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The Right to Access to Justice: Assessing Enforcement of Legal Guarantees in Ethiopian Somali Regional State (Case Study)

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Keywords: *access to justice, ethiopian somali regional state, ethiopian justice system.*

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The Right to Access to Justice: Assessing Enforcement of Legal Guarantees in Ethiopian Somali Regional State (Case Study)

Marishet Mohammed Hamza (Llm) [α], Melaku Gezahegn [σ] & Fikre Tinsae Berhane (Llm) [ρ]

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Keywords: access to justice, ethiopian somali regional state, ethiopian justice system.

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I. Introduction

Most international and regional human rights treaties set general requirement that States parties provide effective remedies to individuals whose rights have been violated. This basically entails the obligation to set up legal frameworks and appropriate judicial and administrative mechanisms to address claims for violations of rights.[1] The mechanisms so established shall also function in accordance with sanctioned legal principles and procedures that safeguard protection of individual rights in the administration of justice.[2]

Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution)[3] also guarantees the right to access to justice. Accordingly, any justiciable matter can be brought before a competent, independent and impartial tribunal established by law.[4] This protection is fundamental in telling the general legal obligation undertaken by the country under various international and regional human rights covenants to which it is party.[5] In addition, there are policy, legislative and administrative measures that have been implemented since the promulgation of FDRE Constitution.

[1] UN Human Rights Committee, General Comment No. 31, "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant", CCPR/C/21/Rev.1/Add. 13, Adopted on 29 March 2004, para.15
[2] Sepulveda M, Van Banning T. et al, "Universal and Regional Human Rights Protection: Cases and Commentaries", 2004, p.478
[3] Constitution of the Federal Democratic Republic of Ethiopian, Federal Negarit Gazeta, 1st year, No.1, 1995.
[4] Id, Article 37 (1), 78 and 79
[5] As Article (94) of the Constitution provides, International agreements (including international and regional human rights treaties) are an integral part of the law of the land and, among others, the government has the obligation to protect, respect and fulfill the rights in line with the Constitutional and international standards (Article 13(2) of the Constitution)

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Nonetheless, there are varying challenges at federal and regional level that impact upon the right to access to justice. One can easily figure out some of the challenges from the recently issued Ethiopian National Human Rights Action Plans which listed out major impediments affecting efforts to protect, respect and fulfilling the right to access to justice.[6] These includes: inaccessibility and irresponsiveness of the justice system to the needs of the poor; low professional competence of judges and court staff, lack of initial and continuous training of judges and staff, limited independence of judges, lack of systems for holding judges accountable for misconduct, poor systems for case management and other aspects of court management, limited access by courts to legal information, limited access of the public to court judgments and court information, little knowledge of the justice system by the general public, little access of the public to justice and, hence, very limited confidence of the general public in courts and other institutions of administration of justice.

As one of the regional states in Ethiopia and, more particularly, given the fact that Ethiopian Somali Regional State (ESRS) is among the least developed regional states in the country, the judicial system in the region may not be immune from challenges and limitations attached with the right to access to justice. But, as the ESRS GTP I[7] three years progress assessment report indicated, lack of empirical research on the challenges in the context of ESRS remains one of the factors holding back efforts aimed at ensuring access to justice in the region. It is with this background that this research has been undertaken. Basically, the research has assessed the practice on the ground in light of international laws Ethiopia has adopted, federal legislations applicable throughout the country and all appropriate (regional) legislations in ESRS.

As an empirical (socio-legal) research, mixtures of qualitative and quantitative approaches are used in this research. Qualitative approach is applied to explore, identify and examine basic/root causes that impede the enforcement of the right to access to justice in the research area. Accordingly, interview based survey of judicial organs administrators, and other selected stakeholders such as, judges and other staffs of courts, courts' clients such as, lawyers were held. Quantitative approach was employed to capture variables which are quantifiable such as, case management of courts, personnel and resource capacity of judicial organs, enforcement of substantive and procedural standards in judicial administration, etc.

