13 accessed October.2021

[62] ibid

[63]Philip Graven, *An Introduction to Ethiopian Penal Law*:(Faculty of Law, Haile Selassie I University, in association with Oxford University Press 1965) 7–8.

[64]Tadesse Simie (n 61)

[65]Guilherme France, *Transparency of court proceedings,* (Transparency International, 2019)1 Transparency-of-court-proceedings_2019_PR.pdf accessed 15 October 2021

[66]See ICCPR Article 19 states that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". And also UDHR demonstrates: "Everyone has the right to freedom of opinion and 1 It defines "public authorities" rather restrictively as "legislative bodies and judicial authorities in so far as they perform administrative functions according to national law" (article 1, 2, a, 2). expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (article 19).

[67] The International Covenant on Civil and Political Rights, which aims to ensure the right to a fair trial, details the obligation of the courts to publicise its rulings. It explicitly states that "any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children" (article 14).

[68]Preston, Brian J. *Achieving consistency and transparency in sentencing for environmental offences, Judicial Commission of New South Wales* (2008) 13

In this regard, Judges are supposed to give reasons for their choice of the sentence and explain the purpose of the sentence imposed. For the prevalence of meaningful understanding of the purpose of sentencing, the public should have access to information regarding criminal sentencing.[69]

In the Ethiopian criminal justice system, different laws require the transparency of the judiciary in all proceedings including sentencing. The supreme law of the country is provided under article 12; all organs of the government including judiciary action shall be transparent to the public. This provision imposes an obligation on the court to be transparent while imposing punishment. In addition to this, article 3(1) of the revised sentencing guideline prescribed that maintaining the transparency of sentencing is one of the objectives and principles of the guideline.[70]

2.5.2. PROPORTIONALITY

The principle of proportionate sentencing is aim to prevent unfair or unjust sentencing outcomes.[71]The term 'proportionality' in sentencing refers to the relationship between a crime and its punishment. Since Magna Carta, the notion of proportionality in punishment has been profoundly ingrained in common-law jurisprudence.[72] In a just society, punishment should be proportional to the offense committed, according to the principle.[73] It all comes down to the gravity of the offense and the severity of the punishment. Proportionality means that the severity of a punishment should be proportional to the seriousness of the offense.[74] In other terms, the proportionality principle holds that the penalty should be proportional to the offense. It stipulates that the punishment must be proportionate to the nature of the offense or not exceed it, and it prohibits excessive, arbitrary, and capricious punishment.[75]

In the Ethiopian legal system, a revised guideline has expressly prescribed that the goal of the guideline is to impose sentencing on offenders proportional to the seriousness of the crime.[76] Furthermore, according to article 88(2) of the Code, the gravity of the offense must be considered when determining the degree of individual guilt, which is then considered to

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[69]ibid
[70]FDRE Supreme Court Revised Sentencing Guideline Directive no 2/2013, Art 3
[71]Andrew Ashworth, *Sentencing and criminal justice* (n 5)104
[72]Dejene Girma, *A Hand book on the Criminal Code of Ethiopia*, (Addis Ababa Fareast Trading Plc 2013) 152
[73] ibid
[74]Mirko Bagaric, *Punishment and Sentencing: A Rational Approach*, (Cavendish Publishing Limited 2001) 63
[75]ibid
[76]FDRE Revised Sentencing guidelines (n 70) art 3

determine the appropriate penalty. As a result, the notion of proportionality of punishment has a place in our criminal justice system to some extent.[77]Moreover, Dr. Dejen argues that

> *Since the constitutional prohibition of cruel and unusual punishment is being interpreted as prohibitive of excessive punishment and the FDRE Constitution also prohibits cruel, inhuman, and degrading punishment, one can argue that, to the extent possible, punishment ought to be proportional to the severity of the crime for which it is to be imposed. Yet, it must also be noted that such constitutional principle is also interpreted as not to prohibit the use of severe penalty for some criminals such as recidivists in order to make criminal law serve it purposes*.[78]

2.5.3. PRINCIPLE OF EQUALITY

This is the notion that all criminals should be treated equally in sentencing decisions, regardless of their class, race, color, sex, talents, employment, or family status.[79] According to the concept of equality before the law, certain personal characteristics unrelated to the offender's crime should be disregarded from sentencing considerations. A universal agreement on what defines such traits is required for the consistent application of the principle. Such Principe is also one of the core human rights recognized universally.[80]Discrimination based on sex, marital status, religious or ethical beliefs, color, race, ethnic or national origins, disability, age, political opinion, job position, family status, and sexual orientation is prohibited under this concept. If equality before the law is deemed to be a crucial part of that right, sentencing judgments should not discriminate against criminals on any of the aforementioned grounds. This does not, however, exclude sentences with differential treatment based on the principles of equal impact and proportionality.

The equality principle has been incorporated under the FDRE Constitution and other laws. For example, article 25 of the constitution stipulated that everyone has equal protection before the law and prohibited discrimination on unnecessary grounds. This provision of the constitution protects offenders from unequal treatment while imposing the sentencing. Moreover, the criminal law expressly provided that

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[77]Belayenesh Achenif (n 16)28
[78]Dejene Girma (n 72) 152
[79]Andrew Ashworth *sentencing and criminal justice* (n 5) 99
[80]See ICCCPR art 3 26 UNDH art 7 and 10 ICESCR art 2

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status.[81]

Above constitutional as well as criminal law provisions guaranteed equal protection of criminals in all preceding including determination of sentencing. Therefore, the courts shall consider the equality principle, while imposing punishment on the persons who have been found guilty of the crime.

2.5.4. CONSISTENCY

Similar instances must be treated similarly, while different cases must be treated differently, according to the principle of consistency.[82]If offenders in similar situations who are convicted of similar crimes receive differing punishments, this can be interpreted as a lack of consistency in sentencing procedure.[83]As a result, consistency can be defined as treating similar circumstances in the same way. Consistency in criminal punishment reflects the concept of equal justice, which is a cornerstone of every reasonable and equitable criminal justice system. Inconsistency in sentencing, on the other hand, is meant to contribute to an erosion of public confidence because it is seen as evidence of unfairness and unequal treatment under the law.[84]As a result, avoiding and eliminating unreasonable sentence disparities is critical to the administration of justice and the community. Those that are broadly similar should be treated similarly, and broadly dissimilar cases should be treated differently, in general. [85]

Revised Federal Supreme Court sentencing guideline requires that sentencing decision shall be consistent.[86] That to say, as prescribed under such guidelines, one of the main goals for the

[81]FDRE Criminal Code (n 7) art. 4
[82]Andrew Ashworth, 'Disentangling Disparity', in Pennington and Lloyd-Bostock (eds.), *The Psychology of Sentencing* (Centre for Socio-Legal Studies, 1987); O'Malley, *Sentencing Law and Practice* (1st edn, Round Hall Sweet & Maxwell 2000)
[83]Niamh Maguire, 'Consistency in Sentencing,' (2010) Judicial Studies Institute Journal 2
[84]Burt Griffin and Lewis Katz, 'Sentencing Consistency: Basic Principles Instead of Numerical Grids', The Ohio Plan, (2002) 53Cas. W. Res. L.Rev.1 14
[85]Preston Brian, *Achieving consistency and transparency in sentencing for environmental offences, Judicial Commission of New South Wales* (2008) 4
[86]FDRE Revised Sentencing Guideline (n 71) Art 3

revised sentencing guideline is to ensure the sentencing of the court is considered the principle of consistency.

2.5.5. PREDICTABILITY

Predictability is the other major principle of punishment. Predictability is one of the most crucial aspects of sentencing consistency and fairness. It has been established that the analyzed legal elements can be used to forecast sentence determination to some extent. High-ranking criminals in prominent positions are sentenced to significantly lengthier jail sentences than regular low-ranking offenders, according to well-understood and legally relevant patterns in sentencing practice. The Revised Federal Supreme Court Sentencing Guideline under article 3(1) stated that one of the objectives of such directive is to maintain the predictability of sentencing decisions.[87]

2.6. APPROACH OF SENTENCING

2.6.1. INDETERMINATE

Legislators assign large sentencing ranges i.e. minimum and maximum to offenses under indeterminate systems.[88] Courts have broad authority in deciding whether to impose community supervision or a prison sentence, as well as the appropriate sentence length for each case and offender. The rationale for the indeterminate sentence is that it is a fully personalized punishment that allows for rehabilitation and includes an assessment of the offender's progress toward that goal.[89]Indeterminate sentencing is based on assumption that convicted offenders are more willing to participate in their rehabilitation if doing so will lessen the amount of time they have to spend in jail. Recalcitrant inmates will be held in prison until the end of their sentences, while good-behaving inmates would be freed early. As a result, in jurisdictions that use the indeterminate sentence paradigm, parole plays a substantial role.[90]Indeterminate sentencing requiring on the discretion of judges to choose between several forms of sanctions and to set upper and lower limitations on the length of time spent in jail. When an offender is convicted of multiple charges, judicial discretion under the indeterminate model extends to the imposing of concurrent or consecutive sentences. The inmate's behavior (while confined) is the key factor of the amount of time served under the indeterminate sentencing approach.

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[87]ibid Art 3(1)
[88]James Inciardi, *Criminal Justice*, (9th edn ,McGraw-Hill Higher Education, Inc 1984) 424-425
[89]Stacy Mallicoat (n 43) 242
[90]ibid

2.6.2. DETERMINATE

Determinate sentencing is described by fixed sentence lengths. These sentences can be served in the community or jail, with prison sentences usually accompanied by a period of community supervision. In determinate systems, the amount of time served is generally determined by the courts, and parole boards and discretionary release do not exist.[91]The rationale for determinate sentencing is to promote clarity in the amount of time served, improve sentence proportionality to the gravity of the offense, and decrease inequities that may arise when sentences are more indeterminate.

2.6.3. MANDATORY SENTENCING

Mandatory sentencing, which is a type of structured sentencing, is worth mentioning. Mandatory sentencing is exactly what it sounds like: a structured sentencing process with precisely defined penalties for specific acts or habitual offenders guilty of a series of offenses.[92] Because it is mandatory, a mandatory sentence differs from presumptive sentencing, which provides at least a certain amount of judicial discretion within specified parameters.[93]Some mandatory sentencing rules impose fairly minor mandatory prison sentences (e.g., three years for armed robbery), whereas others are substantially more broad.

There are different forms of mandatory sentencing.[94] First related with once the legislative stipulated the penality and the judiciary has no power to divert from such stipulated penalty. The second form of mandatory penality is mandatory minima. In such cases, the court requires to impose a prescribed minimum whilst allowing a harsher sentence. The other category is the law allows the court to impose a sentence less than the stipulated provided the condition is met. One of the most common criticisms of mandatory sentencing is that it prevents judges from taking into account the unique characteristics of the offense or the offender when deciding on a sentence. In effect, the prosecutor now has the power of sentencing, as he or she decides whether or not to file a charge with a mandatory sentence against an offender.[95]

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[91]Dean Champion (n 3)
[92]Frank Schmalleger, *Criminal Justice Brief Introduction* (20th edn, Prentice Hall 2011) 266
[93]ibid
[94]Department of justice Canada, *Mandatory Sentences Of Imprisonment In Common Law, Jurdiction , Some Representative Model*(2005)
[95]ibid

2.6.4. PRESUMPTIVE SENTENCING

For every offense or offense class, presumptive or guidelines-based sentencing is a particular punishment, usually represented as a range of months.[96] In all except the most egregious situations, the sentence must be imposed, but judges are given limited leeway in lowering or lengthening sentences within certain parameters when there are mitigating or aggravating circumstances.[97] Sentencing guidelines are founded on the premise that more serious offenses should be punished more severely, and repeat offenders should be punished even more severely. Guidelines for sentencing determine a "presumptive" punishment depending on the seriousness of the offense and the offender's prior convictions. The judge can minimize the sentence by ordering a downward deviation from the presumptive sentence if there are particular mitigating circumstances. The judge can order an upward deviation from the presumptive sentence in certain aggravating circumstances, therefore raising the punishment.

2.7. SENTENCING APPROACH UNDER ETHIOPIAN LAW

As discussed above there are different approaches to sentencing adopted by different countries of the world. The Ethiopian criminal legal system mostly uses determinate sentencing, which states the minimum and maximum sentences prescribed by the legislature, and the court can impose either a prison term or a fine, or both, on the defendant.[98] That to say FDRE criminal code in its special part specified the range of sentences and the judge may decide a fixed period sentence against the defendants of the crime. However, as stipulated under article 202 of the criminal code, the defendants may be released upon the parole officer's reformative reports after the inmate completed two-thirds of imprisonment. The first example;

Art. 543(1) of the Code reads:

> *Whoever negligently causes the death of another in circumstances other than those specified in sub-article (2) and (3) of this Article, is punishable with simple imprisonment from six months to three years, or with fine from two thousand to four thousand Birr.(Emphasis supplied)*

[96]Dean Champion (n 3)
[97]ibid
[98]Meron Haile Selassie, *Disparity of Sentence in Ethiopia Courts with Special Emphasis on Sentencing Rape, Offenders*, (2008) 29-40.

This Article grants a wide discretion for a judge to decide a sentence from the wide range provided by the law. Accordingly, the judge could pick a sentence starting from the minimum six months to the maximum three years or starting from two thousand birr to four thousand birr fine.

Another example is the crime of serious bodily injure

> *Whoever intentionally: a) wounds a person so as to endanger his life or to permanently jeopardize his physical or mental health; or b) maims his body or one of his essential limbs or organs, or disables them, or gravely and conspicuously disfigures him; or c) in any other way inflicts upon another an injury or disease of a serious nature, is punishable, according to the circumstances of the case and the gravity of the injury, with rigorous imprisonment not exceeding fifteen years, or with simple imprisonment for not less than one year.*[99]

The above article grants a wide discretion for a judge to pick a sentence in the provision of either simple imprisonment or rigorous imprisonment. That to say the judge could pick 1 year to 15-year rigorous imprisonment or starting from1 year to three years simple imprisonment. Therefore, the departure and the destination points of sentencing rely on the statute of the legislature.

Nonetheless, there are some provisions in the unique conditions of juvenile offenders, and partially irresponsible persons can be sentenced based on indeterminate sentencing.[100]For example, art.132 (1) of the criminal code of 2004 specifies that

> *The competent administrative authority shall carry out the Court's decision concerning treatment and confinement. Treatment and confinement shall be of indefinite duration but the Court shall review its decision every two years. As soon as, according to expert opinion, the reason for the measure has disappeared the administrative authority shall, after having referred the matter to* the *Court and upon its decision, put an end to the measure ordered.*

[99] FDRE Criminal Code (n 7) Art. 555
[100] Ayenew Sefiew (n 9)17

The law provided the treatment and confinement may be for an indefinite time, but that the court must review its decision every two years. Experts believe that if the offender makes substantial improvement, the rationale for the measure will fade away with time. As a result, after referring the matter to the court and receiving its verdict, the administrative body must terminate the order.

In the Ethiopian criminal legal system, the law has been adopted the determinate sentencing approach by fixing the minimum and maximum length of sentencing. The judges could pick the sentences for each particular case from the rages stipulated by the legislator. But in some situations, an indeterminate approach of the sentence has been adopted in the criminal code. In the case of the young offenders and partially irresponsible offenders, the sentences can be imposed based on the indeterminate sentencing approach.

2.8. CONCLUSION

The discussion in the preceding chapter, presented in various sections, indicates the concept of sentencing. Sentencing is one of the significant steps in the criminal justice system. Following a conviction for a criminal offense, the court imposed sentencing on the offender. Sentencing is legal action taken by the court on defendants who have been guilty of the crimes. During imposed punishment on the offenders, the courts are required to consider different purposes of punishment. Among others, it includes deterrence, rehabilitation, incapacitation, restoration, just desert, and rehabilitation. The FDRE criminal code expressly incorporates three main purposes of sentencing, i.e., deterrence, rehabilitation, and incapacitations. In addition to the purposes, the courts are required to follow the basic principles of sentencing while imposing sentencing on the defendants. The sentencing decisions should be transparent, consistent, equal, proportional, predictable, and others. Moreover, the chapter discussed different approaches to sentencing, i.e., determinant, indeterminate, mandatory, and others. In the Ethiopian criminal justice system, the law has been adopted the determinate sentencing approach by fixing the minimum and maximum length of sentencing. But in some situations in the case of the young offenders and partially irresponsible offenders, an indeterminate approach of the sentence has been adopted.

CHAPTER THREE

3. SENTENCING OF INCHOATE CRIMES

3.1. INTRODUCTION

Inchoate crimes are incomplete or not consumed and the penalty is attached even if they are not completed. The perpetrators are at least taking a substantial step towards committing a crime but not completely committing the intended crimes. There are different types of inchoate crimes among others including attempts, being an accomplice or an accessory to a crime, incitement, criminal facilitation, and others. Most states today, including Ethiopia, criminalized and stipulated punishment for inchoate crimes. The first section of this chapter discussed the general overview of inchoate crimes, including their definition and justification. The second and third sections contain the arguments and theories related to the criminalization and punishment of inchoate crimes. The fourth section discussed different types of inchoate crime in general and under Ethiopian law in particular. This research focuses on three types of inchoate crimes, i.e., attempt, accomplice, and incitement. The final section of this chapter deals with the Ethiopian laws that apply to determine the sentencing of inchoate crimes.

3.2. OVERVIEW OF THE CONCEPT OF INCHOATE CRIMES

Inchoate refers to something that has "just begun," is "under-developed," is "partially completed," or is "imperfectly constructed". Inchoate crimes are thus incomplete offenses that are deemed to have been committed, although the substantive crimes, that is, the offense for which they were aiming, have not been completed and the intended harm has not been realized.[101] Black's Law Dictionary defines inchoate crime as ''A step toward the commission of another crime, the step in itself is being serious enough to merit punishment''.[102] Even if the crime they were planning to commit does not take place, they may all face criminal prosecution.[103]

Inchoate responsibility occurs when a defendant makes some progress toward the commission of a crime but does not commit the entire crime.[104]They are not concerned with bringing physical

[101]Andrew Ashworth, *Principles of Criminal Law*, (4th edn, OUP 2003)445; B. A. Garner (ed.), *Black's Law Dictionary*, (7th edn, West Group 1999) 765
[102] Black law dictionary (n 101) 765
[103]Wibke Timmermann, 'Incitement in international criminal law', (2006) 88IRR 823, 825
[104]Roger Geary, *Understanding criminal law*, (Cavendish Publishing 2002) 27

harm to a victim, but rather with promoting or plotting to commit crimes with others, or with an attempt to conduct the crime itself.[105]There have been several justifications proposed for their existence. One way to look at inchoate crime is as preventative measures: liability is imposed for conducts that aren't quite as serious as a full-fledged crime, such as murder or theft but are close enough to endanger public order.[106]The criminal law moves in to prevent or interrupt the commission of the complete crime. According to Ashworth ''the concern [in criminal liability] is not merely with the occurrence of harm but also with its prevention''[107]. Furthermore, Catherine Elliott and Frances Quinn argues that

> *One of the reasons for the existence of inchoate offences is that without them the police would often have to choose between preventing an offence being committed, and prosecuting the offender – it would be ridiculous, for example, if they knew a bank robbery was being planned, and had to stand by and wait until it was finished before the robbers could be punished for any offence. In addition, the person would have had the mens rea for the commission of the offence, and it may often merely be bad luck that he or she did not complete the crime – for example, if a planned bank robbery did not take place because the robbers' car broke down on the way to it.*[108]

Another justification is that the behaviors are morally reprehensible. It is possible, for example, that someone's failed attempt to harm another is only thwarted by the victim's swift response, in which case the attempt is just as morally blameworthy as a completed crime.[109]

The mental element is significant in each inchoate offense. The actor desires to commit the substantive crime that renders her behavior potentially harmful and warrants the intervention of the criminal law before any actual harm has been committed to another person or property.[110] Simply preparing to commit a crime does not carry any legal consequences. Even for inchoate offenses, there must be an *actus reus*, though it will differ from the *actus reus* of the substantive offense.[111] To put it another way, simply thinking of evil ideas is not a crime. For instance,

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[105]Marise Cremona and Jonathan Herring, *Criminal Law* (2nd edn, Macmillan Press LTD 1998) 323
[106]ibid
[107]Andrew Ashworth, *principle of criminal law* (n 101)446
[108]Catherine Elliott and Frances Quinn, *criminal law* (8th edn, Pearson Education Limited 2010)254
[109]Marise Cremona and Jonathan Herring(n 105) 323
[110]ibid
[111]ibid

incitement is committed when the offender discloses the plan is to another person with the intent of inducing the other to commit the substantive offense. A conspiracy is committed when the other person agrees to conduct the crime and a common plan is prepared. And it will constitute an attempt if the plan progresses beyond the preparatory stage and it begins the substantive offense but is unable to complete it. An attempt can be committed by a single person acting alone, and it does not have to be preceded by a conspiracy. The core of inchoate offenses is that the substantive crime is not committed; if it is, it is proper to charge the accused with that substantive offense.

3.3. ARGUMENTS ON THE PUNISHMENT OF INCHOATE CRIMES

As discussed above, inchoate crimes are incomplete or not yet consumed crimes. The offender's objective is to commit a crime, but it was never fully completed. Because of different factors, they are failed to complete the crimes even if they are intended to complete the crimes. There are different arguments or debates concerning whether and how inchoate crimes are punished when the offense that the person intends to commit or facilitate is never fully completed.[112]

Some scholars argue against punishing inchoate crimes. One of the main arguments used by those who oppose punishing inchoate offenses is that persons should not be punished when no actual harm has occurred.[113] As long as there is no harm resulting from the action of offenders, there has to be no punishment or sentencing for the conduct of the offenders.[114]Furthermore, one of the most fundamental foundations of the legal system is that it is preferable for a guilty person to go free than for an innocent person to be punished for a crime they did not commit. This is a problem that is intimately linked to inchoate crimes since law enforcement has a vested interest in tracking down and stopping criminal conduct in its early phases before it becomes a full-fledged crime. This makes it more probable that a person would be punished for apparently innocent behavior that resembled criminal action in the early stages of development.

On the other hand, there are strong arguments to impose punishment or sentencing on persons who commit inchoate crimes. One of the most compelling justifications for criminalizing inchoate offenses is that doing so can prevent or deter the commission of subsequent crimes and

[112]Joel Samaha (n 13) 235
[113]Larry Alexander and Kimberly Ferzan, *Crime and Culpability: A Theory of Criminal Law* (2009)
[114]ibid

prevent social harm before occurrence.[115] The notion behind the deterrence effect is that if people see others being punished for crimes that were not fully finished, they will be less likely to engage in criminal activities themselves.[116] Another argument for punishing inchoate crimes is that the individual being punished is far from blameless, even though the planned offense was not fully performed.[117] Many contend that because the underlying offense was not completed owing to circumstances beyond their control, they are just as mentally guilty as those who fully complete criminal offenses.[118]The underlying crime would have been performed as planned if these external circumstances had not prevailed. Indeed, the reasoning for penalizing inchoate crimes is based on two types of danger: those who do dangerous or criminal activities (actus reus) and those who have a guilty mind (*mens rea*). Although these concerns may not lead to the complete completion of any specific crime, they are both legitimate threats to society that the criminal law has a significant interest in regulating and stopping. I think the second argument is stronger than the first one.

3.4. THEORIES OF LIABILITY OF INCHOATE CRIMES

3.4.1. CULPABILITY BASED

According to this view, inchoate crimes are committed by the criminal's desire to participate in harmful or wrongful activity.[119] In this view, inchoate culpability is defined and justified by a person's affirmative desire or purpose to cause some criminal harm or wrong. Yet, understanding inchoate crimes in terms of an offender's motivations or culpability poorly suits the task of specifying the nature and limits of that category or the state's criminalization authority. As a criterion for criminality punishment or differentiating inchoate from completed crimes, subjective intent is both over-inclusive and under-inclusive. Criminalization depends on intent is over-inclusive, it allows liability grounded solely on the criminal's culpability, without requiring any showing of objective harm or wrong (or even risk of harm or wrong.[120]

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[115]Thomas Gardner and Terry Anderson, *Criminal Law*, (10th edt, Thomson Wadsworth 2009) 60

[116]ibid

[117]Cahill, M. T. 'Defining Inchoate Crime: An Incomplete Attempt' (2012)9Ohio State Journal of Criminal Law751, 755 https://doi.org/10.7282/T3K35Z1B accessed 3November 2021

[118] Katja Stubbs, 'Inchoate crime' in Francesca Galli and Anne Weyembergh (Eds.), *EU counterterrorism offences: What impact on national legislation and case law?* (Éditions de l'Université de Bruxelles, 2012) 291

[119]Larry Alexander, 'Mens Rea and Inchoate Crimes', (1996-1997) 87J. Crim. L. & Criminology113

[120]Larry Alexander and Kimberly Ferzan,' Culpable Acts of Risk Creation', (2008) 5Ohio State Journal of Crim. Law 375

3.4.2. THE RISK-BASED

Douglas Husak has a view of the nature and reasonable boundaries of inchoate culpability, characterizing inchoate offenses as requiring the creation of a sufficient danger of harm, while harm does not have to materialize.[121] While it is undoubtedly possible to distinguish between harm-based and risk-based offenses, this distinction may prove to be less durable or beneficial in the long run. Many crimes that intuitively appear to be consummate offenses (especially in that it appears uncontroversial to penalize inchoate attempt to do them) could easily be classified as risk-based rather than harm-based under positive law: For example, theft violates property interests but, depending on how narrowly one frame the offense temporally, may not result in harm insofar as the stolen property is eventually recovered or returned; fraud offenses involve deception but may not harm the person deceived; bribery risks, but need not entail, corruption in that a bribe may not affect the recipient's official conduct; even arson is often defined in a way that requires action (starting a fire), but does not demand any resulting property damage.[122]

3.4.3. THE INTERVENTION-BASED

According to this view, preventive purposes may support criminalization and punishment of inchoate crime even if the actor's preliminary activity is not (yet) incorrect.[123]Consummate offenses are those in which the punishment is given after the offender has engaged in harmful, dangerous, or otherwise improper behavior. Inchoate offenses, on the other hand, are focused on prevention; they are designed to allow for ex-ante intervention to avert harm, risk, or wrongdoing before it occurs.[124] Because the justifications for consummate and inchoate crimes differ, individual transgressions should be scrutinized (and supported) differently depending on whether they fall into one of the two categories or both.[125]

3.5. TYPES OF INCHOATE CRIMES

3.5.1. CRIMINAL ATTEMPT

In most legal systems, there are four stages to the commission of a crime. It includes the formation of the intention or mental element for the commission of a crime, preparations, acting

[121]Douglas Husak, 'The Nature and Justifiability of Non consummate Offenses,' (1995) 37 Arizona LR 151, 165–166.
[122]Michael Cahill, 'Inchoate Crimes' in Markus Dubber and Tatjana Hörnle(edt), *The Oxford Handbook of Criminal Law* (OUP 2014)
[123] ibid
[124] ibid
[125] ibid

based on the preparation, and the final stage is the commission of the crime. Some legal systems penalize the stage of preparation.[126] They, depending upon the importance the system gives to the value of 'crime prevention' declare certain offenses to be criminal and punishable from the stage of preparation.[127] Attempts exist in the third stage, i.e., when a person's action is per the preparation but fails to bring the intended result. The essence of the crime of attempt is that the offender has failed to perform the offense's guilty act, but has the direct and specific desire to commit the entire offense.[128] To put it in other words, an attempt to commit an act takes place when a person comes extremely close to committing a criminal act and intends to do so, but fails to do so. Although a person may have followed all of the stages, still failed, or the effort may have been abandoned or terminated before the crime was completed. The preparation's author fails to achieve the desired result for several reasons that can be attributed to his efforts or external ones.[129] That is why every attempt fails. We can only talk about complete crimes, not attempted crimes if there is a success.[130] Moreover, Dr. Dejene argues that

> *Some other elements must be present. These are; a. normally, for attempt to exist, the requisite moral element is intention. ..... In as long as the intention element is fulfilled, the material element can be either commission or omission. So, there is no distinction in relation to the actus reus. Attempt within the meaning of criminal law can exist only if the result intended, if achieved, is a crime. If the result intended is innocent, attempt to do it can in no case be a crime. Attempt can be completed only if the elements of the intended crime are completed.*[131]

True, the criminality of an attempt is based on the intent, or *Mens Rea*,[132] of the accused, but this *Mens Rea* must be supported by what the accused has done to achieve his final goal. However, the problem occurs when the *actus reus* of an attempt fails to do any harm as a result of the absence of circumstances or the unavailability of the means used.[133]

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[126]Suwarn Rajan, Attempt In Criminal Law (2009), https://www.lawyersclubindia.com/articles/ATTEMPT-IN-CRIMINAL-LAW-1664.asp accessed 4 November 2021
[127]Nigam R.C, " Law of crimes in India" Chap.V, p. 112 cited Suwarn Rajan (n 126)
[128] Rokaj, 'Between Model Penal Code and Common Law Criminal Liability in Attempted Crimes in United States of America', (2015) 5IJHSS11, 96
[129] Dejene Girma (n 72) 56
[130] ibid
[131] ibid
[132]R.A. Duff , *criminal attempt* (OUP 1996) 6
[133]ibid

Liability for a criminal attempt does not begin until the criminal has committed some act that not only demonstrates his *mens rea* but also helps him carry it out.[134] The criminal law is not the punishable bare intention. The law does not take into account a person's mere thought. The reason is self-evident. It is impossible to show a person's mental condition, and a court cannot penalize a person for something he does not understand. However, if the person's evil intent is expressed in words and can be inferred from his actions, he can be criminally prosecuted.[135]

When we come to FDRE Criminal code, the criminal attempt is stipulated under art. 27(1) of the Code.

> *Whoever intentionally begins to commit a crime and does not pursue or is unable to pursue his criminal activity to its end, or who pursues his criminal activity to its end without achieving the result necessary for the completion of the crime shad be guilty of an attempt.*
>
> *The crime is deemed to be begun when the act performed dearly aims, by way of direct consequence, at the Commission.*

According to the provision, first, there has to be a failure to achieve the result. The offender has taken all the necessary steps to commit a crime or begin to commit a crime, but could not complete them. In other words, the law provides that a criminal attempt occurs when an individual does not pursue or is unable to pursue their criminal activity to its end, or has pursued their criminal activity to its end but without achieving the intended result. Secondly, the mental element requires intention, so negligence is not recognized. Thirdly, the article includes material elements of both commission and omission. "*The cumulative reading of the Amharic version of article 27(1) and 23(1), 2nd paragraph, leads us to a conclusion that there can be attempts by both commission and omission despite the use of the term "commit in article 27(1)."*[136]Fourthly, art. 27 states, "*whoever intentionally begins to commit a crime...*" the word "crime" indicating that the intended result should be a crime. As a result, there must have been a substantive crime that the offenders intended to commit. All of the above-listed requirements are cumulative and should fulfill to say the criminal attempt committed.

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[134]ibid 33
[135]Kenny, C.S, " Outlines of criminal Law" Chap.V , p.111cited by Suwarn Rajan,(n 127)
[136]Dejene Girma (n 72) 57

Criminal attempts have many types or forms. First, there is an attempt, which is considered a complete attempt. It occurs when a person performs all of the steps necessary to commit a crime but still fails. That is to say, the wrongdoer has done everything that is thought to be required, but the intended outcome has not been achieved.[137] Art 27 stated that "*who pursues his criminal activity to its end without achieving the result necessary for the completion"* refers to the complete attempt. The second type of attempt is an incomplete attempt. When a person abandons or is impeded from committing a crime, this is known as an "incomplete attempt."[138] A distinguishing characteristic of an incomplete attempt is that things still need to be done.[139] As a result, the effort is said to be incomplete when the accused is impeded from conducting or chooses not to conduct the final act of the crime. Under article 27 of the criminal code of Ethiopia, the words"… *does not pursue or is unable to pursue his criminal activity to its end"* indicate an incomplete attempt. The other form of criminal attempt occurs when the complete crime attempted has failed because of the impossibility of its being achieved under the circumstances.[140]

3.5.2. INCITEMENT

When a person incites another person or persons to commit a crime, incur inchoate criminal liability. In comparison to other forms of inchoate crime, the presence of communication intended to persuade the addressee(s) to commit an offense is the most distinguishing feature of incitement."The essence of the law of incitement is that a person (the ''inciter'') urges another person or persons (the ''incitee(s)'') to commit a criminal offense." [141] The legal concept of "incitement" is an example of how the law recognizes the threats of people joining together to commit crimes.[142] The threat of individuals who try to encourage others to commit crimes is the

[137]Gashaye Biyadge, 'Nature of Criminal Attempt and its Sentencing under Amhara Region Courts;Comparative view'; (2007) 1Amhara Region Justice Professionals Training and Legal Research Journal, 82 cited by Belaynesh Achenef (n 16)

[138]Markus Dubber, *An Introduction To The Model Penal Code*((2d ed. OUP 2015)

[139]William Wilson, *Central Issues in Criminal Theory*, (Queen Mary University 2002) 231

[140]FDRE criminal code (n 7) article 29 stipulated that "When a criminal has attempted to commit a crime by means or against an object of such nature that the commission of the crime was absolutely impossible, the Court shall, without restriction, reduce the punishment (Art. 180). No punishment shall be imposed when the criminal, from superstition or owing to the simplicity of his mind acted by using means or processes, which could in no case have a harmful effect"; John S. Strahorn, JR, 'The effect of impossibility on criminal attempts', (university of Pennsylvania law review, 1930), pp 962-998,966

[141]Joseph Jaconelli, 'Incitement: A Study in Language Crime',(2018)12Crim Law and Philos:245–265 https://doi.org/10.1007/s11572-017-9427-8 accessed 2 November,2021

[142]Marise Cremona and Jonathan Herring (n 105)324

focus here. It could be claimed that someone who can persuade others to commit crimes on his behalf poses a specific threat to society.[143] As a result, the crime can be justified as a form of public protection.