II. Description of the Study Area

Ethiopian Somali Regional State (ESRS) is one of the nine regional states constituting the Federal Democratic Republic of Ethiopia. The region has a very large size ranking second - next to the State of Oromia.[8] The State is located in the eastern and south eastern part of Ethiopia sharing boundaries with Afar and the Republic of Djibouti in the north, Kenya in the south, regional state of Oromia in the west and Somalia in the east and in the South. At the time of doing this research, there are 9 administrative zones and 49 woredas in the region. Among these, this research focuses on Fafan, Siti, Nogob and Jarar Zones.

Geographically, the four zones totally share at least one third of the regions total land mass. Similarly, among 49 woredas in the region, 24 (i.e., almost 49%) are within the four zones. Specifically, there are 7 woredas under Fafan Zone, 6 under Sitti Zone, 7 under Nogob Zone and 4 under Jarar Zone.

In terms of population, according to the official 2007 Population and Housing Census of Ethiopia - Statistical Report for Somali Region, out of an estimated 4,445,219 population of the region, almost half, i.e., 2,251,315 live in the four zones; Fafan Zone 967,652, Sitti Zone 457,086, Nogob Zone 348, 409 and Jarar Zone 478, 168.[9]

III. Conceptual Framework

a) The Right to Access to Justice under International Human Rights Law

Most often, among the measures states are required to take and which are considered to be essential for realizing human rights is 'the provision of judicial remedies or other effective remedies with respect to right(s) violated'. For Instance, Article 2 paragraph 3 (a) and (b) of the International Covenant on Civil and Political Rights (ICCPR) provides that:

[Each State Party to the Covenant undertakes]

a. To ensure that any person whose rights or freedoms … are violated shall have an effective remedy … [and]
b. To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative ahorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy"[10]

[6] Federal Democratic Republic of Ethiopia National Human Rights Action Plan (2013-2015), 2013, p.36

[7] Ethiopian Somali Regional State Bureau of Finance and Economic Development, "Progress Towards GTP Targets: Assessing Development Gaps in Somali Regional State of Ethiopia", 2013

[8] Ethiopian Government Portal, [Available at: www.ethiopia.gov.et, last visited on: 27 July 2016]

[9] The 2007 Population and Housing Census of Ethiopia: Statistical Report for Somali Region

[10] Almost similar legal protections are stipulated under different other international and regional human rights instrument. For instance, Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); Articles 3, 4 and 6 of the International Convention for the Protection of All Persons from Enforced

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As the UN Human Rights Committee (i.e., committee that monitors the enforcement of ICCPR) explained, the provision above impose obligation on States to ensure the availability of accessible and effective remedies to vindicate rights violations – possibly judicial remedy.[11] Thus, for rights to have meaning the availability of effective remedies which redress violations is must. This general obligation imposed upon states is corollary human right of individuals ensuring that any individual who claims his right(s) are violated can have his right determined and obtain remedy by competent authority in the legal system of the state.

The other normative standard that often serves as foundation to make out the right to access to justice is individual's right to fair trial. Among others, the right to fair trial sets out:

- The right to take proceedings before a court, be brought before a judge or other officers authorized by law to exercise judicial power;
- The right to be tried by a competent, independent and impartial tribunal established by law;
- The right to equality before courts or other pertinent tribunals;
- The right to a public trial with all the guarantees necessary for defense; and
- The right to have legal assistance (without payment) where the interest of justice so require and where the accused do not afford the payment for assistance.[12]

While the general obligation of States to make available and accessible organs that remedy violation of rights is basically concerned with substantive element of the right to access to justice, the list of guarantees under the right to fair trial on the other hand provide both substantive and procedural guarantees. Nonetheless, most of the fair trial guarantees are framed in the context of criminal justice system, particularly, as rights pertaining to arrested or accused persons.[13]

b) Access to Justice in Ethiopia

i. *Legal Framework*

In Ethiopia, the right to access to justice is a constitutionally entrenched right. Article 37 (1) of the FDRE Constitution specifically provides that:

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

Though the above provision appears to have focus on the substantive aspect, and to this end guarantees a specific right to access to courts or other competent judicial bodies, it indeed has various important aspects which have different implications on the right to access to justice. For instance, in conjunction with Article 25 of the Constitution guaranteeing the right to equality, access to justice set out the right to equality before courts and tribunals with judicial power; without discrimination. Likewise, along with Articles 78 and 79, the constitution inform the right to trial by a competent, independent and impartial tribunals established by law.

Articles 19 and 20 of the Constitution are the other provisions of the constitution which cannot be dispensed with while dealing with the right to access to justice. However, resembling some of the core international legal frameworks, these provisions as well outline the components of the right to fair trial only in the context of criminal justice system while they are equally relevant in judicial procedures determining rights and obligations (civil matters). For instance, the rights to speedy trial, assistance of an interpreter at state expense during proceedings, legal representation at state expense for indigent defendants when there is/are risks of miscarriage of justice, the right to appeal, etc are set in the context of administering criminal justice procedures.[14]

Underneath the constitution, there are subsidiary legislations enacted to supplement the principle as laid down by the Constitution. First and foremost, in order to ensure the competence, independence and impartiality of the judiciary, there is a Federal Judicial Administration Council Establishment

Disappearance; Articles 2 and 4 of the Convention on the Rights of the Child (CRC); Article 2 (c) of the Convention on the Elimination of Discrimination Against Women (CEDAW); Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Article 4 of the Convention on the Rights of Persons with Disability (CRPD); Article 26 of the African Charter on Human and People's Rights (ACHPR); Articles 1 and 4 of the African Charter on the Rights and Welfare of the Child (ACRWC); and Article 25 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

[11] UN Human Rights Committee, General Comment No.31, cited above at note 1, para.15. See also, Committee on the Rights of the Child (CRC), General Comment No. 5 (2003), General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, para.6), (CRC/GC/2003/5, 27 November 2003), paras.24 and 25

[12] See Articles 7, 8, 10 and 11 of the Universal Declaration on Human Rights, Art.14 of ICCPR, Art.40 of CRC, Article 7 of ACHPR, Article 17 of ACRWC and Article 8 and 25 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

[13] Of course, almost all international and regional human rights instruments guarantee equality before the law for all. But, when it comes to the right to fair trial the range is often limited to persons arrested or accused.[13] In this respect, the provisions of Universal Declaration of Human Rights (UDHR), ICCPR, the Convention on the Rights of Persons with Disabilities (CRPD) and Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa are exceptional. All of these treaties set out the right to fair trial to all whose rights or freedoms therein have been violated.

[14] Article 19 and 20 of the FDRE Constitution

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Proclamation.[15] The proclamation has guarantees relating to security of tenure of judges, independence of the judiciary from political interference by the executive and legislative branches of government and set apparently clear procedures and criteria for the appointment, remuneration, promotion and dismissal of judges and possible disciplinary measures against judges. While this legislation ensures institutional aspect, there is also Federal Courts Establishment Proclamation which ensures physical accessibility of courts and regulates personal aspect of judges; i.e., impartiality and independence of judges on a case by case basis.[16]

ii. *Judicial Organs*

The FDRE Constitution in clear terms establishes judicial organs at federal and regional states which have the power to entertain any justiciable matter. Basically, the Constitution provides that judicial powers, both at Federal and State levels, are vested in the courts.[17] Consequently, there are three tiers of courts established both at Federal and in Regional States; namely: Supreme, High and First Instance Courts.[18] These different levels of courts exercise judicial powers at Federal or Regional States based on particular laws that delineate their respective jurisdictions. In addition to regular courts, the Constitution also recognizes other institutions that will be empowered to exercise judicial powers based on legally prescribe procedures.[19]

Thus, in accordance with the obligations the country has assumed under international and regional human rights laws, Ethiopia has constitutionally entrenched judicial organs that may hear and decide legal matters. Besides, the Constitution sanction the judicial organs so established to function based on legally prescribed procedures.[20] It is also against the Constitution to establish special or ad hoc courts which take judicial powers away from the regular courts or institutions legally empowered to exercise judicial functions unless the former function according to procedures prescribed by law.[21] The principles and procedures courts have to follow are set under different subsidiary legislations – both at the Federal and Regional States.