Some argue that the crime is useless since an act of incitement can occur apart from the commission of a substantive crime.[144]Incitement to commit a crime considers as the actual encouragement of another person to commit a crime through counsel, persuasion, threat, or pressure expressed in writing, orally, or through any other express or implicit expression, including signs.[145]In the United States, a solicitation crime is completed with the asking or request, and it makes no difference whether the incited agrees, the offense is carried out, or no action is taken to complete the requested offense. [146]As a result, even if the crime incited is not committed, a person who solicited someone to commit a crime is guilty of solicitation.[147] FDRE criminal code is criminalized and stipulated punishment for the crime of instigation. Art 36 of the FDRE criminal code expressly provided that

> *Whoever intentionally induces another person whether by persuasion, promises, money, gifts, and threats or otherwise to commit a crime shall be regarded as guilty of having incited the commission of the crime.*[148]

The first condition is the mental element of the offence. A person needs to induce another person intentionally. Specific intent is required as the mental element in instigation to persuade or induce another person to commit a crime. So the mental element required in the case of instigation is the only intention and not committed by negligence. The second element is related to the material elements of the act. As we can understand from the means of inducement provided under the provision, inducement is committed only through the commission, not omission. Thirdly, the criminal code prescribed different means of inducement. It includes persuasion, promises, money, gifts, threats, or others. Furthermore, the criminal code states that whoever intentionally induces someone must be innocent before the inducement; otherwise, any attempt to induce him will be merely assistance or encouragement to carry out an already

[143]ibid
[144]ibid
[145]Catherine Elliott and France Quinn, (n 108)273 , Joel Samaha (n 13)265
[146] John Scheb (n14) 84-85
[147]ibid
[148]FDRE Criminal Code (n 7) Art 36(1)

established plan. A person decides to commit a crime only once, and the subsequent behaviors he engages in to appear convinced are merely ruses to obtain whatever he desires.[149]

3.5.3. ACCOMPLICE

An accomplice is a person who has assisted or encouraged the principal criminal in committing the crime.[150]Words like "aid," "abet," "assist," "counsel," "procure," "hire," and "induce" are commonly used. If a person is a party to a conspiracy to commit a crime and hires, urges, counsels, or plans with another to commit a crime, he or she may be criminally liable.[151]If a person is an aide and abettor to someone who commits a crime, he or she is likewise accountable for that person's actions.[152]The aider and abettor could have been involved in the crime's planning.[153]"*Mere presence at the scene of a crime isn't enough to satisfy the accomplice actus reus requirement.*"[154]

An accomplice may be expressed in many forms, i.e., a person may aid another to commit a crime. Many activities could be considered accomplices, such as driving the principal to the crime scene, keeping an eye on him while committing the crime, or providing him with a weapon, equipment, or information.[155] All of these activities have one thing in common: their aid, assist or enable the principal in committing the crime. Aiding requires assistance in the sense that it must make it easier, faster, or safer for the defendant to commit the crime, but it does not have to result in the offense being committed.[156] An accomplice might also be engaged in counseling the principal, which can include advising, encouraging, convincing, training, pressuring, or even threatening the principal into committing the crime.[157]

When we come to FDRE criminal code, the concept of an accomplice is incorporated and recognized as punishable conduct under the criminal code.[158] The code provided that

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[149]ibid
[150]Roger Geary, *understanding of criminal law*,(Cavendish publishing 2002) 41
[151]Thomas Gardner andTerry Anderson, *Criminal Law*, (10th edn , Thomson Wadswort 2009) 72
[152]ibid
[153]ibid
[154]Joel Samaha (n 13) , Roger Geary (n 150) 43
[155]Thomas Gardner and Terry Anderson(n 151)
[156]ibid
[157]ibid
[158]FDRE Criminal Code (n 7) Art 37

An accomplice is a person who intentionally assists a principal criminal either before or during the carrying out of the criminal design, whether by information, advice, supply of means or material aid, or assistance of any kind whatsoever in the commission of a crime.[159]

First, the provision requires that the act of the accomplice is committed intentionally. A person should know that he is helping another to commit a crime. Negligent assistance does not make a person an accomplice. Second, aid to commit a crime should be given to a principal offender. Hence, a person could not be an accomplice when assisting or aiding a secondary offender. Third, the time of assistance should be either before or during the commission of the crime by the principal offender. A person is not an accomplice if they assist after the commission of a crime. It constitutes an independent crime as stipulated in the criminal code. Fourth, the law provides that the type of assistance is immaterial: it can be material (like giving money or borrowing a gun) or intellectual (like counseling). The kind of assistance is also foreseen under article 37, for it states that of any kind assistance whatsoever in the commission of a crime can make a person an accomplice. An accomplice may be committed in commissions and omissions. Unlike the instigator, an accomplice can also commit through omission.[160]If assistance is given to the commission of any crime, then there will be a no different crime as far as the accomplice is concerned. Hence, he will be liable for punishment. Moreover, if the change made by the actor pertains to the identity of the victim or the object of the crime, the accomplice should still be liable.

3.6. SENTENCING OF INCHOATE CRIMES UNDER ETHIOPIAN LAWS

The sentencing framework of Ethiopia establishes a general sentencing law as well as particular punishment ranges for specific offenses.[161] The FDRE Criminal Code has two main parts, i.e., the general and the special part. The general part of the code incorporated generic rules and principles applicable to all crimes, whereas special parts listed specific crimes with their sentencing ranges. The general section contains, among other things, a list of mitigating and

[159]ibid Art 37(1)
[160]Dejene Girma (n 72) 138
[161]Kassahun Molla And Julian Roberts (n 10) 313

aggravating circumstances and their rules[162], provisions for determining the sentence[163], rules governing mitigation and aggravating circumstances[164], types of punishments, and others.[165]

In determining sentences for crimes in the special part, the courts considered the provisions in the general part. The special part also provided punishment with a wide minimum and maximum limit. Moreover, the sentencing provisions of the criminal code are supplemented by the 2010 Ethiopian Federal Supreme Court Sentencing Guidelines and revised in 2013." The guidelines shall be interpreted in line with the sentencing provisions in the Criminal Code".[166] So, the criminal code and sentencing guidelines cumulatively apply while the courts determine the sentencing on persons who have been found guilty of the crimes.[167]In the following sub-sections, we will discuss the sentencing of inchoate crimes under the FDRE criminal code, Federal Supreme Court sentencing guidelines, and the procedure of sentencing.

3.6.1. SENTENCING OF INCHOATE CRIMES UNDER FDRE CRIMINAL CODE

Sentencing or punishments of inchoate crimes (i.e. attempt, accomplice, instigation) under the FDRE criminal code are the same as completed crimes.[168] The law imposed the same punishment for inchoate crimes as it did for complete crimes. For example, as provided under Art 27(3) of the criminal code, in the case of an attempt, a person will be punished the same as the penalty for a person who has succeeded in the commission of the crime. Similarly, a person who has been involved as an accomplice and instigation is liable to the penalty stipulated for the crime intended (complete crime).[169] But to punish the instigator or accomplice, the intended crime at least attempted.[170]

Therefore, as a rule, the penalty for an inchoate crime under the FDRE criminal code is the same as the penalty provided for an intended crime. However, this does not imply that all inchoate crimes are punishable in the same way as those committed by someone successful in committing an intended crime. To put it in other words, in some exceptional situations, an attempt to commit

[162]FDRE Criminal Code (n 7)Art 82–86
[163]ibid Art 88
[164]ibid Art 179–189
[165]ibid Art 90–120
[166]FDRE Supreme Court Revised criminal Sentencing guideline (n 70) Article 4(9)
[167]Kassahun Molla And Julian Roberts (n 10) 313
[168]FDRE Criminal Code (n 7) art 27(3), 36(3), 37(4)
[169]ibid
[170]ibid

a crime may not be punishable. The criminal code stipulates that any attempt to instigate or assist is not a punishable act, though instigation and accomplice are punishable.[171] Similarly, as provided under article 740 of the criminal code, any attempt to commit petty offenses is non-punishable. Furthermore, since the law requires that to impose the death penalty, the crime must be completed, a person who has attempted to commit a crime that would entail the death penalty will not be punished by death.[172]

Although in principle, the penalty imposed for the inchoate crime is similar to that of the intended crime, the law grants the courts discretion to reduce the penalty within the limits of the law or freely, provided that certain conditions are met. [173] The courts may reduce the punishment within the limits of the law or without restriction when there is renunciation and active repentance. Furthermore, the courts shall not impose a penalty if the renunciation was motivated by honesty or high motives.[174]Individuals who freely renounce their intention to attempt, incite, or assist, or who actively repent and have done everything required of them to prevent the occurrence of the crimes incited, attempted, or for which assistance is provided, will be eligible for the benefits provided under article 28.[175] It is not a requirement to succeed in preventing the occurrence of the crime; rather, the only requirement is to do what is required of a person and the reason seems clear. The completion of the commission of the crime is not under the control of the repenting person, as provided in articles 28(1) and (2) of the Criminal Code governing renunciation and active repentance.[176]Furthermore, the law gives wider discretion to the court as stated under art. 31

> *In determining the punishment to be imposed or, where appropriate, in reducing it within the limits allowed by law, or, in special cases, in imposing no punishment where an attempt was abandoned or failed, the Court shall take into account all relevant circumstances. It shall, in particular, take into consideration the stage reached in the carrying out of the attempt and the danger it represented, the reasons for which it failed,*

[171]ibid Art 27(2), 2nd paragraph
[172]ibid Art 117 (1) "Sentence of death shall be passed only in cases of grave crimes and on exceptionally dangerous criminals, in the cases specifically laid down by law as a punishment for completed crimes and in the absence of any extenuating circumstances. A sentence shall be passed only on an criminal who, at the time of the commission of the crime, has attained the age of eighteen years." emphasis added
[173]ibid art. 27(3),36(3), 37 (4)
[174]ibid Art 28
[175] Dejene Girma (n 72)
[176]ibid

the motives which prompted the renunciation or the active repentance of the criminal, as well as his antecedents and the danger he represents to society.[177]

Generally, the law prescribes a penalty for a person who has been found guilty of an inchoate crime that is similar to the penalty provided to a person who has committed an intended crime. But the law gives wide discretionary power to the courts to mitigate penalties within the limit of the law or freely mitigate or even not impose penalties if circumstances are satisfied. Therefore, the courts shall take into consideration different circumstances provided under the criminal code while punishing a person who has been found guilty of inchoate crimes.

3.6.2. SENTENCING OF INCHOATE CRIMES UNDER SENTENCING GUIDELINE

The Sentencing Guidelines provide a way to attain the goals and objectives of more consistency and predictability in the process of criminal sentencing. [178] As a result, the Sentencing Guidelines are one of the most relevant tools for preventing unwarranted sentencing disparities. In the current world, most countries benefit from sentencing guidelines. The goals or purposes of sentencing guidelines vary.[179] Sentencing guidelines systems aim to promote uniformity in sentencing approaches and sentence outcomes in specific situations.[180]Ashworth argued that '*the use of guidelines to enhance consistency of approach to sentencing is an essential aspect of the rule of law'*.[181]And also, such a system aims to increase transparency in sentencing.[182]

As provided under FDRE criminal code the legislator has delegated power to Federal Supreme Court to enact sentencing guidelines that aim to bring consistency in the sentencing decisions. Different scholars suggest that sentencing guidelines are the best mechanism for the Ethiopian courts for different reasons.

First, "sentencing guidelines creates uniformity in decisions not only in a specific bench but also uniformity in decisions in the whole country". Second, "time can be saved and

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[177]FDRE Criminal Code (n 7) Art 31
[178]Warren Young and Andrea King, 'The Origins and Evolution of Sentencing Guidelines A Comparison of England and Wales and New Zealand', in Andrew Ashworth and Julian V Roberts(ed.) *Sentencing Guidelines Exploring the English Model,* (OUP 2013) 203
[179]ibid
[180]ibid
[181]Andrew Ashworth, 'Coroners and Justice Act 2009: Sentencing Guidelines and the Sentencing Council' (2010) Crim. LR 389–401
[182] Warren Young and Andrea King (n 178) 203

not expected to meet in every single case". Thirdly, "sentencing guideline limits judge"s discretion in a reasonable manner so that it helps to ensure transparency, certainty and fairness in the criminal justice". Finally, "rationality and proportionality of punishment is also attained".[183]

Accordingly, the Federal Supreme Court came up with the first sentencing guidelines in 2010.[184] It was the first guidelines or manual at the national level. Article 20 of the first guidelines provided the way the sentencing of inchoate crimes could be determined. That is to say, the first sentencing guideline 1/2010 sentencing of inchoate crimes (attempt, instigation, and accomplice) was provided under article 20 of the guideline. In this provision, courts were required to reduce two levels for inchoate crimes. The provision doesn't consider different situations and circumstances provided under the criminal code that the court needs to take into account while determining to sentence for the inchoate crime. Of course, incorporation of the mechanism of calculating inchoate crime could be considered the achievement of the first sentencing guidelines. When we come to the revised sentencing guideline[185], it brings various amendments and new added concepts when compared with the previous guideline. For example, crimes against the government, crimes related to forgery and negotiable instruments, crimes of human trafficking, crimes against women and children, and others are added in the Revised Guidelines.[186]

But there are no provisions that specifically deal with the determination of sentencing for inchoate crimes. The revised guideline is silent about the method of calculation of sentencing on persons who have been found guilty of inchoate crimes. As we have seen above, the first sentencing manual provided that the courts could mitigate two levels while calculating sentencing for inchoate crimes. But the revised sentencing manual doesn't incorporate such a way of determining the sentencing of inchoate crimes rather leaves it to the discretion of the courts. To put it in other words, the revised sentencing manual provided nothing about the calculation or determination of sentencing on persons who have been found guilty of inchoate crimes. As provided under article 4 of the revised sentencing guideline or manual, the main

[183]Meron Haile Selassie, Disparity of Sentence in Ethiopia Courts with Special Emphasis on Sentencing Rape, Offenders, (2008),54 as cited by Ayenew, Sefiew (n 9)
[184] Criminal Sentencing Manual, Federal Supreme Court, 1/2010
[185]FDRE Revised criminal Sentencing guideline (n 70)
[186]ibid chapter six

objectives and goals are to bring accountability, predictability, transparency, effectiveness, consistency, and proportionality to the sentencing decision. "*In the absence of guidelines, substantial inconsistency in sentencing is inevitable".* [187] For instance in USA the Recent sentencing guideline has been incorporated the way of calculating inchoate crimes. That to say, the Sentencing Guidelines of USA, under chapter two, provided the way of determination of sentencing of inchoate crime.[188] In the given chapter, it stipulated different offenses with the initial or basic level. It is divided into offenses, each of which has a base offense level and one or more special offense features that change the offensive level higher or downward.[189]For example, in case the case of murder the guideline provided under clause 2A1.5, Conspiracy or Solicitation to Commit Murder, makes the Base Offense Level 33.[190] But "If the offense involved the offer or the receipt of anything of pecuniary value for undertaking the murder," in such case the level increase by 4.[191]Imposing sentencing on inchoate crimes is one of the problematic areas because the criminal law gives wider discretion to the courts. It needs to be governed by the sentencing manual to minimize the inconsistencies and other problems associated with the calculation of the sentencing of inchoate crimes. But the revised sentencing manual fails to address or manage the sentencing of inchoate offenses since it doesn't set elements of calculation and limit the discretion of courts for good. As a result, the sentencing of inchoate crimes could be contrary to the objectives and goals of the revised sentencing manual and the principles and purpose of sentencing.

3.6.3. PROCEDURE OF SENTENCING OF INCHOATE CRIMES

Sentencing is the final stage in a criminal proceeding. After proving the defendant's guilt, the courts will impose a sentence. The criminal procedure codes provide the producers that the courts should follow before imposing sentencing. As provided under Article 143 (3) of the CPC, the court shall ask the prosecutor and the accused whether there is anything to say related to sentencing.[192] First, as provided under Art. 149/3/CPC, the court shall ask the public prosecutor after the guilty accused proves whether he has anything to say related to the sentence by way of

[187]Warren Young and Andrea King,(n 178) 203
[188]United States Sentencing Commission, Guidelines Manual, §3E1.1 ,Nov. 2016 chapter two
[189] ibid 54
[190] ibid 57
[191] ibid
[192] Criminal procedure code of The Empire of Ethiopia, proclamation No185/1961,Nigarit Gazeta, No1, art 149(3)

aggravation or mitigation. The law requires that the public prosecutor reveal not only aggravation grounds but also mitigation grounds. The criminal code provided the general aggravating (Art.84)[193] and mitigating (Art.82)[194] grounds. Moreover, the law requires the public prosecutor to call witnesses as to the character of the accused.[195] Therefore, at this stage of the procedure, the public prosecutor could reveal all aggravating and mitigation grounds that the court could consider in imposing the sentence.

After the public prosecutor mentioned aggravating or mitigating grounds to the court, the latter shall be given to the accused reply and mention any mitigating grounds he could raise, if any. As indicated above, the criminal code provided different mitigation grounds. As a result, the accused may reveal all facts that the courts may consider when punishing those guilty of inchoate crimes. Like a public prosecutor, the court may demand the production of evidence to prove the existence of such mitigation grounds.[196]

3.7. CONCLUSION

This chapter discussed different concepts of the sentencing of inchoate crimes. Inchoate crimes are crimes that are not completed or yet consumed. The offender's objective is to commit a crime, but it was never fully completed. There are different arguments or opinions regarding the

[193]FDRE criminal code (n 7) Art.84 the court shall increase the penalty in the following cases(a) when the criminal acted with treachery, with perfidy, with a base motive such as envy, hatred, greed, with a deliberate intent to injure or do wrong, or with special perversity or cruelty.(b) when he abused his powers, or functions or the confidence, or authority vested in him.(c)when he is particularly dangerous on account of his crime or the means, time, place and circumstances of its preparation, in particular if he acted by night or under cover of disturbances or catastrophes or by using weapons, dangerous instruments or violence;(d)when he acted in pursuance of a criminal agreement, together with others or as a member of a gang organized to commit crimes and, more particularly, as chief, organizer or ringleader;(e)when he intentionally assaulted a victim deserving special protection by reason of his age, state of health, position or function, in particular a defenseless, feeble-minded or invalid person, a prisoner, a relative, a superior or inferior ,a minister of religion, a representative of a duly constituted authority, or a public servant in the discharge of his duties.

[194]Ibid Art.82, the court shall reduce the penalty based on the general circumstance based on the five categories .(a)when the criminal who previously of good character acted without thought or by reason of lack of intelligence, ignorance or simplicity of mind;(b) when the criminal was prompted by an honorable and disinterested motive or by a high religious, moral or civil conviction;(c)when he acted in a state of great material or moral distress or under the apprehension of a grave threat or a justified fear, or under the influence of a person to whom he owes obedience or upon whom he depends;(d) when he was led into grave temptation by the conduct of the victim or was carried away by wrath, pain or revolt caused by a serious provocation or an unjust insult or was at the time of the act in a justifiable state of violent emotion or mental distress.(e). When he manifested a sincere repentance for his acts after the crime, in particular by affording succor to his victim, recognizing his fault or delivering himself up to the authorities, or by repairing, as far as possible, the injury caused by his crime, or when he on being charged, admits every ingredient of the crime stated on the criminal charge.

[195] Criminal Procedure Code(n 192) art 149

[196] ibid

criminalization and punishment of inchoate crimes. Some argued that there has to be no punishment imposed to inchoate crimes based on the ground people should not be punished when no actual harm has occurred. If there is no harm resulting from the action of offenders, there has to be no punishment or sentencing for the conduct of the offenders. Others argued criminalizing inchoate offenses is that doing so can prevent or deter the commission of subsequent crimes and prevent social harm before occurrence. Different theories developed related to criminalization and punishment of inchoate crimes, i.e., culpability-based, risk, and prevention-based. This chapter also discussed different types of inchoate crime in general and under Ethiopian law in particular. An attempt to commit an act takes place when a person comes extremely close to committing a criminal act and intends to do so, but fails to do so. An incitement is committed when the offender discloses the plan is to another person with the intent of inducing the other to commit the substantive offense. And, an accomplice is a person who has assisted or encouraged the principal criminal in committing the crime. Sentencing for inchoate crimes (attempt, accomplice, instigation) under the FDRE criminal code is the same as completed crimes. But, the law provided different situations to mitigate the penalty. The FDRE Criminal Code and the Sentencing Guideline are applied to determine sentencing for an inchoate crime under the Ethiopian legal framework. The first sentencing guideline 1/2010 provided sentencing of inchoate crimes (attempt, instigation, and accomplice) under article 20 of the guideline. But the Revised Guideline is silent about the method of calculation of sentencing on persons who have been found guilty of inchoate crimes.

CHAPTER FOUR

4. PRACTICAL APPLICATION SENTENCING OF THE INCHOATE CRIMES IN HIGHER COURTS WITHIN BONGA DIVISION

4.1. INTRODUCTION

Previous chapters discussed the concepts of sentencing and inchoate crimes. Accordingly, in chapter two, the meaning of sentencing, the principles and purposes of sentencing, the approaches of sentencing, and related concepts were discussed. In chapter three, we have seen the definition of inchoate crimes, the arguments and theories related to criminalization and punishments inchoate crime, the types of inchoate crimes, and the rules and laws that applied to the sentencing of inchoate crimes. This chapter discusses the practical application of rules, principles, and purposes of sentencing in the study area. This chapter has five sections. The first section discussed the practical application of the procedure of sentencing on inchoate crime in the Higher Courts within SNNPRS Supreme Court Bonga Division. The second section is devoted to dealing with the practical application of the rules in the sentencing of inchoate crime in the study area. The third and the fourth sections will discuss and assess the practical application of the principles and purposes of sentencing. The final section is devoted to the discussion of the challenges to the proper application of the sentencing laws on the defendants who have been guilty of inchoate crimes in the study area.

4.2. PROCEDURE OF SENTENCING OF INCHOATE CRIMES IN HIGHER COURTS WITHIN BONGA DIVISION

The criminal procedure codes provide the producers that the courts should follow before imposing sentencing. As provided under Article 143 (3) of the CPC, the court shall ask the prosecutor and the accused whether there is anything to say related to sentencing. The law requires that the public prosecutor reveals not only aggravation grounds but also mitigation grounds. The accused replied and mentioned any mitigating grounds he could raise if any. The court may demand the production of evidence to prove the existence of aggravating and mitigating grounds.

In practice, the courts did not strictly follow the procedures while imposing sentencing on persons who had been guilty of inchoate crimes. First, the data gathered shows that the public prosecutor tends to state only aggravating circumstances. [197] Although the law requires the public prosecutor to reveal both aggravation and mitigation circumstances, the practice indicates that the prosecutor did not disclose the existence of mitigation circumstances.[198] It affects the rights of the accused, specifically those who were not represented by a lawyer.[199] Second, most of the defendants who appeared before the courts were not represented by lawyers. They could not reveal the detailed mitigation grounds provided under the law.[200] Most of the time, the judges helped them to disclose mitigation grounds.[201] Third, the practice of the courts in the study area shows that both the public prosecutor and the accused did not produce evidence to prove the existence of mitigation and aggregative grounds.[202] Lastly, under the sentencing guideline, both parties in the criminal case have to give recommendations of the sentencing by following the rules provided under the sentencing guideline. But in practice, in some cases, only the public prosecutor follows such producers. Even those accused, represented by their lawyer, didn't state the facts according to the sentencing guidelines.[203]

To sum up, the practices in the study area show that the procedures were not appropriately applied while determining to sentence. It hurts the proper application of the principle and purpose of sentencing.

4.3. SENTENCING OF INCHOATE CRIMES IN HIGHER COURTS WITHIN BONGA DIVISION

In previous chapter discussed that the criminal code and the federal sentencing guideline could apply when determining sentencing for inchoate crimes. The FDRE criminal code stipulated sentencing or punishments for inchoate crimes (i.e., attempts, accomplices, and instigation) are

[197] Interview with Beniyam Babu, President Of Bench Sheko Zone High Court (Mizan Aman Nov 15, 2021)
[198] ibid
[199] Interview with , Mr. Zerhun Kenfish, private lawyer in all level courts of SNNPR (Mizan Aman Nov 16, 2021)
[200]Interview with, Mr. Tezazu Mersha, Defence Council in Bench Sheko Zone High Court(Mizan Aman, Nov 16,2021) interview with Mr. Muligata G/Yohannes, Private Lawyer And Lecture At Bonga University, (Bonga Nov 22, 2021)
[201]Interview with Mr. Habitamu Dachachwe, Judge Of Keffa Zone High Court (Bonga Nov, 22,2021)
[202]Interview with Mr, Tameru Basha, Public Prosecutor Of Keffa Zone Justice Department, (Bonga Nov 23,2021); Interview with Mr. Maseresha Mengesha, Public Prosecutor Of Bench Sheko Justice Department, (Mizan Aman Nov 17, 2021), Interview with Mr. Keyam Sekure, Public Prosecutor Of West Omo Zone Justice Department, (Jemu Nov 20,2021), Interview with Mr. Getahun Teshome, Private Lawyer And Lecture Of Mizan Tepi University, (Mizan Aman Nov 17,2021)
[203] ibid

the same as for completed crimes.[204] Although, in general, the penalty imposed for inchoate crimes is similar to that of the intended crime, the law gives the courts discretionary power to reduce the penalty within the limits of the law or freely, provided that certain conditions are fulfilled.[205] The courts may reduce the punishment within the limit or without restriction when there is renunciation and active repentance. The courts shall not impose a penalty when the renunciation was motivated by honesty or high motives.[206] In addition to the general part of the criminal law, the federal sentencing guidelines apply to calculating the sentencing of inchoate crimes. Under article 20 of the first guidelines, it provided a way of determining a sentence of inchoate crimes. In this provision, courts should reduce two levels for inchoate crimes. But the revised guidelines are silent about a way determination of sentencing on persons who have been found guilty of inchoate crimes. It doesn't mean that the revised sentencing guideline does not apply to inchoate crimes.

In practice, the rules and laws were not properly applied while determining penalties on defendants who have been guilty of inchoate crimes. Most of the time, the courts were ignorant of the provisions of the criminal code and calculated without considering the basic facts of the case. The practices were different from one court to other courts, even from bench to bench in the same court. Some interviewees stated that the persons who were found guilty of inchoate crimes should always be punished the same as those who have committed the completed crimes.[207] To this effect, the courts were referring to the laws that provided the penalty imposed for the persons who have been guilty of inchoate crimes similar to the penalty imposed on intended crimes.[208] The courts did not consider those circumstances provided under the criminal code to mitigate the punishment for those found guilty of inchoate crimes. On the other hand, there were practices where judges reduced the penalty without mentioning what circumstances justified such a reduction.[209] The courts were not considering those circumstances expressly provided under the criminal code. For instance, the reason for the failure, degree of the harm

[204]FDRE Criminal Code (n 7) art 27(3), 36(3), 37(4)
[205]ibid art. 27(3),36(3), 37 (4)
[206]ibid art 28
[207]Interview with Mr. Dawit G/Medehene ,Former Judge of SNNPRS Supreme Court and now Public Prosecutor Of Bench Sheko Zone Justice Department, (Mizan Aman Nov 17,2021) Interview made with Mr. Beniyam Babu (n 197), Interview made with Mr. Tamru Basha (n 202)
[208] FDRE criminal code (n 7) art 27(3) 36(3) 37(4)
[209]Interview with Mr. Germo Yerango, Public Prosecutor Bench Sheko Zone Justice Department, (Mizan Aman Nov 17, 2021);Interview with Mr. Tariku, Public Prosecutor Of Keffa Zone Justice Department, (Bonga Nov 24, 2021)

inflicted against the victim, the existence of renunciation, active repentance, and other relevant circumstances were not taken into account while imposing sentencing on the inchoate crime. Some judges argue that imposing the same punishment as the completed crime would be unfair and contrary to the purpose of criminal law.[210] Accordingly, there was a practice that judges reduced the sentencing for such crimes because the crimes were incomplete even without proving and mentioning the existence of circumstances expressly stipulated under the criminal code.

Moreover, there were diversified practices related to the practical application of sentencing guidelines while calculating sentencing for inchoate crimes. Sometimes the courts did not apply sentencing guidelines to the defendants who have been found guilty of inchoate crimes. It depends on the ground that the revised sentencing guideline stated the way of calculating sentencing for complete crimes, not for inchoate crimes. As a result, the judges imposed arbitrary punishment on the person guilty of an inchoate crime rather than following the rules for calculating sentencing stipulated in the sentencing guidelines. On the other hand, there was a practice where the court calculated sentencing based on the sentencing guideline. Since the law expressly stipulates that sentencing for the inchoate crime is similar to that of the intended crime, the court should calculate the penalty as a completed crime by using the sentencing guideline. But the court has the discretion to reduce this by considering the different circumstances of inchoate crimes. In some cases, judges decide to use the sentencing guidelines case-by-case basis. I will discuss such issues in detail in a separate section.

To sum up, the practices in the courts of the study area show that the rules stipulated under the criminal code and the federal sentencing guidelines didn't properly apply to inchoate crimes. Most of the time, the courts impose sentences for inchoate crimes without considering the circumstances expressly prescribed under criminal law. The same is true concerning the application of the federal sentencing guideline. It has an impact on the rights of the accused as well as the victims.

[210]Interview with Mr. Debebe Wendemu, Judge Of Kafa Zone High Court, (Bonga Nov 23,2021): Interview with Mr. Mengesha Bualdebure, Judge Of West Omo Zone High Court(Jemu Nov,20.2021)

4.4. ASSESSING THE PRACTICAL APPLICATION OF THE PRINCIPLES OF SENTENCING

4.4.1. TRANSPARENCY

As we discussed above, transparence is one of the core principles of sentencing. International, regional, and domestic laws recognized such principles. And also, the FDRE constitution under article 12 incorporated such principles. Such a provision requires that all organs of the government, including judiciary action, be transparent to the public. The court is required to be transparent in all proceedings, including at the time of determining the sentence. Transparency is one of the principles of sentencing that plays a significant role in combating arbitrary disparities in sentencing.

In the practice area of study, there were problems in considering the transparency principles while determining sentences for defendants who have been guilty of inchoate crimes. The practice of courts shows that imposed sentencing on the accused without mentioning and explaining the facts and circumstances that the courts were considering to determine the sentencing for inchoate crimes. As stated by the interviewees, sometimes the courts punish defendants who have been guilty of inchoate crimes similar to those of completed crimes without discussing the fulfillment of the circumstances provided under the criminal law. [211] The court cited art. 27(3), 36(3), and 37(4) of the criminal code but didn't discuss the facts or conditions provided in such provisions being fulfilled.[212]

On the other hand, sometimes the courts reduce sentences for the persons who have been guilty of inchoate crimes arbitrarily without any legal justification.[213] As we discussed above, the criminal code provided the circumstances that the courts could reduce the penalty for persons who have been guilty of inchoate crimes. However, the practice was contrary to the law. The courts in the study area reduced the sentencing for the defendants who were found guilty of an

[211] Interview with Mr. Teshome Alemaye , Judge Of Bench Sheko Zone High Court,(Mizan Aman Nov 16, 2021): Interview with Mr. Muden Mehede, Judge Of West Omo Zone High Court, (Jemu Nov 21, 2021)
[212] ibid
[213] Interview with Mengistu Kebede, president of Kafa Zone High Court(Bonga, Nov 23, 2021); Dawit G/Medehen (n 207)

inchoate without discussing the circumstances prescribed under the law fulfilled.[214] The same is true concerning the application of the Federal Sentencing Guidelines for inchoate crimes. Art. 27 of the Sentencing Guidelines stated that the court is required to provide transparent justification when deciding to impose a penalty outside of the sentencing manual. Sometimes in practice, the courts didn't mention any legal justifications when they decided to calculate the sentencing out of the guideline. [215] There was also a lack of transparency relater to mitigations and aggravating grounds raised by the parties during the preceding. [216] Courts denied or granted without providing any explanation. [217]

In addition to the data gathered through interviews, the researcher selected cases that involve inchoate crime to assess the application of the principle of transparency. The first case is Public Prosecutor vs. Mitiku Engida and Engida Abate. [218]. The defendants were charged and convicted of the violations of Article 27(1) and 540 (attempted homicide). The public prosecutors proposed the sentencing recommendation in grades 6 and level 33 based on the sentencing guidelines. And also, the prosecutor has revealed two aggravating circumstances. On the other hand, the defendants have proposed three mitigation grounds. The defendants also asked the court to consider the crime was an incomplete attempt crime and no permanent injury. But, the court only accepted two general mitigation circumstances based on art. 82(1) (a) and 86. Then, the court decided to 15 years of rigorous imprisonment.

In a particular case, the sentencing decision was not transparent to the parties of the case and the public. First, the court rejected aggravation circumstances without giving any justification. The decision did not explain why the court was not accepting the aggravating grounds alleged by the public prosecutor. Second, although the defendants asked the court to consider whether the crime was attempted or incomplete, the court expressly neither rejected nor accepted. The court remains silent even if the accused requested to consider the crime was incomplete and there was no permanent harm to the victim. The court calculated the sentence based on the sentencing

[214] ibid
[215] Interview with Mr. Eyob Hailu , Judge Of Bench Sheko High Court, (Mizan Aman Nov 16,202)
[216] Interview with Mr. Abedureman Said, private lawyer in all level of Federal and SNNPRS courts and part time lecture at Mizan tepi university(Mizan Aman Nov 18, 2021)
[217] ibid
[218] Public Prosecutor Vs Mitiku Engida And Engida Abate, Kafa Zone High Court, File No 19948 Date 2013 E.C.

guidelines similar to the completed homicide crime. Thirdly, the decision did not indicate the purpose of punishment the sentencing.

The second case was the public prosecutor vs. Mentesenot Beyen et al[219] that involved the crime of incitement. The defenders were charged with three counts in violation of art.32 (1): 37: 670, 671; and 35: 589, 590. After the defendants were found guilty, the public prosecutor recommended sentencing based on the sentencing guidelines. The defendants alleged different mitigation circumstances. The court decided on 17 years of rigorous imprisonment for the principal offenders and seven years for the instigators.

The sentencing decision of the court was not transparent from a different angle. First, the court was referred to articles 37(4) and 179 to mitigate the penalty for instigators. The courts stated the provisions that give the discretion to the court to reduce the sentencing. However, the court did not explain the existence of sufficient justification to reduce the penalty and the circumstances prescribed in the provision fulfilled. Second, the court did not explain those aggravating and mitigating circumstances alleged by the parties. The court accepted mitigation circumstances without discussing the rest of them. Thirdly, the sentencing decision did not explain or discuss the purpose of the sentencing.

The third case was between the public prosecutor and Mekera Seku.[220] The defendant was charged and convicted of committing attempted homicide in violation of articles 27 (1) and 540 of the criminal code. The court found the accused guilty and imposed six years of rigorous imprisonment. In this case, the public prosecutor has proposed the sentencing based on the sentencing guidelines. The accused also revealed different mitigation circumstances. But the court decided the sentencing without clearly following the rules of sentencing guidelines and criminal law.

In this case, the sentencing decision was not transparent for different reasons. First, the court was sentencing six years of rigorous imprisonment without explaining the reasons. That is to say, the reason that the court selected six years of imprisonment did not explain. It was not clear, not only

[219] Public Prosecutor Vs Mentesenot Beyen Et Al, Bench Sheko Zone High Court, File No 20122 Date 29/9/2013 E.C.
[220] Public Prosecutor Vs Mekera Seku, West Omo Zone high Court, File No 22389 Date 2009 E.C.

for the defendant but also for legal professionals. Second, the decision did not mention any aggravating or mitigating circumstances, though alleged by the parties. Third, the court did not discuss the nature of such a crime, i.e., an inchoate crime, the reason for non-completion of the crime, and its effect on punishment. Finally, the decision has not explained the purpose of the punishment that the sentencing decision required or expected to achieve.

The data gathered through interviews and analyzed cases indicated that the principle of transparency did not properly apply in the courts. Most of the time, the courts in the study area impose penalties that were not clear to the parties in particular and the public in general. Although the courts require conducting all activities, including sentencing decisions, transparently, the practice contradicts this principle when imposing sentencing on inchoate crimes. It hurts the defendant's rights and the criminal justice system in general.

4.4.2. PRINCIPLE OF CONSISTENCY

As discussed in the previous chapter, the principle of consistency refers to treating similar circumstances in the same way. Consistency in criminal punishment reflects the concept of equal justice, which is a cornerstone of every reasonable and equitable criminal justice system. On the other hand, inconsistency in sentencing contributes to an erosion of public confidence. It considers as evidence of unfairness and unequal treatment under the law. Therefore, the sentencing decision should be consistent from one court to another and within one court.

The practice of the courts indicated inconsistency of sentencing decisions from one court to another court and within the same court. Most of the time, courts decide cases without considering all sentencing principles, including the consistency principle. Interviewees stated that there was a practice that different sentencing decisions were given in similar cases for those who had been found guilty of the inchoate crime within the same court, let allowing from court to court.[221] On certain occasions, the criminal bench determined the sentencing for a person who had been found guilty of an inchoate crime the same as that of a complete crime without considering the inchoate nature of the crime, type, and circumstances provided under the criminal code.[222] On the other hand, in a similar situation, the same criminal bench calculated

[221] Interview made with Mr. Eyob Hailu (n 215), Interview made with Mr. Muden Mehede(n 211)
[222] ibid

sentencing for the inchoate crime out of the sentencing guidelines and arbitrarily reduced the penalty without any justification.[223] Although the two cases involved similar facts and appeared in the same courts, the decision was inconsistent.

According to Mr. Binyam Babu, president of the Bench Sheko High Court, and other interviewee judges,[224] the principle of consistency applies correctly to completed crimes rather than people convicted of inchoate crimes. The courts usually calculated sentencing based on the Revised Sentencing Guidelines for the completed crime. As a result, the consistency of sentencing related to the completed crime was relatively not questionable. In the case of an inchoate offense, the criminal code gives wide discretionary power to the courts. Because the courts exercised such broad discretion, there is a high likelihood that the sentencing decision will be inconsistent. In addition to this, the revised sentencing guideline is to remain silent about the method of calculating inchoate crimes. There were various practices concerning the application of sentencing for inchoate crimes. As a result, the courts were imposed unrelated and inconsistent sentences for the inchoate crime involving similar facts.