IV. Observations Related to Access to Justice in Fafan, Siti, Nogob and Jarar Zones

a) *Legislative Frameworks*

Evidently, access to justice requires the existence of norms that define the rights and obligations of individuals, the organization and structure of judicial organs and the code of conduct of individuals working in the judicial and justice organs. In the context of Ethiopian Somali Regional State (ESRS), it is the regional constitution and other subsidiary legislations enacted by the regional council, i.e., Ethiopian Somali Regional State Council, which will be applied in the region. Accordingly, Ethiopian Somali Regional State has adopted its own regional constitution first, in 1991 and revised it in 2003. The Revised Constitution in almost similar terms with the Federal Constitution guarantees the right to access to justice[22] and, independence and impartiality of the judiciary.[23] Judicial powers are vested in courts and Supreme regional judicial authority is vested in the Regional Supreme Courts.[24] The Constitution also guarantees relating to appointment of judges, security of tenure of judges and independence of judges from political interference by the executive and legislative branches.[25]

Furthermore, taking into account indispensible roles religious and customary laws, and dispute resolution mechanism therein play in the tradition and customs of peoples of Ethiopian Somali Regional State, the ESRS Constitution allows religious and customary laws as well as courts to exist and practice religious and traditional administration of justice.[26]

There are also guarantees related to the powers and duties of regional Judicial Administration Council.[27] According to ESRS Judicial Administration Commission Establishment Proclamation, the Commission is mandated to select candidate judges for the regional Supreme, High and Woreda Courts, Issue Disciplinary Code of Conduct rules and, decide judges, registrars and defense attorneys' disciplinary cases. The proclamation also provides detailed rules on the appointment of judges for regional courts, guarantees related with independence of the judiciary, rights of judges, termination of tenure of judges, etc.

In addition, ESRS Courts Proclamation No. I/1991 is essential in terms of providing detailed rules related with the structure and jurisdiction of courts, place of sittings of supreme, high and Woreda courts and working languages thereof. The Proclamation includes

[15] Proclamation No. 684/2010, Amended Federal Judicial Administration Council Establishment Proclamation, Federal Negarit Gazeta, 16th year, No.41, 2010

[16] Proclamation No. 25/1996, Federal Courts Proclamation, Federal Negarit Gazeta, 2nd year, No.13, Articles 27 and 28.

[17] Article 79 of the FDRE Constitution

[18] Id, Article 78

[19] Id, Article 79 (4)

[20] Id, Article 79 (3)

[21] Id, Article 78 (4)

[22] Article 37 of the Revised Constitution of Ethiopian Somali Regional State, 2003

[23] Id, Article 65 and 67

[24] Id, Articles 67 and 68

[25] Id, Article 69

[26] Id, Article 66

[27] Id, Article 70

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rules concerning fair trial rights such as, public hearing and withdrawal of judge (on the grounds of lack impartiality).

Besides the regional State's laws, laws enacted by the Federal Government in areas exclusively vested upon it will govern such matters in the region. In this respect, one may identify laws governing criminal matters, commercial laws, labor law, some of the tax laws, etc. Furthermore, there are laws which are not federal by their nature but which are still applicable all over the country. These include, Civil Code of the Empire of Ethiopia, Civil Procedure Code, Criminal Procedure Code, etc.