The sample cases from selected courts also indicated that the consistency principle did not properly apply to inchoate crimes. The first case that assesses consistent sentencing is Public Prosecutor vs. Bekel Abebe. [225] The defendant was charged and convicted of a violation of attempted homicide (art. 27 and 540), and this crime was punishable by up to 20 years of imprisonment. Through court proceedings, the defendant was found guilty of the violation of Art. 27 and 540 attempted homicide crime. Then the public prosecutor reveals one aggravating circumstance based on article 84 of the criminal code. On the other hand, the defendant has proposed two mitigation circumstances: the absence of a previous record and head of the family based on articles 82(1) (a) and 86 of the criminal code. Then, the court decision based on the revised sentencing guidelines for 13 years of imprisonment from the table at level 33 of the sentencing manual. In such a particular case, the court preferred to impose sentencing on the defendant who was found guilty of an inchoate crime based on the revised sentencing guideline. The nature and type of the inchoate crime were not considered by the court while deciding such a

[223] ibid
[224]Interview with Mitiku Abedessa, President Of West Omo Zone High court (Jemu Nov 20, 2021), Interview made with Binyam Babu (n 117);Interview made with Mengistitu Kebede(n 213)
[225] Public Prosecutor vs. Bekel Abebe, West Omo Zone High Court, File No 22050 Date 22/7/2011 E/C

sentencing decision. That is to say, such a sentencing decision of the court was without considering the complete or incomplete nature of the attempted crime and the reasons for not achieving the result.

Another case involving a crime committed similar to the above case was decided differently in another court. The case was between the public prosecutor and Penso Koni. [226] The defendant was charged and convicted in violation of articles 27 and 540 of the criminal code. The public prosecutor and the defendant have alleged one aggravation and two mitigation grounds as per articles 84 and 82 of the criminal code respectively. The public prosecutor asked the court to calculate the sentence based on the revised sentencing guideline. But finally, the court imposed 6-year imprisonment. In a case, the court did not calculate the sentencing decision based on the revised sentencing guideline. The reason given by the court in the sentencing decision was that the committed crime was not complete and unfair to calculate based on the sentencing guideline.

The two above-mentioned comparative cases were decided by different higher courts. But the facts involved in the two cases were similar. Both cases violated the same provision of the criminal code (attempted homicide). In both cases, the defendants caused bodily injury to the victim using the knife. The degree of injury was almost similar, and the victims recovered from their injuries after getting medical treatment. Moreover, the aggravation and mitigation circumstances alleged by the parties were similar. Generally, we can understand that similarities between the two cases are very high concerning the committed crime, the dangerous disposition of the criminal, the injury caused to the victims, the material used in the attack, and the aggregative and mitigation circumstances. However, the sentencing decisions of the courts were inconsistent. In the first case, the court decided 13 years without considering the nature and type of the committed crime. That is to say, the court calculated the sentencing decision based on the revised guidelines and didn't consider the mitigation circumstances available to attempted crime. In the second case, the court punished the defendants to 6 years of imprisonment and calculated out revised sentencing guidelines without sufficient justification.

The practice of the courts shows inconsistency in the sentencing decisions not only from one court to another but also within the same court. Let's discuss two similar cases where the

[226] Public Prosecutor Vs Penso Koni, Bench Sheko Zone High Court, File No 19564 Date 23/12/2011E.C.

sentencing was calculated differently in the same court. In the first case, the public prosecutor Vs. Alemu Anbo et al.,[227] the defendants were convicted for the violation of art. 27 and 540 attempted homicide. The public prosecutor proposed two general aggregative circumstances based on articles 84 (1) (a) and (d) of the criminal code. On the other hand, the defendants alleged two general mitigation circumstances based on articles 82(1)(a) and 86 of the criminal code. The court accepted such aggravation and mitigation circumstances. Then, the court decision was based on the revised sentencing guideline of 15 years of imprisonment from the table at level 33 of the manual. In this particular case, the court imposed a penalty on the defendants without considering the nature and time of the inchoate crime. Some defendants participated in the second degree, i.e., accessory before the fact, but the court did not consider such incomplete crimes. Also, the court didn't consider the type of attempt (the complete or incomplete) and the reasons for such interruption.

There was another similar case in the same court but decided differently. The case was between the public prosecutor and Baheru Bayu et al.[228] The defendants were charged and convicted for the violations of articles 27 and 540 of the criminal code. Both the public prosecutor and the defendant have alleged aggravation and mitigation circumstances, respectively. Those aggravation and mitigation circumstances revealed by the parties were similar to those in the former case. But the court stated that since the committed crime was inchoate, the sentencing should be calculated outside of the sentencing guidelines. Accordingly, the court imposed a 5-year sentence for the principal offenders and a 3-year sentence for the participants as accomplices.

The above comparative cases were decided by one court, i.e., the Kaffa Zone High Court. We can understand that similarities between the two cases are very high concerning the committed crime, the dangerous disposition of the criminal, the injury caused to the victims, the number of participants, the material used to attack, and the aggravation and mitigation circumstances. However, the sentencing decisions of the courts were inconsistent. In the first case, the court decided 15 years without considering the nature and type of the committed crime. On the other hand, in the second case, the court decided on three years and five years of imprisonment.

[227] Public Prosecutor Vs Alemu Anbo Et Al, Keffa Zone High Court, File No 15846 Date 14/07/2010 E.C.
[228] Public Prosecutor Vs Baheru Bayu Et Al, Keffa Zone High Court, File No 19549 Date 2013 E.C.

The data gathered through interviews and the above-analyzed cases indicated that the sentencing of inchoate crimes was not consistent. The sentencing decisions were inconsistent not only from one court to another but also within the same court. Absence of detailed and clear provisions that provided a method of calculating inchoate crimes is the primary cause of sentencing inconsistency.

4.4.3. PRINCIPLE OF PROPORTIONALITY

The proportionality principle holds that the penalty should be proportional to the offense. It stipulates that the punishment must be proportionate to the nature of the crime or not exceed it, and it prohibits excessive, arbitrary, and capricious punishment. Sentencing is a crucial stage that influences the offender's behavior and his/her liberty as well as the victims' and society's satisfaction. It should be proportional and justifiable. On the contrary, in practice, sentencing is imposed on some inchoate crime cases without considering the principle of proportionality.

The interviewees stated that judges faced dilemmas related to maintaining the proportionality of sentencing on inchoate crimes. Some of the interviewee's judges believed that the criminal law was not clear about the sentencing of the inchoate crime.[229] The law prescribed that the sentencing for the inchoate crimes be similar to the penalty stipulated for the completed crimes. It is unfair and not proportional to impose the same penalty on inchoate crimes.[230] Furthermore, those mitigation circumstances provided in the criminal code are vague and require additional directives or manuals.[231] Because of that, the court preferred to impose sentencing on the persons found guilty of inchoate crimes similar to completed crimes even if they believed it was not proportional.[232] Therefore, there were practices of excessive sentencing imposed on defendants who had been guilty of inchoate crimes.

On the other hand, there were also practices where the defendants who had been found guilty of inchoate crimes were punished with very lenient punishment. According to the data gathered from the interview, sometimes the court arbitrarily imposed very lenient sentences on those

[229] Interview made with Mr. Binyame Babu (n 197), Interview made with Mr. Mengistu Kebede (n 213), Interview made with Mitku Abedissa (n 224)
[230] ibid
[231] ibid
[232] ibid

found guilty of inchoate crimes.[233] The courts have mitigated penalties even lower than specified under a special part of the criminal law without having justified circumstances. The reason for mitigation was that the type of crime committed is incomplete without stating the conditions provided under the criminal law.[234] That is to say, the law requires the court to mitigate a penalty for a person who has been found guilty of an inchoate crime only if there are circumstances provided under the criminal code. However, the practice of some courts shows that they impose very lenient penalties for such defendants without proving the existence of the circumstances provided under the criminal code.

Therefore, the above discussion revealed that the penalty imposed on the person who has been found guilty of the inchoate crime was not proportional. In certain courts, the sentencing decision on inchoate crime was more excessive than the law required. In such situations, the courts imposed a penalty equal to or higher than the completed crime, although the mitigating circumstances provided under the criminal law proved. Such an excessive penalty may affect the defendant's rights. In contrast, in some courts, the sentencing on the person found guilty of the inchoate crime was very lenient. In such situations, the courts have arbitrarily imposed very lenient sentencing on defendants of inchoate crimes without critically examining the circumstances provided under the criminal law. When a sentencing decision is less than what the law requires, it defeats the purpose of sentencing and affected the victim's rights.

The researcher also selected cases from the courts to assess the proportionality of the sentencing imposed on the defendants guilty of inchoate crimes. The first case was between the public prosecutor and Jemal Shalwa.[235] A defendant was charged and convicted of attempted first-degree homicide under Articles 27 and 539(1) of the Criminal Code. The defendant caused harm to the defendant by using the knife. After injuring the victim, he abandoned him, and the victim recovered through medical treatment. The defendant alleged various mitigation circumstances, but the court only accepted four of them. In this case, the court did not consider the incomplete nature of the committed crime and the factors that caused the interruption. The court finally

[233] Interview made with Mr. Tameru Bash (n 202), Interview made with Mr. Dawit G/Medehen (n 207)
[234] ibid
[235] Public Prosecutor Vs Jemal Shalwa, West Omo Zone High Court, File No 000316 Date 26/12/2/2013 E.C.

decided to sentence based on the sentencing manual's 18-year imprisonment from a table at level 34.

The sentencing imposed on the defendant was very excessive than what the law required in such situations. That to say, the penalty imposed on the defendant was not propositional to the committed crime. In such a particular case, the court did not carefully examine mitigating circumstances such as the degree of the injury caused to the victim, the incomplete of the crime, the reasons interrupted, and other mitigation circumstances stipulated under the general part of the criminal code. The researcher believed that excessive and not proportional penalties were imposed on a defendant.

The practice of the court not only imposed excessive penalties but also sometimes the courts imposed very lenient punishments that were contrary to the goal of the criminal code. For instance, in the case of public prosecutor Vs. Baheru Baye, [236] the defendants were charged and convicted as accomplices and attempted ordinary homicide (article 540). In the given case, a grave bodily injury was caused to the victim. The defendants committed the crime through agreement. And the facts indicated that the criminal disposition of the defendant was dangerous. There were no justified grounds to impose penalties lower than the minimum penalties specified under a special part of the criminal code. But the court decided only three years for both types of inchoate crime, i.e., attempt and accomplice, which was below the minimum penalty stipulated under article 540 of the criminal code. The sentencing imposed on the criminals, in this case, was very lenient than the crime they committed. The writer of this paper believed that it was not proportional to the nature and danger of criminals and was too lenient to achieve the goals and purposes of the criminal code.

To sum up, the above-gathered data in the form of interviews and case analysis indicated and revealed that the principle of proportionality was not properly applied while imposing sentencing on those on inchoate crimes. Sometimes the courts decided excessive penalties could violate the rights of defendants. On the contrary, sometimes the courts decided very lenient penalties for such crimes that were contrary to the purpose and goals of the criminal law and infringed the rights of the victim.

[236] Public Prosecutor Vs Baheru Baye,(n 228)

4.4.4. PRINCIPLE OF EQUALITY

The principle of equality is one of the principles of sentencing. According to the concept of equality, certain personal characteristics that are unrelated to the offender's crime should be disregarded from sentencing considerations. A universal agreement on what defines such traits is required for the consistent application of the principle. Such a principle is also one of the core human rights recognized at universal, regional, and domestic levels. Accordingly, if offenders who commit a similar crime with a similar degree of guilt, similar circumstances, and similar personal characteristics were punished similarly, the principle of equality would have taken place since equals are treated equally without discrimination based on race, sex, color, and national origin. In another scenario, if offenders of similar crimes with different degrees of guilt, different circumstances, and different personal characteristics were punished similarly, the principle of equality was violated.

The practice revealed the existence of unequal treatment among defendants who commit similar crimes with a similar degree of guilty, similar circumstances, and similar personal characteristics. The interviewees stated because of the nature and type of the crime, difficult to properly apply the principle of equality while imposing sentencing on the inchoate crimes. [237] Some judges imposed severe punishments on defendants who were found guilty of inchoate crimes. On the other hand, defendants who committed inchoate crimes in similar circumstances and situations might be subject to lenient sentencing.[238] Unequal treatment in the sentencing of inchoate crimes was the result of a misunderstanding of the circumstances, improper acceptance and rejection of aggravating and mitigating circumstances, and other erroneous applications of the law. [239] There were instances that in similar cases related to the way commission of a crime, the number of participants, and the material used for commission a crime, available aggravation and mitigation circumstances, the type and nature of the inchoate crime, and other facts, might be treated differently. Although defendants deserved equal punishment in such cases, there were practices that the court could impose unrelated punishments. [240]

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[237] Interview made with Mr. Teshome almayehu (n 211), Interview made with Mr. Habetamu Dachachwe (n 201)
[238] ibid
[239]Interview made with Mr. Dawit G/Medehene (n 207)
[240] Interview made with Mr. Abdureman Said (n 216)

Furthermore, there was unequal treatment between defendants represented by lawyers and defendants not represented by lawyers.[241] Although there were similar facts in the cases, those represented by lawyers were penalized with much lower sentences than those not represented by lawyers. The interviewee's defense counsels stated that in the sentencing of inchoate crimes, there was a different treatment between those who conducted litigation by themselves and those represented by lawyers. [242] The courts imposed lenient penalties on the defendants represented by lawyers.[243] On the contrary, there was a practice that the courts imposed excessive penalties without considering the circumstances stipulated under criminal law when not represented by lawyers. The interviewed private lawyers also agreed on the grounds of unequal treatment. Most of the time, the courts were arbitrarily imposed high and excessive penalties on defendants who were not represented by a lawyer.[244] The opposite is true for those defendants represented by a lawyer.

Moreover, the courts were treated unequally to those defendants of inchoate crimes because of internal and external pressures. The internal pressures included attitudes of the judge towards the penalization of inchoate crime, corrupted practice, family relations, and others.[245] On the other hand, the external pressures included political interference, the biased conduct of the public prosecutor during litigation, and others. [246] Because of these internal and external pressures, the courts imposed the penalty on the defendants who had been guilty of inchoate crimes in an unequal manner. The defendants who committed the crimes in similar circumstances and personal characteristics were punished differently. On the contrary, those defendants who committed crimes with different conditions and characteristics were punished similarly.

The cases discussed during assessing the consistency of sentencing also show the unequal treatment of the sentencing of inchoate crimes. For instance, the two above discussed the cases of public prosecutor vs. Alemu Anbo et al. and public prosecutor vs. Baheru Bayu et al. [247] In both cases, the defendants were charged and convicted for the violation of article 540, attempted

[241]Interview made with Mr. Tezazu Mersha (n 200) , Interview with Selmon Mesfin ,Defnce counsel of West Omo High court, (Jemu Nov 21,2021)
[242] ibid
[243] ibid
[244] Interview made with Mr. Abedusemend Said (n 216), Interview Made with Muligeta G/ Yehanesse (n 200)
[245] Interview made with Mr. Germo Yerango (n 209)
[246] Interview made with Mr. Mengesha Buladuber (n 210)
[247] Public Prosecutor Vs Alemu Anbo et al (n 237) And Public Prosecutor Vs Baheru Bayu et el (n 228)

homicide, and presented in the same court. As we can understand from the case, the similarity between the two cases was very high concerning the committed crime, the dangerous disposition of the criminal, the injury caused to the victims, the number of participants, the material used to attack, and the aggravation and mitigation circumstances. However, the sentencing decisions of the court were different. In the first case, the court decided on 15 years without considering the nature and type of the committed crime. On the other hand, in the second case, the court imposed five and three years of imprisonment each. In the two cases, defendants had committed crimes with similar circumstances and similar personal characteristics punished differently.

The practice of the courts related to the implementation of the principle of equality was contrary to the law. Because of different factors, the defendants who were guilty of the inchoate crime with similar circumstances of the commission of the crime and similar personal characteristics were punished differently. It was contrary to the equality rights of the defendants.

4.5. ASSESSING THE APPLICATION OF THE PURPOSES OF PUNISHMENT

As discussed in chapter two, there are different purposes for punishment, including deterrence, rehabilitation, restoration, incapacitation, retribution, and others. The FDRE criminal code provided the goal and different purposes of sentencing. That is to say, article 1 of the criminal code stipulates that the purposes of sentencing are deterrence, incapacitation, and rehabilitation. This section will assess the implementation of such purposes of the sentencing concerning inchoate crimes in the study area.

4.5.1. DETERRENCE

As discussed in chapter two, deterrence proposes discouraging criminals and potential offenders from committing crimes because they fear that the punishments are associated with these acts.[248] According to this theory, punishment is justified and measured by the utilitarian idea of preventing future offenses. Deterrence could be specific or general. The FDRE criminal code expressly states that one of the purposes of punishment is deterrence. The provision has adopted both general and specific deterrence.

[248]Stacy Mallicoat (n 43) 590

The practice of the court shows that most of the time, they punish people who have been guilty of inchoate crimes to deter the offenders from committing other crimes and potential criminals from committing similar crimes. The interviewee judges explained that the courts imposed sentencing on all crimes, including inchoate crimes, to achieve the purpose of deterrence.[249] Some judges stated that the deterrence purpose of sentencing applied broadly without specifying the type of deterrence. [250] That is to say, whether the type of deterrence was specific, general, or both did not discuss in the sentencing decision of the courts. But, there was also the practice that the courts discussed in the sentencing decision the type of deterrence.[251]

However, the interviewees revealed the courts in the study areas didn't critical analysis of the nature of the crime and the character of the defendants when decided to use deterrence purposes of punishment. [252] The judges used such words for punishment purposes because it was adopted or common practice in the courts to incorporate into sentencing decisions. [253] As discussed above, there are different purposes of sentencing applied to inchoate crimes. It is different from case to case and depends on the character of the defendants. In practice, there were instances where courts applied deterrence purposes to those defendants required to incapacitate them because they were very dangerous to society.[254] In addition to this, there were also instances where the courts applied the deterrence purpose of punishment to young offenders, although rehabilitation was the appropriate purpose of punishment.[255]

To sum up, most of the time, the courts in the research area used the deterrence purpose of punishment while punishing people who had committed inchoate crimes. That is to say, the courts relatively applied the deterrence purpose of sentencing compared with the others. However, the courts applied the deterrence purpose of punishment on the persons who were guilty of inchoate crimes without critically evaluating the facts of the cases and the character of

[249] Interview made with Mr Muden Mehede(n 211) , Interview made with Mr Eyob Hailu(n 215), Interview made with Mr Debebe Wondemu (n 210)
[250] ibid
[251] ibid
[252]Interview made with Mr. Teshome almayew (n 211)
[253]Interview with Mr. Gezchewe G/ Medehen , Public prosecutor of Kafa Zone Justice Department, (Bonga Nov.24,2021)
[254]Interview made with Mr. Maseresha Mengesha (n 202), Interview made with Mr. Getahun Teshome (n 202)
[255]Interview with Mr, Yargal Hailu, public prosecutor of west Omo Zone High Court,(Jemu Nov 21, 2021) Interview made with Zerehun kenfesh (n 199), Interview made with Mr. Tariku(n 209)

the defendants. Therefore, there was a practice that the courts applied the purpose of punishment was not appropriate to the nature of the crime and the character of the defendants.

4.5.2. REHABILITATION

As we have discussed in the previous chapter, one of the purposes of punishment is to shape the future behavior of the criminal and is considered rehabilitation. Utilitarians favor rehabilitation because it salvages one more person from becoming a criminal and transforms them into productive, law-abiding citizens. On the individual level, deterrence may have a similar effect to rehabilitation (criminals stop committing crimes), but the motive is different. Rehabilitation implies that the individual no longer wishes to commit the crime (s) at hand. On the other hand, specific deterrence means that a criminal is simply afraid of committing the crime (s) again. Our criminal law incorporates rehabilitation as one of the purposes of punishment.

The practice of the courts shows that most of the time, the courts were not considering this purpose of punishment. According to the interviewees of lawyers and public prosecutors, the courts did not use this purpose of punishment while deciding sentences on persons who have been guilty of inchoate crimes. [256] There were situations that the defendants committed inchoate crimes, because of a lack of knowledge unable to understand the consequences of the crime. In such situations, rehabilitation is the best purpose of punishment for defendants who have committed crimes. But, the courts refused to apply the rehabilitation purpose of punishment, even the defendant claimed that penalty should impose based on the rehabilitation purpose of the punishment.[257] To put it in other words, rehabilitation is the proper purpose of punishment for defendants who have committed crimes because they are unable to understand the situation and lack knowledge about the nature and consequence of the crime. But, the practice revealed that rehabilitation did not apply as a purpose of punishment in such situations.[258]

Moreover, according to the interviewee judges, most of the time, the courts did not consider the rehabilitation purpose of punishment.[259] There were different reasons for the courts not properly

[256]Interview with Mr. Hageru Menele, Public Prosecutor of West Omo Zone,(Jemu Nov. 2021), Interview made with Mr. GermoYerango (n 209), Interview made with Mr. Abedruman Said (n 216),
[257] ibid
[258] ibid
[259]Interview made with Mr. Teshome Alemaywe(n 211), Interview made with Mr. Muden Mehede(n 211) ,Interview made with Mr. Debebe Wenedemu (n 210)

applying all purposes of punishment, let allow the rehabilitation purpose. The first reason was the absence of a conducive working environment. The current working environment in courts did not encourage sentencing for inchoate crimes based on a critical examination of the purpose of punishment. [260] The other reason was the existence of a workload in the courts. Since the numbers of judges in the courts were not proportional to the case flow, the judges focused more on finishing the cases on hand than analyzing the appropriate purpose of the punishment.[261]

The researcher also tried to analyze dead files from the selected courts to assess the application of rehabilitation purposes of punishment. More than 15 cases that involved inchoate crimes were identified and analyzed. But none of the cases discussed the rehabilitation purpose of the punishment. For instance, in the case of Public Prosecutor Vs. Chalchew Mola,[262]the defendant was punished with 16 years of imprisonment. The defendant was charged and convicted for the violation of articles 27 and 620 of the criminal code for attempted rape. After the defendants were found guilty, the sentencing was calculated based on the revised sentencing guidelines. Moreover, the court explained that the penalty imposed on the defendant to achieve the general deterrent purpose of punishment.

In a particular case, the personal character of the defendant was young and had no previous criminal record. As we can understand from the overall cases, the defendants committed the crime due to a lack of knowledge about the situation. The personal character of the defendant was not very dangerous to society. The crime was interrupted because the defendant decided not to continue until the end. That is to say, the crime was incomplete attempted, and the defendant decided not to complete the intended crime. Furthermore, there was no serious bodily injury caused to the victim. The facts presented in this case indicated that the personal character of the defendant was less dangerous to society. The writer believed[263] that the court should impose a penalty on the defendant in a way to achieve the rehabilitation purpose of punishment. But the court imposed an excessive penalty on the defendant, which couldn't achieve the deterrent purpose of the punishment, let allow rehabilitation.

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[260] ibid
[261] ibid
[262] Public Prosecutor Vs Chalchew Mola, Kefa Zone High Court, Appeal File No1282, Date 24/2/2008 E.C.
[263]The researcher also discussed with the judges related to proper purpose of the punishment in such case, most of the judges agreed that the rehabilitation more preferable purposes of punishment for such particular case.

To sum up, the above-gathered data shows that the practices in the court regarding the application of rehabilitation purpose of punishment were not following the criminal law. In most cases, the court punished the offenders without considering the different purposes of punishment, including rehabilitation. So in practice, the rehabilitation purpose of punishment did not properly apply.

4.5.3. INCAPACITATION

Incapacitation or prevention is the other purpose of the punishment incorporated under the criminal code. Incapacitation entails protecting society from dangerous criminals by isolating them from society. It depends on the notion that, at times, the public has no other choice but to physically restrain the offender from reoffending to protect itself from delinquency.

As we have discussed in chapter three of this paper, the incapacitation purpose of punishment is the main justification for the criminalization and punishment of inchoate crime. Most of the time, the perpetrators of inchoate crimes are punished to prevent society. So sentencing is imposed for conduct that isn't quite as serious as a full-fledged crime, such as murder or theft but is close enough to endanger public order. The criminal law moves in to prevent or interrupt the commission of the entire crime.

The practice of the courts shows that they ignored the incapacitation purpose of punishment when imposing sentences on persons who were guilty of inchoate crimes. The interviewees responded in one voice that no practice applied incapacitation as the purpose of punishment when punishing defendants who were guilty of inchoate crimes.[264] The incapacitation purpose of punishment was not practiced as the purpose of punishment in selected courts.

The writer of this paper also analyzed the cases that involved inchoate crimes to assess the practical application of the incapacitation purpose of punishment. However, the researcher could not find the sentencing decision that incorporated incapacitation as the purpose of punishment while imposing sentencing on the defendants who were guilty of the inchoate crimes. Although in some identified cases the writer believed that the purpose of punishment required incapacitation, the courts did not apply such a purpose of punishment. For instance, in the case

[264]Interview made with Mr Eyob Hailu (n 215); Interview made with Mr Teshome Alemayew(n 211) Interview made with Mr Muden Mehede (n 211)Interview made with Mr. Habitamu Dachachwe(n 201)

between the public prosecutor and Jemal Shalwa,[265] the court didn't explain the purpose of punishment. The defendants were charged and convicted for the violations of articles 27 and 539 (1) of the criminal code, which attempted first-degree homicide. The court imposed an 18-years sentence after the defendant was found guilty. In such a particular case, the defendant causes serious injury to the victim. The material used to commit a crime and how it was committed indicated that the personal character of the defendant was extremely dangerous. From the overall case, one could understand that the appropriate purpose of punishment was incapacitation. But the court did not consider and specify the incapacitation purpose of punishment in the sentencing decision.

Generally, although the incapacitation purpose of punishment is one of the main justifications for imposing penalties for inchoate crimes, the courts in the research area ignored such a purpose of punishment. The data gathered through interviews and analyzed cases shows that there were no instances of sentencing imposed on defendants who were guilty of inchoate crimes by considering incapacitation the purpose of punishment.

4.6. CHALLENGES FOR PROPERLY APPLYING SENTENCING IN HIGHER COURTS WITHIN BONGA DIVISION

The sentencing decision is a critical step in the criminal proceeding. It has implications for the rights of defendants, victims, and the public in general. The courts have to consider and apply the law and rules while imposing sentences on those defendants who have been guilty of the inchoate crime. Also, the courts should consider different purposes and principles of sentencing in the sentencing process. Failure to observe these rules and principles of sentencing may result in an unwarranted disparity. That is to say, the uniformity and predictability of sentencing become questionable whenever the courts have not properly applied the sentencing rules and principles.

The previous sections demonstrated that the courts were not properly applying the rules, principles, and purposes of punishment concerning a person found guilty of inchoate crimes. This section discussed the major challenges to the proper application of the laws, principles, and purposes of sentencing.

[265]Public Prosecutor Vs Jemal Shalwa (n 235)

4.6.1. GAP ON THE SENTENCING GUIDELINE RELATED TO INCHOATE CRIMES

Different countries adopted the sentencing guidelines to maintain the uniformity and consistency of the sentencing. It is the best mechanism to minimize unwarranted disparities in sentencing decisions. The goals or purpose of sentencing guidelines vary.[266] The sentencing guidelines systems, for example, aim to promote greater uniformity in sentencing approaches and sentence outcomes in specific situations.[267] Also, such a system aims to increase transparency in sentencing. [268]Therefore, sentencing guidelines are relevant to properly apply the principles and goals of the punishment.

In different countries, various organs are assigned to adopt the sentencing guideline. For instance, in the USA, the power to enact and administer the sentencing guidelines is given to the independent agency in the judicial branch of the government known as the "U.S.A. Sentencing Commission." [269] When we come to Ethiopia, the criminal code authorizes the Federal Supreme Court to prepare the sentencing guidelines. "*In order to ensure the correctness and uniformity of sentencing, the Federal Supreme Court shall issue a manual relating to sentencing'.* [270] According to the provision, the Federal Supreme Court has vested the power to enact the sentencing manual, which aims to ensure the correctness and uniformity of sentencing. As a result, the first sentencing guideline was adopted in May 2010.

The FSC Sentencing Guidelines No.1/2010 incorporated different sections including a preamble, six sections, twenty-five detailed sub provisions, two main tables, and eighteen sub tables. The guideline labeled some identified crimes. The sentencing related to inchoate crime is provided in these sentencing guidelines. As provided under article 20, the court is required to mitigate two levels for those defendants who have been guilty of the inchoate crime. For a defendant who committed an attempted crime or participated as an instigator or an accomplice, the sentencing would be two levels of mitigation. The provision was vague and open to abuse. There were circumstances when the defendants of inchoate crimes required more than two levels. The defendants who did not commit the crime until the end due to active reparation, for example, are

[266]ibid
[267]ibid
[268] Warren Young and Andrea King (n 178) 203
[269] http//ussc.gov/about the commission/index.cfm
[270] FDRE criminal Code (n 7) Art. 88(2)

entitled to more than two levels of mitigation. On the other hand, there are circumstances in which defendants who are found guilty of an inchoate crime are not eligible for a reduction of sentencing. Sometimes, depending on the danger of the criminal and the degree of harm caused, the court may be required to impose a sentence on the inchoate crime equal to the completed crime as provided in articles 27(3), 36, and 37 of the criminal code. But the first sentencing guidelines did not have the room to consider such different situations.

The Revised Sentencing Guideline is adopted to fill the gaps in the first sentencing guideline. Like the first guideline, the revised sentencing guidelines contain a preamble, six sections, and thirty-one detailed sub provisions. Unlike the former sentencing guidelines, specific types of crimes are labeled in every section of the entire document. Several crimes were identified, included, and labeled in the revised Federal Supreme Court Sentencing Guidelines that were not labeled in the first guidelines. The Revised Sentencing Guidelines have also solved some lenient sentence problems by increasing and decreasing one level per aggravated or mitigating circumstance. Moreover, the revised sentencing guideline introduced many modifications compared with the first sentencing guideline.

Although the revised sentencing guideline has come with many amendments, it was unclear how the calculation related to the inchoate crimes. The current sentencing guidelines remain salient concerning determining the sentencing of the persons who have been guilty of inchoate crimes. As discussed in the previous chapter, the FDRE criminal code provided equal punishment for inchoate crimes and completed crimes. But different circumstances are stipulated in the criminal code that the courts may mitigate penalties with a limit or without a restriction. Criminal law has given broad discretionary power to the court while imposing the sentencing of inchoate crimes. Most respondents of the interview explained that such broad discretionary power without having the guideline might cause an unwarranted disparity.[271] Even if the first guideline required the court to reduce two levels for the inchoate crime without considering different circumstances, it maintained the consistency and predictability of sentencing for such crimes.[272] But the revised sentencing manual has nothing to say about a way of calculating sentencing inchoate crime cases. As a result, the courts interpreted such guidelines in various ways.

[271] Interview made with Mr. Binyam Babu (n 197), Interview made with Mr Mengitu Kebede(n 213)
[272] ibid

Sometimes the courts determine the sentencing without considering the inchoate nature of the crimes. Accordingly, some respondents were argued that the courts should impose punishment equal to the completed crime because the guideline does not specifically indicate the sentencing of the inchoate crime. [273] The argument was based on the provision of criminal code provided punishment for inchoate crimes equal to with intended crime. The court should apply such a provision as long as the guideline has not said anything about such crimes. For instance, in the case of the public prosecutor Vs. Bekel Abebe[274], the defendants were charged and convicted for the violation of articles 27(1) and 540 of the criminal code for attempted homicide. In this case, the defendant's committed an incomplete attempted crime. And also, the defendants revealed different circumstances of such crime were incomplete to mitigate the penalty. But the court explained that the criminal code and sentencing guidelines provided equal punishment with that of the completed crime. Then, the court calculated the sentencing based on the revised sentencing guideline and imposed 13 years of imprisonment. In my view, such a way of interpretation would be against the purpose and goal of the punishment. Although the criminal code prescribed a similar penalty for the inchoate crime as it did for the intended crime, the law provided different circumstances that the courts deemed to be reduced penalties for those who committed the inchoate crimes. The courts are duty-bound to consider and mitigate the penalty provided that the circumstances stipulated under the criminal law are fulfilled. Otherwise, it could violate the defendant's rights and go against the purposes and principles of sentencing.

On the other hand, some interviewees explained that the criminal law and the sentencing guideline give the power to the courts to reduce the penalty for inchoate crimes.[275] They cited art. 24 of the sentencing guideline give discretion to the courts to mitigate penalties without being limited by the manual, where the criminal code empowers it to reduce the penalties without restriction.[276] The Criminal Code gives the courts discretionary power when deciding on the sentencing for the inchoate crime. As a result, they argued that courts are free to mitigate the penalty without restriction for defendants who have been guilty of the inchoate crime as per article 24 of the manual. The penalty was arbitrarily reduced without the circumstances prescribed under the criminal law fulfilled. Such practices of the courts have an impact on the

[273] Interview made with Mr. Teshme Almayehu (n 211), Interview made with Mr. Muden Mehede (n 211)
[274] Public Prosecutor Vs Bekel Serku, West Omo Zone High Court, File No 22050 Date 22/7/2011 E.C.
[275] Interview made with Mr. Eyob Hailu (n 215), Interview made with Mr. Mengesha Buladuber (n 210)
[276] ibid

consistency and transparency of the sentencing decision. And also, it was difficult to achieve the main purposes of criminal law. In my view, article 24 of the sentencing manual should not be applied to the sentencing of persons who have been found guilty of all types of inchoate crimes. Such a provision gives discretion for courts to mitigate sentencing without limit by the guideline when the criminal code empowers the court to reduce penalty without restriction In the case of inchoate crime cases, mitigation without restriction (based on article 180) is allowed where there is renunciation[277]and active repentance[278] and impossible attempted.[279]

The gap in the sentencing guideline also leads to another way of interpretation regarding the application revised sentencing manual related to inchoate crimes. Some of the respondents of the interviews argued that the manual only deals with the completed crime, not an incomplete crime.[280] As a result, the sentencing of the inchoate crime should not calculate by using the sentencing guidelines.[281] According to such groups of interviewees, the sentencing guideline is not applied or used to calculate the sentencing of inchoate crimes. To apply the Revised Federal Sentencing Manual requires the completion or consummation of the crime. For example, in the case of homicide, all grades are prepared to depend on the death of the victims. Therefore, there was court practice that the sentencing for inchoate crimes determined out of the manual as provided under article 27 of the sentencing guideline. In the case of the public prosecutor vs. Adiss Kone, for example, the defendant was charged and convicted for violating articles 27 and 540 of the attempted homicide.[282] The court imposed sentencing of 6 years imprisonment. In a particular case, the court was calculated sentencing out of the sentencing guideline based on article 27. As provided under article 27, the courts may decide the sentencing decision out of the sentencing guideline whenever there are justified grounds. In such a particular case, the court

[277]FDRE Criminal Code (n 7) art 28(1) "If a criminal of his own free will renounces the pursuit of his criminal activity the Court shall reduce the punishment within the limits provided by law (Art. 179) or without restriction (Art. 180) if circumstances so justify. No punishment shall be imposed if the renunciation was prompted by reasons of honesty or high motives"

[278]Ibid art 28(2) "If a criminal, having completed his criminal activity, of his own free will prevents, or contributes to prevent the consequent result, the Court shall without restriction reduce the punishment"

[279]Ibid art 29 "When a criminal has attempted to commit a crime by means or against an object of such nature that the commission of the crime was absolutely impossible, the Court shall, without restriction, reduce the punishment (Art. 180).No punishment shall be imposed when the criminal, from superstition or owing to the simplicity of his mind acted by using means or processes, which could in no case have a harmful effect. The above provisions of this Article shall similarly apply to an instigator or an accomplice."