Major challenge in relation to most of the laws above, in the context of the research areas, is the language the law codes are written. Predominantly, the society around the judicial organs, judges and court officers are native speakers of Somali[28] and lack adequate knowledge of reading or speaking Amharic or English languages the codes are written in. Somali/Somaligna is also the working language of the State. Thus, the fact that most federal legislation applicable throughout the nation such as, criminal procedure, civil procedure, civil code, property laws, and others enacted frequently at the Federal level are not translated in to Somali has been raised as one critical factor impeding efforts to ensure access to justice in the areas surveyed.[29]

There is also critical legislative gap in relation with adjudicating family matters in the region generally. Among others, lack of comprehensive regional family code has been a major setback. Since 2002, the federal government and all regional states, except ESRS, have adopted their own respective family codes that are compatible with international and national human rights standards; particularly revising provisions in the civil code that are discriminatory and against the rights of women and children. ESRS could not yet manage to adopt one. As a result, family matters are set to be settled on the basis of the Civil Code provisions – of course in line with the rules and principles set under the Federal and region's Constitution. Nonetheless, unless a strong regional family law with strict provisions on women's right to equality and non-discrimination is adopted – it remains challenge for, at least, women to access justice and vindicate violation of their rights.

b) Establishment of Competent Judicial Organs

i. *Institutional Competence - Structure and Powers of Courts*

Ensuring the right to access to justice both in civil and criminal cases undoubtedly requires availability of judicial institutions which are competent, independent and impartial. Particularly, competence, independence and impartiality are essential elements of effective protection of the right to fair trial. This is why that international human rights instruments such as, ICCPR[30] and ACHPR[31] clearly stipulated the right to have cases heard by competent, independent and impartial tribunals.

Structurally, the Revised Constitution recognizes Regional Supreme Court at the center, Zonal courts in each Zone and Woreda courts at each Woreda administrative unit. Given the fact that Woredas' are the lowest administrative structure next to Kebele, it can be concluded that, the regional constitutional norm is fairly enough in terms of legally guaranteeing physical accessibility of courts. In line with this, the four administrative zones surveyed in this research established Zonal and Woreda courts based on their respective administrative structure. The table below summarizes the level of courts and their respective location in the research areas.

[28] According to information in the Ethiopian Government portal, Somali/Somaligna is the predominant language spoken in ESRS constituting 95.9% of the population. See Ethiopian Government Portal, cited above at note 45.

[29] The Regional Supreme Court and Justice Bureau have made attempts to translate some of the federal codes in to the regional working language – Somali. Under the project, so far some codes such as the 2004 FDRE Criminal Code is translated in to Somali and put in to use in the regional courts.

[30] ICCPR, Article 14

[31] ACHPR, Article 7

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Table 1: Zonal High Courts and Woreda Courts in Fafan, Siti, Nogob and Jarar zones

	Zone	List of Woredas by zone	Division of court available
1	Fafan	Tuli Guled	Woreda Court
		Awbere	Woreda Court
		Babile	Woreda Court
		Gursum	Woreda Court
		Harshin	Woreda Court
		Jigjiga	Woreda Court and Zonal High Court
		Kebri Beyan	Woreda Court
2	Siti	Afdem	Woreda Court
		Ayisha	Woreda Court
		Dembel	Woreda Court
		Erer	Woreda Court
		Shinile	Woreda Court and Zonal High Court
3	Nogob	Dihum	Woreda Court
		Fiq	Woreda Court and Zonal High Court
		Gerbo	Woreda Court
		Hamero	Woreda Court
		Lagahida	Woreda Court
		Mayumuluka	Woreda Court
		Salahad	Woreda Court
4	Jarar	Degehamedo	Woreda Court
		Degehabur	Woreda Court and Zonal High Court
		Gashamo	Woreda Court
		Gunagudo	Woreda Court

Article 34 (5) of the Revised Constitution also recognizes religious and customary courts that may adjudicate disputes related with personal and family laws. There is, however, no detailed subordinate law such as, proclamation or regulation that define the jurisdiction of religious or customary courts and the relation they have with regular courts in the region. This had created confusion within society, as observed in the context of the research areas, over the division of power and working methods – particularly between the regular courts and religious (Sharia) courts.