[280]Interview made with Mr. Habitamu Dachachwe(n 201), Interview made with Mr. Debebe wendemu(n 210), Interview made with Mr. Abedurman Said(n 216)

[281] ibid

[282] Public Prosecutor Vs Deneso Kone, Bench Sheko Zone High Court, file no 19564 Date 23/12/2011 E.C.

stated that since the guideline didn't apply for incomplete crimes sentencing was calculated out of the sentencing guideline. In my opinion, article 27 of the sentencing guideline allows the courts to impose penalties out of the manual only in some exceptional situations. The situations are when the judges believe that imposing sentencing based on the sentencing guideline would be contrary to the purpose and goal of the criminal code. The guideline would be contrary to the purpose and goal of the criminal code. The guideline required exceptional situations to be calculated out of such guidelines, not for the sole reason that crime was incomplete.

The above discussion indicates that the legal gap in the sentencing guideline leaves room for courts to interpret and apply the guideline differently regarding inchoate crime cases. As a result, sentencing decisions on inchoate crimes are inconsistent and unpredictable. In other words, such a gap has the consequence that the sentencing decisions on inchoate crimes differ from one court to another court and from one bench to another bench. Such an unwarranted disparity in the sentencing of such crimes hampered the proper application of the purposes of punishment.

4.6.2. THE CHALLENGE OF UNBALANCED RELATION BETWEEN THE PARTIES IN THE LITIGATION

Most of the time, the parties in criminal cases are the public prosecutor and the defendants. The public prosecutor alleged criminal charges against the defendants. Public prosecutors are professional, well-educated, and well experienced in criminal cases. In addition to the experience in criminal trials, the offices of the public prosecutor are well organized in terms of staffing and facilities. On the other hand, most of the time, the defendants do not know the law and do not have litigation experience. The FDRE Constitution stipulates that accused persons have the right to be represented by the legal counsel of their choice, and if they do not have sufficient means to pay for it and a miscarriage of justice would result, it must be provided at state expense. The constitution tries to maintain the equality of the army in criminal cases by recognizing the right to be represented by a lawyer by themselves or on state expenses if they do not have sufficient means to pay for it, and a miscarriage of justice would result.

In the study area, most defendants who have been charged with the violation of inchoate crime do not know the law and experience of litigation before the court. Most defendants come from

remote areas, and they are uneducated. [283] For instance, in the West Omo Zone, most of the defendants were from the pastoral community and did not have any knowledge about the law and criminal litigation.[284] These circumstances result in an unusual him or her on the trial. As a reason, most of the defendants were unable to raise different litigation in the court, including the preliminary objection, mitigation, and aggravation circumstances in the sentencing decision.[285] As we have discussed above, there are different situations or circumstances available to defendants of inchoate crimes that may reduce the sentencing of the courts. For instance, art. 27(3), 36, 37, 28, 29, and other provisions of the Criminal Code provided different mitigation circumstances for the persons who have been found guilty of inchoate crimes. To alleged mitigation in such a situation, knowledge of the law and experience in criminal litigation is required. But, most of the defendants in research areas were not in that position to claim such situations.[286]

As we have seen above, the accused has the right to be represented by a private or government lawyer. Most of the defendants could not afford a private lawyer for economic reasons. On the other hand, the accessibility of government lawyers is very low for various reasons. The practice of the courts shows that the defendants were represented by defence counsel only in certain crimes.[287] The defendants charged with the violation of an inchoate crime were rarely represented by a lawyer. The interviewee from defence counsel explained that there are many reasons the defendant of inchoate crimes was not represented by the defence counsel.[288] First, it is related to a lack of sufficient manpower. Although many inchoate criminal cases appeared before the courts, there is only one defence lawyer in each court. The case flow and the number of defence counsel in each court were not proportional. Second, there was no common interpretation of miscarriage of justice. One of the constitutional requirements to appoint defence counsel, in addition to the inability of the defendant to hire a private lawyer, is that the possibility of miscarriage of justice has occurred. However, there was no common understanding related to the interpretation of miscarriage of justice in practice. Most of the time, courts applied

[283] Interview made with Mr. Selmon Mesfin (n 241)
[284] ibid
[285] ibid
[286] ibid
[287]ibid, Interview made with Tezazu Mersha (n 200), Interview with Alemayew W/Mariyam , defence Counsel of Kafa Zone High Court, (Bonga Nov 24, 2021)
[288] ibid

such provisions to defendants charged with only first-degree homicide and first-degree robbery.[289] The majority of the inchoate crimes brought before the study area's high courts were grave and punishable by a severe penalty. At the same time, the defendants were uneducated and from rural areas. However, there was no practice of appointing defence counsel in such inchoate crimes. Because of that, the defendants could not reveal the facts that the court could use to decide an appropriate sentencing decision. As a result, the sentencing imposed on defendants not represented by defense counsel would be contrary to the principle and purposes of the sentencing.[290] Different circumstances provided by the law would not be examined by the courts since the defendants could not disclose the availability of such circumstances. Furthermore, interviewee judges agreed that there was a difference between those defendants represented by a lawyer and those not represented by a lawyer related to the proper application of sentencing concerning inchoate crimes.[291] In addition to the interview, the researcher identified dead court files which involved inchoate crimes, but there were no cases that defendants were represented by the defence counsel.

The practices of the court show that most of the defendants have not been represented by private and public lawyers, although most of the cases brought before the high courts were serious and punishable with long imprisonment. There was the possibility of a miscarriage of justice occurring. It also has an impact on the correctness and uniformity of the sentencing decision. As a result, one of the challenges to the proper application of sentencing for inchoate crimes was the imbalance of the litigating parties

4.6.3. THE CHALLENGE OF THE COURT'S CASELOAD

A quality criminal decision, including the proper sentencing decision, cannot be sufficiently given unless the government shows a full-fledged commitment to allocating an ample budget that fulfills all of the necessary human resources and infrastructure expected from a well-organized, strong court structure. Lack of sufficient manpower increased the workload on the judge. It has an impact on the quality of the judgment.

[289] ibid
[290] ibid
[291] Interview made with Muden Mehede (n 211), Interview made with Mr. Teshome Almayehu (n 211), Interview made with Mr. Debebe wendemu (n 210)

The practice of the courts shows that lack of adequate manpower was one of the main challenges to the proper implementation of the rules, principles, and purposes of punishment. The presidents of each high court stated that fewer than half the expected judges have been appointed to each court.[292] For instance, in the West Omo Higher Courts, only six judges are working the court. But, based on the case flaw, the court expects to have more than fifteen judges.[293] The same is true in Kafa and Bench Sheko's higher courts. Less than half of the expected judges have been appointed.[294] The interviewees stated that there are different reasons for the lack of an adequate number of judges in the selected courts. The first problem was related to the lack of a sufficient budget assigned to the courts. There was no sufficient budget allocated to the courts to hire judges in the required numbers.[295] Second, in some courts, it was difficult to afford manpower because of the remoteness of the area and a lack of incentive.[296]

As previously stated, when imposing sentencing on inchoate crimes, in particular, the courts should evaluate various situations. To put it in other words, the sentencing of inchoate crimes needs a detailed analysis of the facts and circumstances provided by the Criminal Law. Otherwise, it hurts the correctness and uniformity of the sentencing. Most interviewees' judges said that because of a lack of sufficient manpower, required to work a lot of criminal cases.[297] The desire of judges to finish or cover all the files than depth analyzed the rules of sentencing. [298] In particular, judges decide sentencing on inchoate crimes rashly without considering the rules, laws, principles, and purposes of sentencing.[299] It has negative consequences for the quality of sentencing decisions. [300]

Therefore, the lack of sufficient manpower in the courts increased the caseload on the judges. It becomes one of the main challenges for the proper application of the rules, principles, and purpose of sentencing and has negative consequences for the uniformity and correction of sentencing. So, without the necessary human resources and infrastructure, a strong judicial

[292]Interview made with Mr. Benyam Babu (n 197), Interview made with Mr. Mitku Abedessa (n 224), Interview made with Mr. Mengsitu Kebede (n 213)
[293] Interview made with Mr. Mitku Abidissa (224)
[294] Interview made with Mr. Benyam Babu (n 197), Interview made with Mr. Mengsitu Kebede (n 213)
[295] ibid
[296] Interview made with Mr. Mitku Abidissa (n 224)
[297]Interview made with Mr Teshome Alemayehu (n 211), Interview made with Mr. Debebe Wendemu(n 210)
[298] ibid
[299] ibid
[300] ibid

structure that deliberates on the quality of sentencing decisions that enforces and protects the constitutional rights of the public at large cannot exist.

4.6.4. LACK OF PROPER SUPERVISION AND EVALUATION MECHANISM

A strong supervision and evaluation mechanism is significant regarding the proper application of the rule, principle, and purpose of sentencing. The practice of the courts shows that the absence of the proper evaluation mechanism concerning the sentencing of inchoate crimes has become one of the challenges to the proper application of the law on the sentencing of inchoate crimes. Existing supervision and evaluation mechanisms could not guarantee the existence of quality sentencing decisions.

The interviewee judges explained that the current practice of evaluating the performance of judges was based on the calculation of the number of disposed of files without considering the quality of the sentencing decision.[301] There were no mechanisms of supervision concerning the proper application of laws in all judgments, including sentencing decisions. Even though the practice of the courts shows the existence of unwarranted disparity in the sentencing of inchoate crimes, there was no sufficient mechanism to evaluate and solve such problems. The current practice used to evaluate judges is very subjective and not scientific, and it violates the personal independence of judges.[302] According to the statements of the interviewees, an independent judiciary and quality of judgment cannot exist without standards and reforms that can strengthen its process of rendering judgment. The existence of an evaluation and supervision mechanism is significant to solving the problems associated with the sentencing of inchoate crime.[303]

The same problem existed concerning the application of the Revised Sentencing Guideline. As stipulated under article 27 of the guideline, the only available way of supervision of the proper application of the sentencing guideline is through receiving a copy of the judgment when the courts decide out of the sentencing guideline. There were no other mechanisms or organs with the authority to ensure the proper application of such a manual, and maintain the consistency and

[301] Interview made with Mr. Eyob Hailu (n 215), Interview made with Mr. Mitku Abdissa (n 224)
[302] Interview made with Mr. Teshome Almayehu (n 211)
[303] Interview made with Mr. Debebe Wendemu (n 210)

correctness of the sentencing decision.[304] As a result, there were various ways of interpretation related to the application of the sentencing guidelines for inchoate crimes

To summarize, the current evaluation and supervision mechanisms do not ensure the uniformity and correction of sentencing decisions for inchoate crimes. There has to be a proper mechanism that can evaluate the proper application of rules, principles, and purposes for sentencing inchoate crimes. Moreover, there has to be an organ that is empowered to supervise the application of the sentencing guidelines as well as other rules and laws that could bring uniformity and correctness in the sentencing decision of inchoate crimes.

4.6.5. LACK OF COMPETENCE

The competence of the legal actors is significant to appropriate applying the laws. Judges, public prosecutors, defense counsel, and other legal actors are expected to have a basic understanding of the law and experience with it. Otherwise, it is difficult to apply the laws appropriately.

In practice, there was a lack of competence while sentencing inchoate crimes. According to the president[305] and other legal actors'[306] West Omo Zone High Court expression, there was a practice that the courts may not properly apply the sentencing of inchoate crimes because of incompetence. [307] In other words, one of the causes for inappropriate apply the rules, principles, and purposes of the sentencing to the inchoate crimes was incompetence. Since the court was located in a remote area and most of the community was pastoral, it was difficult to afford well-experienced and well-known professionals.[308] Some legal professionals had an academic level below an LLB degree. Because of that, judges decide the sentencing of inchoate crime cases generally as they are inchoate crimes.[309] It was rare that judges differentiate between different types of inchoate crimes and different circumstances of the failure to complete the crime during the sentencing provided by the law. [310]

The problem of incompetence was also the problem of other courts in the study area. For example, Mr. Teshome Almayehu, Judge of The Bench Sheko High Court, explained that the practice in the sentencing of inchoate crime cases seems against the principle of the criminal

[304] ibid
[305] Interview made with Mr. Mitku Abedissa (n 224)
[306] Interview made with Mr. Keyam Sekure(n 202), Interview made with Mengesha Buladeber(n 210)
[307] ibid
[308] ibid
[309] ibid
[310] ibid

code which provides that inchoate crimes are punishable the same as completed crimes, except if there is a justifiable circumstance, the penalty may be reduced. [311] But the practice is the reverse. Sometimes the courts always reduce the penalty for inchoate crimes without examining whether there are circumstances that justify such a reduction or not.[312] On the other hand, sometimes the courts impose equal punishment on completed crimes even if there is justification for the reductions.[313]

As we have discussed above, the sentencing decision can be correct and uniform only when the courts properly apply the principles and purposes of punishment. As the application of the sentencing rules, there was a problem of competence related to the application of the purpose and principles of sentencing. Most of the interviewees responded that there were problems concerning the implementation of the principles and purposes of sentencing, and incompetence was the reason for the inappropriate application of the purposes and principles of sentencing.[314] There was a situation that judges applied the purposes of sentencing were not adopted in the Criminal Code. Sometimes, judges used words equivalent to the retribution purpose of punishment.[315] For instance, the courts stated in the sentencing decision that the penalty was imposed on the defendants because the defendants did wrong and deserved rather than for utilitarian reasons. As we have seen in chapter two, the FDRE criminal code doesn't incorporate such a purpose of punishment.

In general, one of the causes or challenges to the proper application of sentencing for inchoate crimes was a lack of competence. The rules, principles, and purposes of sentencing were not applied appropriately unless the judges were competent. Failure to apply to sentencing correctly impacts the rights of defendants and victims, as well as impedes maintaining the correctness and uniformity of sentencing on inchoate crimes.

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[311] Interview made with Mr. Teshome Alemayehu (n 211)
[312] ibid
[313] ibid
[314] Interview made with Mr. Eyob Hailu (n 215) , Interview made with Mr. Muden Mehede (n 211) Interview made with Mr. Debebe wendemu (n 210)
[315]ibid

4.6.6. UNJUSTIFIED FRAMING OF CHARGES AND IMPROPER MITIGATION AND AGGREGATIVE CIRCUMSTANCE

Most of the time, the criminal proceedings started through the framing of the charge. The public prosecutor is required to frame the charge within fifteen days after receiving the investigation file from the police.[316] The framing of the charge is a decisive factor for all criminal proceedings, including sentencing. Although sentencing comes at the last stage of criminal proceedings, the charge filed by the public prosecutor has a decisive factor in sentencing. Unlike other crimes, inchoate crimes require critical analysis of the circumstances and factors contributing to non-completion crimes. The charge must indict the circumstances and facts for the courts to impose sentencing based on such situations. If the public prosecutor frames a charge of inchoate crime by identifying the type of inchoate crime, the reason for the failure of the crime, the intention of the accused, and other facts and situations, it will have a high a high contribution to the proper application of sentencing rules.

In practice, most of the time, public prosecutors frame charges of inchoate crimes quickly and negligently without deeply investigating the intention of the criminal, the result of the crime, and the circumstances surrounding the crime. It was common practice for the public prosecutor to prepare a charge without indicating the accused intention that intended to commit a specified crime. According to the president of the Bench Sheko zone High Court, sometimes the public prosecutor frame a charge without including the facts that distinguish attempted homicide from bodily injury. The nature and type, the circumstances, the reasons for not completing it, and other relevant facts were not stated in the charge.[317] In similar facts and circumstances, some public prosecutors charge the accused with attempted homicide, while others were charged with intentional bodily injury. It was also common for public prosecutors to charge people with attempted first-degree homicide or robbery without the elements were not specified in the charge. Mr. Mengesitu[318] Kafa High Court Precedent, and other interviewee judges[319], explained that most of the time, the public prosecutor preferred to frame a charge of a serious crime without clearly proving the existence of elements. For example, there was a practice that the public prosecutor framed the charge for the violation of 27(2) and 539(2) of the criminal code

[316]Criminal procedure code (n 192) art 109
[317] Interview made with Mr. Biniyam Babu(n 197) Interview Made with Mr. Dawit G/Medehen(n 207)
[318] Interview made with Mengistu Kebede (n 213)
[319]Interview made with Mr. Habitamu Dachachwe(n 201)

without clearly maintaining the elements of the alleged crime fulfilled. In such situations, some judges changed the provisions to the lesser provisions as provided under article 113 of the CPC. Courts have sometimes ignored and imposed sentences based on the provisions specified in the charge. The same is true with other types of inchoate crimes, i.e. accomplice and instigation. Prosecutors may frame the charge without distinguishing the instigator or accomplice from the principal offenders. Such practical problems impact the proper application of principles and purposes of sentencing. Those defendants who have committed crimes in similar situations would be punished differently. Therefore, the unjustified framing of charges is one of the challenges for proper application of sentencing on inchoate crime

The other challenge was related to mitigation and aggravation circumstances. First, as provided under Art. 149/3/CPC, the court shall ask the prosecutor after the accused is found guilty whether he has anything to say as regards sentence by way of aggravation or mitigation. The law requires that the public prosecutor reveals not only aggravation ground, but also mitigation grounds. These are the general aggravating (Art.84) and mitigating (Art.82) grounds provided under the criminal code. In the practice of the courts, public prosecution only disclosed the aggravating circumstance, not the mitigating circumstance. As we discussed in the sub-section, most of the defendants who appeared before the court were uneducated and didn't have experience in court litigation. They could not reveal the available mitigating circumstances. Although the public prosecutor was duty-bound to reveal both aggravating and mitigating circumstances, no practice in the courts related to mitigating circumstances. . Therefore, it makes a difference in the sentencing between those who could reveal the mitigating circumstances and those we could not disclose. As provided under art. 84(2), *when the law, in a special provision of the Special Part, has taken one of the same circumstances into consideration as a constituent element or as a factor of aggravation of a crime, the Court may not take this aggravation into account again.* But in practice, it was reversed: most of the time, the public prosecutor proposed the constituting elements of the crime as aggravating circumstances. [320] Some judges accept such aggravating circumstances, whereas others reject them. In such cases, different penalties were imposed on the defendants, although in a similar situation committing an inchoate crime.[321]

[320] Interview made with Mr. Debebe Wendimu (n 210), Interview made with Mr.Dawit G/Medehen (n 207)
[321] ibid

So, the unjustified framing of the charge and improper aggravation and mitigation circumstances were the other challenges to the proper application of rules, principles, and purposes of the sentencing.

4.6.7. LACK OF TRAINING

Training is relevant to the legal actors, i.e., judges, public prosecutors, and others to the proper application of the laws. Training involves increasing the skills and knowledge of judges, prosecutors, lawyers, and others. At its most basic level, judicial training provides the information and tools judges need to do their jobs effectively, including legislation, practice directions, case reports, academic articles, bench books, or manuals. Beyond providing substantive law information, training also addresses what is commonly referred to as "judge craft"—the specific skills judges require doing their job, such as opinion writing, sentencing, dealing with certain types of litigants, and evidence

In practice, there are different challenges to the proper application of the sentencing rules, principles, and purposes. As previously stated, court practice demonstrates that sentences imposed on the inchoate crime were contrary to the principles and purposes of punishment. The rules and procedures of the sentencing were not properly implemented. Most of the time, the sentencing imposed on the defendants of inchoate crimes was without considering the circumstances provided by the law. Among other things, the practical problems related to competence and lack of training. The same problems also existed related to public prosecutors and lawyers. There was a problem related to the public prosecutor, among other unjust framings of the charge, and problems with aggravation and mitigation circumstances. Mr. Debeb Wendemu[322], a judge of Keffa High Court who served for more than fifteen years as a public prosecutor and judge stated that in the area of sentencing in general and related to inchoate crime, in particular, was ignored area in judicial training. From his experience shared that there was no training related to the sentencing of inchoate crimes. Most of the practical problems are associated with a lack of sufficient training. Many lawyers, judges, and public prosecutors were agreed with his opinion. Mr. Dawit G/Medehen[323] served for more than 15 years as a judge and public prosecutor explained that even if the problem related to the sentencing of inchoate crimes

[322]Interview made with Mr. Debeb Wendemu (n 210)
[323] Interview made with Mr. Dawit G/Medehen (n 207)

was serious, there was little or no training in such areas. Almost all the interviewees[324] agreed in one voice that the availability of training in the sentencing of inchoate crimes could minimize the practical problems. Accordingly, training related to inchoate crime is vital for different reasons. First, the cases that involved inchoate crimes required critical analysis, and there were many cases with high flaws regarding inchoate crimes. [325] Second, there were problems with the competence of the legal actors.[326]Therefore, training is critical to minimize the problem related to the proper application of sentencing of inchoate. [327] Furthermore, MR. Abdurrahman[328] a private lawyer and part-time lecturer at Mizan Tepi University stated that training in such areas should include all legal actors to ensure consistency in the application of sentencing on inchoate crime.

As a result, one barrier to the proper application of sentencing for such crimes was a lack of adequate training in sentencing in general and inchoate crime in particular. Training on the nature of the inchoate crime, the circumstances of the failure to complete the crime, and the principles and purposes of punishment are essential for resolving the practical challenges of applying sentencing to inchoate crimes.

4.6.8. LACK OF INDEPENDENCE OF JUDICIARY AND ACCESSIBILITY OF LAWS

The independence of the judiciary is one of the critical factors for the proper delivery of legal service to the public. Impartiality is essential if justice is to prevail. The separation of the judiciary from the other two organs of the state and its independence from their control and influence are the foundations of judicial independence. An independent judiciary is a necessary component for safeguarding fundamental liberties and human rights, and it is recognized in several international and regional treaties, beginning with the Universal Declaration of Human Rights. The 1995 FDRE Constitution in Chapter 9 Article 78 (1) stipulates, "An independent judiciary is established by this constitution.

[324] Interview made with Mr. Mitku Abidssa (n 224)
[325] ibid
[326] ibid
[327] ibid
[328] Interview made with Mr. Abdureman Said (n 223)

In practice, the independence of the courts was questionable. As stated by some interviewees, the judges were not free to decide the case based on what they believed and the laws[329] The judges could not freely interpret the laws without interference. In the cases of the sentencing of inchoate crimes, the judges were expected to decide based on adopted practice rather than by considering the circumstances provided under criminal law. The working environment in the court did not ensure the independence of the judiciary. Therefore, the absence of personal independence of the judge challenges the proper application of the laws on the sentencing of inchoate crimes. Other interviewed judges also expressed that there was external pressure that affected the independence of the judiciary. Sometimes the executive branch of government intervenes and obstructs the proper application of the rules, principles, and purposes of the sentencing on the crime of the inchoate.[330]

Judges are required to be independent internal and institutional, to render quality service to the public. The lack of independence may have an impact on the correct interpretation of the laws. The judge is required to decide the cases only based on the law. There has to be a system that protects the independence of the courts. According to Mengistu Kebede[331] the president of Keffa Zone high court, there is one directorate within the court that has the mandate to protect the independence and accountability of the court. But such a directorate was not fully functional for different reasons. The problems associated with independence and supervision mechanisms would be minimized if such a directorate became functional.

The other challenge was the accessibility of laws in the local language. The criminal code was written and published in English, Amharic, and certain languages. On the other hand, the revised sentencing guideline is only officially published in Amharic. For instance, the working language of the Keffa zone is kefinoono. But there is no copy of both the criminal code and the revised sentencing guidelines in the local language. Most interviewees from the Keffa zone stated that the lack of access to such laws in their local language has an impact on the uniformity of the sentencing of inchoate crimes.[332] The absence of laws in such a working language impeded all parties from easily understanding the rules, principles, and purpose of the sentencing. It also

[329] Interview made with Mr. Teshome Alemayehu (n 211)
[330] Interview made with Mr. Mengesha Buladber (n 210)
[331] Interview made with Mr. Mengistu Kebede(n 213)
[332]Interview made with Mr. Mulgeta G/Yohannes (n 200) Interview made with Mr. Debebe Wendemu(n 210), Interview made with Mr. Tameru Basha (n 202), Interview made with Mr. Gezachwe G/Medehen (n 253)

increases the workload of the courts. Therefore, the defendants' rights and the public at large are hampered by the lack of accessibility of the laws in the local language, which harms the uniformity and correction of the sentencing.

Other challenges to the correctness and uniformity of the sentencing are the lack of independence and the accessibility of the laws. The courts have rendered quality judgment when there is both personal and institutional independence of the courts. The accessibility of the laws in the working language is also significant for the proper application of the laws.

4.7. CONCLUSION

The discussion in the chapter shows, there are limitations on the practical application of the laws, rules, purpose, and principles of sentencing. The study revealed that the rules stipulated under the criminal code and the federal sentencing guidelines didn't properly apply to inchoate crimes. The courts imposed penalties that were not clear to the parties in particular and the public in general. Although the courts require conducting all activities, including sentencing decisions, transparently, the practice contradicts this principle when imposing sentencing on inchoate crimes. The sentencing decisions were inconsistent not only from one court to another but also within the same court. Sometimes the courts decided excessive penalties could violate the rights of defendants. On the contrary, sometimes the courts decided very lenient penalties for such crimes that were contrary to the purpose and goals of the criminal law and infringed the rights of the victim.

Related to the purposes of punishment, the courts relatively applied the deterrence purpose of sentencing compared with the others. However, the courts applied the deterrent purpose of punishment on the persons who were guilty of inchoate crimes without critically evaluating the facts of the cases and the character of the defendants. The other purposes, such as incapacitation and rehabilitation, were not practically applied concerning inchoate crimes. Furthermore, the study revealed different legal and practical challenges for the proper application rule, purposes, and principles of sentencing. Among others, it includes the gap in the Revised Sentencing Manual, incompetence, lack of supervision and evaluation mechanisms, unbalances of litigating parties, lack of independence of judges, lack of accessibility of laws, lack of training, and others.

CHAPTER FIVE
CONCLUSION AND RECOMMENDATIONS

5.1. CONCLUSION

Sentencing is one of the main parts of criminal litigation that involves imposing sanctions on someone found guilty of breaking the law by a court of law. The courts were required to consider different purposes and principles of sentencing while imposing sentencing on the defendants. Among other things, rehabilitation, deterrence, incapacitation, just desert, retribution, and restoration are the contemporary purposes of sentencing. The FDRE criminal law limits the goals of punishment to deterrence (particular and general), rehabilitation, and incapacitation. And the criminal code tacitly precluded the retribution rationale of sentencing. Sentencing decisions should also be uniform, consistent, predictable, transparent, proportional, and equal.

In addition to such principles and purposes of the sentencing, courts require critical analysis of the law while punishing those who have been found guilty of inchoate crimes. Sentencing or punishments of inchoate crimes (attempt, accomplice, instigation) under the FDRE criminal code are the same as completed crimes. However, the courts have the discretion to reduce the penalty within the limits of the law or freely. Chapters two and three indicated that the sentencing of inchoate crimes required to critically analyze sentencing rules, principles, and purpose, otherwise, it may result in unwarranted disparity and hamper the uniformity and correctness of the sentencing.

In chapter four, the researcher discussed and critically analyzed the sentencing of inchoate crime in the high courts of the SNNPRS Bonga Division. The data gathered lead to the conclusion that there are limitations on the proper application of the sentencing of inchoate crimes. First, the courts did not strictly observe the laws and procedures applied to inchoate crimes. In practice, the sentencing of inchoate crime cases was against the principle of the criminal code and the reverse with the law. Sometimes the courts reduce the penalty for inchoate crimes without examining whether there are circumstances that justify such a reduction or not. On the contrary, the courts impose equal punishment on completing crimes, even if there were justifications for the reductions. There were also diversified practices related to the application of the sentencing guideline on inchoate crimes. The Revised Federal Sentencing Guideline remains silent

concerning determining the sentencing for the inchoate crimes. In practice, the courts have interpreted the guidelines in various ways. It may result in unwarranted disparity.

Other issues discussed in this research are the application of the principle and the purposes of sentencing. Related to the principles of sentencing, the courts did not properly consider it. The sentencing decisions of the courts were not transparent and have not explained the type of inchoate crime, the reasons for the reduction of penalty, the reasons of failure, the mitigation and aggravation circumstances, the purpose of the sentencing, and others. The sentencing decisions were also inconsistent. Not only from one court to another but also within the same court. Moreover, there were limitations on the practical application of the principle of proportionality. Sometimes the courts decide the excessive penalties. On the contrary, sometimes the courts decided lenient penalties that were contrary to the purpose and goals of the criminal law and infringed the rights of the victim. The same is true concerning the application of the principle of equality. Those who were guilty of the inchoate crime with the same circumstances of the commission of the crime and similar personal characteristics were punished differently

The limitations were not only on the principles but also related to the purpose of punishment. The practice of the court shows that most of the time punished defendants who had been guilty of the inchoate crime to deter the offenders from committing other crimes and potential criminals from committing similar crimes. The courts used deterrence as the purpose of a punishment without critical analysis. In some cases, even if the appropriate purpose of sentencing was not deterrence, the courts used deterrence as the purpose of punishment. There were instances where courts applied deterrence purposes to those defendants required to incapacitate or rehabilitate. The data gathered through interviews and analysis of cases show that the courts did not apply rehabilitation and incapacitation purposes to punishments related to inchoate crimes.

The study revealed different causes or challenges to the proper application of the rules, laws, and purpose and principle of punishment. First and foremost, the main problem is the gap in the revised sentencing guideline. Unlike the First Sentencing Manual, the current sentencing guideline remains silent concerning determining the sentencing of defendants who have been guilty of inchoate crimes. Second, there were unbalances between the litigating parties. A third challenge was the existence of a caseload and an insufficient number of judges. Fourth, there was a problem related to competence that had an impact on the proper application of laws to those

who had been guilty of inchoate crimes. Fifth, there was unjustified framing of the charger and improper mitigation and aggravation circumstances. Sixth, the lack of a proper supervision and evaluation mechanism was also another challenge the researcher identified. Seventh, the data collected indicates that a lack of training related to sentencing, the principle, and purpose of sentencing, the type of inchoate crime, and other related issues was also a practical problem with the proper application of sentencing for inchoate crimes. Finally, the researcher discovered that a lack of independence and accessibility of laws in the local language impedes the proper application of sentencing laws on defendants who have been convicted of inchoate crimes.

5.2. RECOMMENDATIONS

In all of the previous chapters, an effort has been made to analyze the applications of laws principles and purpose of sentencing on the inchoate crime and the challenges for the proper application. Based on the findings, here are important recommendations concerning their priority and significance

- The Federal Supreme Court has to revise the current sentencing guideline. According to article 88 of the FDRE criminal code, the Federal Supreme Court must issue a sentencing manual. The researcher strongly recommended that the amendment be urgent and should consider the circumstances provided under the criminal code. The sentencing guidelines should be revised and labeled for inchoate crimes based on the following elements: First, the degree of dangerous or mental blameworthiness should be used as a standard or element to label. Second, there has to be an identified standard based on; the seriousness of the injury (the permanent or temporary nature of the injury), the type and dangerous nature of the material, and the method used to commit a crime and others. Third, the type or way of assistance and instigation should also be considered. Fourth, the type and the reason for the failure should be used as an element or standard
- The Federal Supreme Court should establish an independent organ that has the mandate to supervise the proper application of uniformity and correctness of sentencing in general and sentencing guidelines in the particular at the national level. In addition to this, the SNNPRS Supreme Court should adopt strong supervision and evaluation mechanism to ensure the proper application of sentencing for inchoate crimes. The method of evaluation should be based not only on the number of cases decided by the judges but also on the quality of the judges' decisions. The organs established to ensure the protection, independence of courts, and supervision, such as the Directorate of Judicial Independence and Accountability, should be functional and effective. As the result, the court should take appropriate measures, including the adoption of directives.
- The SNNPRS Supreme Court should allocate sufficient budgets to hire or appoint judges and other legal actors. The quality of the decision highly depends on the sufficiency of professionals. The researcher highly recommended that the number of judges should increase in all courts. The number of judges should be proportional to the case flaw in each court. In addition to judges, the number of defense counsel should be increased, and allocate

appropriate budget. Therefore, a sufficient budget should be assigned to appoint competent judges and other legal professionals in research areas.

- . The SNNPRS Supreme Court should create an opportunity by collaborating with different universities to upgrade their academic status as legal professionals. Those judges and other legal professionals with an academic level lower than the LLB degree must upgrade their level of education. In addition to this, judges and other legal actors should update their knowledge, skills, and attitudes. The SNNPRS Supreme Court and SNNPRS Justice Bureau should arrange training related to the sentencing of inchoate crime. The training could be combined in the long term with other courses given by judicial training institutions like the Federal and regional Judicial Training Institutions. It is also a short-term training program that focuses on the sentencing of inchoate crimes. The training has to be inclusive of all actors in the judicial system.
- Finally, the legislative organ of the government at both regional and federal levels has to be translated Federal Criminal Code, Revised Sentencing Guidelines, and other laws in the working language of the particular high courts. So that the Federal Criminal Code, Revised Sentencing Guidelines, and other laws should be accessible.
- SNNPRS Supreme Court and SNNPRS Justice Bureau should adopt strong controlling mechanisms to avert the problem in the sentencing of inchoate crimes associated with the improper conduct of the judges, public prosecutors, and other legal actors.

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ANNEX

Annex 1 Interview Questions Guidelines

This interview is provided to collect data for a research paper in Jimma University College of law and Governance School of Law for LLM thesis, **Sentencing of Inchoate Crimes in SNNPRS Focuses on Higher Courts within Bonga Division**. The researcher would like to assure you that the information provided would be used for research purposes only and all responses will be treated in confidentiality. To this end, as your cooperation is very essential for the reliability of this research, I kindly request you to answer the following questions, thanking you in advance.

Name (optional)----------

Office----------

Job description----------

Zone----------

INTERVIEW QUESTIONS FOR JUDGES, PUBLIC PROSECUTORS, PRIVATE LAWYERS, AND DEFENCE COUNSEL

1. What are the procedures, laws, and rules that the courts apply to determining sentences for inchoate crimes?
   1.1. Please explain in detail all laws and rules which the courts practically apply for imposing sentences on the persons who have been found guilty of inchoate crimes?
   1.2. Do you agree with punishing the persons who commit inchoate crimes?
   1.3. If your answer to number 1.2. If yes, why? If not, why?
   1.4. Do you think the courts practical consider the types and nature of the inchoate crimes while imposing punishment?
   1.5. Do you think the courts consider different circumstances provided under the criminal code and other laws while imposing sentencing?
   1.6. If the answer is no, why explain?

1.7. Do courts mitigate penalties for persons who have been found guilty of an inchoate crime? What are situations considered by the court to mitigate penalty for those persons who have been found guilty of inchoate crimes

2. What are the principles of sentencing applied to inchoate crimes?
   - 2.1. Explain how the principle of proportionality is applied in the sentencing of inchoate crimes?
   - 2.2. Explain how the principle of consistency is applied in the sentencing of inchoate crimes?
   - 2.3. Explain How the principle of equality applied in the sentencing of inchoate crimes
   - 2.4. Explain How the principle of transparency applied in the sentencing of inchoate crimes
   - 2.5. Explain the challenges in applying the principles of sentencing on inchoate crimes
   - 2.6. What are the mechanisms to check the proper application of the principle of sentencing?
3. What are the purposes of punishment sentencing applying inchoate crimes?
   - 1.12. Explain how the deterrence purpose of punishment applies for inchoate crimes?
   - 1.13. Explain how the rehabilitative purpose of punishment applies to inchoate crimes?
   - 1.14. Explain how the incapacitation purpose of punishment applies for inchoate crimes?
   - 1.15. What are the challenges in appropriately applying those purposes of sentencing for inchoate crimes?
   - 1.16. What are the mechanisms to check the proper application of the purposes of sentencing?
2. What are the legal and practical challenges in determining sentencing on inchoate crimes?
   - 2.1. What are the practical challenges of determining sentencing on inchoate crimes?
   - 2.2. What are the causes for such challenges?
   - 2.3. What are the legal challenges in determining the sentence of inchoate crimes?
   - 2.4. What are the causes of such legal problems?
   - 2.5. What are the consequences on the right of defendants and in the criminal justice systems?

Annex 2 Cases