The problem is further complicated when one observe that in almost all woreda courts, Sharia courts exist within the compound of Woreda or first instance courts. Evidently, given the fact that the region's population is predominantly Muslim, putting Sharia courts along with regular courts may highlight the degree of recognition and importance given to it. Nonetheless, it is equally important to bear in mind that religious courts rules and procedures are distinctive and apply on the basis of parties consent to abide by it. Particularly, from the perspective of parties who do not want to use such options, location of religious courts with formal courts may compromise their interest to pursue justice through the regular courts.

ii. *Personnel Competence*

Besides institutional competence, ensuring competence of personnel's (judges and judicial officers) working in judicial organs is the other facet of the requirement of establishing 'competent tribunal'. Accordingly, a legally established tribunal must have "qualified and experienced persons to act as judicial officers".[32] As the UN Basic Principles on the Independence of the Judiciary requires:

> "(p)ersons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualification in law."[33]

States may use different criteria and procedures to determine the ability/competence of persons selected for judicial office – provided that the process employ safeguards that prevent appointment of unqualified persons. In addition, continuous training and capacity building measures may be required and necessary to develop personal competence – more particularly for

[32] A. Conte and R. Burchill, "Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee", 2nd Ed., 2009, p.165

[33] UN Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

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judges dealing with specialized legal matters such as, juveniles.

As it has been pointed out earlier, it is the mandate of ESRS Judicial Administration Council to select candidate judges to the regional Supreme, High and Woreda Courts.[34] Then, up on the recommendation of the Judicial Council, candidates will be appointed by the ESRS Council.[35] The regional Judicial Council Establishment Proclamation set general criteria and procedures for selection of judges. Accordingly, any Ethiopian who meets the following criteria of election for judgeship may be appointed as judge:

- A person loyal to the Federal and the Regional Constitutions;
- Has legal training and acquired legal skill through experience;
- Has a good reputation for his diligence, sense of justice and good conduct;
- Consents to assume judgeship; and
- Is not less than 25 years of age.

The Judicial Administration Council has to ensure that nominees satisfy these conditions before submitting their list for appointment to the regional Council. In addition, the Judicial Council has the responsibility to solicit and obtain the view of the Federal Judicial Administration Council on candidates selected for the regional Supreme and High Courts. In any case, the above criteria and others related are important in guaranteeing competency of individual judges. By contrast, if the system is poorly designed and/or the Judicial Administration Council do not adhere to the rules and procedures, that will allow unskilled, incompetent and unmotivated individuals to be in the judicial process and compromise service effectiveness thereby violating service users right to access to justice. Objectively, a brief look at the criteria above informs that, the criteria set under the Judicial Administration Council's Establishment Proclamation are too general and minimal. It is not clear for instance, what will be the measurement to determine loyalty to the Constitutions. Likewise, the sort of training, skill and experience required is not defined. Mind here that, this criterion does not at all refer to educational background.

It is an internationally accepted principle that, the selection and career of judges should be based on merit, having regard to qualifications (in law), integrity, ability and efficiency.[36] In the selection of judges, "there shall also be no discrimination against a person on the grounds of race, color, sex, religion, political or other opinion, national or social origin, property, birth or status", except the requirement of nationality. Finally, it has to be ensured that, the procedures to appoint judges are transparent and independent in practice.[37] ESRS Judicial Administration Council Proclamation falls short of guaranteeing these standards.

In addition, neither the Proclamation nor its procedural rules clearly provide details on important selection procedures, such as:

- The opening of and search procedure for candidates;
- The procedure for selection and evaluation of candidates;
- The procedure for screening and final decisions about individual candidates;
- On outside (public) input or involvement in to the selection; and
- The right for candidate or other individual to appeal against a decision whatsoever.[38]

Consequently, one can conclude at this juncture that, the rules and procedures for selecting candidate judges and appointment thereof, as provided under the ESRS Judicial Council Establishment Proclamation is incomprehensive and thus, does not guarantee quality of individual chosen to be judges. Evaluation of judges and other court staff on the ground squarely reflect the failure in the system. There seems to be less concern for qualities, skills and experience. The table below summarizes the number of judges and their educational qualifications at Woreda and Zonal High Courts in the research areas.

[34] Article 69 of the Revised Constitution of Ethiopian Somali Regional State

[35] Ibid

[36] UN Basic Principles on the Independence of the Judiciary, cited above at note 64

[37] Council of Europe Committee of Ministers, Recommendation No. R (94) 12, "On the Independence, Efficiency and Role of Judges"

[38] These were some of the problems identified at national level based on the baseline study of Ethiopian justice system in 2005 under the defunct Ministry of Capacity Building, Justice System Reform Program Office. Though different measures were taken at the federal level, the legal and practical the challenges still persist in the research areas; and generally at ESRS level. See Ministry of Capacity Building Justice System Reform Program Office, cited above at note 14, p.160

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Table 2: Number of judges in education standards

Education Standard	Fafan Zone	Siti Zone	Nogob Zone	Jarar Zone	Total
2nd Degree and above in law	6	-	-	-	6
1st Degree in Law	14	4	3	5	26
Diploma in Law	25	9	11	13	48
Certificate in Law	14	12	13	10	49
Degree in other Fields	8	2	3	-	13
Diploma in other Fields	12	6	5	3	26
Certificates in other Fields	-	-	-	-	-

Source: ESRRS Supreme Court 2006 Annual Report

As can be seen from the table above, less than half of the judges, i.e., 80 out of 168, representing 47 % of judges in the three administrative zones have law related educational qualification above diploma level. This implies two things: either lack of skilled man power or the minimal level of concern given to nominee's educational background. In an interview with ESRS Supreme Court, it was also pointed out that acute qualified and skilled manpower and that the region has been taking different measures to solve the problem.[39] Such measures include, creating higher education opportunities (in partnership with Jigjiga University) for judges and other court officers working at woreda and high courts, and capacity building trainings through ESRS Judicial Professionals Training and Research Institute.

c) Independence of the Judiciary

Ensuring the right to access to justice also requires an independent and impartial judicial system as well as judges and judicial officers. This means that the judiciary as an institution and, individual judges and judicial officers that involve in judicial must act independently and impartially.

i. *Institutional Independence*

The requirement of institutional independence basically emanate from the theory of separation of power among the legislative, executive and judiciary branches of government. Concerning the judicial branch, separation of power theory requires States parties to ensure (legally) institutional independence of the judiciary from the executive and legislative branches. Essentially, this entails enacting and enforcing laws that guarantee "actual independence of the judiciary from any interference by the executive and legislative branches in the inherent judicial functions of the judiciary".[40]

As far as the law is concerned, ESRS Constitution clearly provides that "Courts of any level in the region shall be free from any interference or influence of any governmental body, government official or from any other source."[41] The Revised Constitution clearly stipulates independence of the judiciary and that judicial powers are vested exclusively in the courts of the region.[42] It can be said from this that jurisdictional independence is also constitutionally entrenched in the region.

Moving on to financial and administrative independence, the Revised Constitution also confers upon Regional Supreme Court the power to draw up and submit to the Regional Council the budget of the regional courts.[43] Up on approval by the Council, the Supreme Court administers the budget. According to Article 79 (7) of the FDRE Constitution as well it is the power of the Regional Councils to determine the budgets of State Courts. These constitutional stipulations are more than enough for one to conclude that institutional independence of the judiciary is legally well recognized in ESRS in general; with necessary implication of the same in the research area.

Practically as well, in an interview with the President of ESRS Supreme Court as well as Presidents of High Courts in Fafan, Siti, Nogob and Jarar Zones, none of them raised budget issue as problem to care about. It does not, however, take a while for one to notice resource limitations in the courts – which is directly attached with budget. In observations made by the research team and interviews with other court officers, in almost all Woreda and High Courts, there is acute shortage of legal materials (particularly, up to date regional and federal legislations), court rooms and judges' bench are poorly furnished, as a result, most trials are conducted in judges' offices – which are also

[39] Interview with H.E. Abdulahi Mohammed – ESRS Supreme Court President

[40] HRC, General Comment No. 32, cited above at note 4, para.19

[41] Article 67 (2)of the Revised Constitution of Ethiopian Somali Regional State

[42] Id, Articles 67 (1) and 68 (1). The Revised Constitution of ESRS confirms under Article 65 (2) exclusive jurisdiction of courts to consider judicial matter as follows:

> "Special or ad hoc courts which take judicial powers away from the regular courts or institutions legally empowered to exercise judicial functions and which do not follow legally prescribed procedures shall not be established."

[43] Id, Article 68 (7)

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under equipped, facilities such as legislations, ICT equipments, file cabinets, file folders, and others are rarely available.

Budget constraint is also identified as one of the major constraints holding back efficiency and effectiveness of the justice sector in general as well as to the judiciary in particular. For instance, in three years GTP I assessment report published in 2013, ESRS Bureau of Finance and Economic Development (BOFED) raised shortage of budget as the major factor for:

- Shortage of qualified man power at different levels of justice sector;
- Lack of office equipment and furniture for the justice sector;
- Poor improvement of information and data in the justice system;
- Lack of availability of information and data in the justice system;
- Lack of trainings to the community to equip them enough knowledge on their legal rights;
- Underdevelopment of social courts and law enforcement at kebele level; etc[44]

This clearly informs that, there is challenge related to financial independence of the judiciary ESRS in general. Obviously, this compromise independence of the judiciary and eventually, may erode public confidence on the independence of the judiciary.

Though it was difficult for the researchers to conduct sample survey on the public perception of the independence of the judiciary, from the research teams observations, review of reports (including GTP I and II of ESRS)[45] and opinion of almost all of persons the research team met, it can safely be concluded that the people in the research areas have low perception of the judicial independence. As the Center for International Legal Cooperation reported in its 2005 Baseline Sturdy on Ethiopian Justice Reform Program, "lack of public and political trust can have serious consequences for judicial independence, as it can encourage incursions into judicial prerogatives".[46]

It is worth to mention at this point that, there is no mechanism in ESRS in general as well as in the research areas that is designed to solicit information from the public about judicial independence. None of the reform measures so far have integrated secure and confidential mechanism by virtue of which an independent organ (may be, the Regional Judicial Administration Council) will conduct inquiry about the public perception of the independence of the judiciary or other mechanism through which the public may complain about lack of independence even on case by case basis.

ii. *Individual Independence*

Ensuring institutional independence alone is not enough to guarantee judicial independence. Individual judges' and other judicial officers' independence in carrying out judicial functions must also be legally guaranteed and practically enforced to make access to justice certain. Like institutional independence, the primary obligations of States regarding individual independence is to put in place legal guarantee clearly establishing individual independence of judges and other judicial officers.[47] Among others, such legislation shall at least provide:

- The procedure and qualification for the appointment of judges;
- Guarantees relating to the security of tenure of judges – which shall be 'until a mandatory retirement age or the expiry of their term of office;
- Objective criteria and conditions governing promotion, transfer, suspension, cessation of functions by judges and disciplinary sanctions against judges; and
- Actual independence of judges from political interference by the executive branch and legislature.[48]

Almost all the above requirements are constitutionally guaranteed in ESRS.[49] The rules and procedures for appointment of judges are also recognized under the Constitution.[50] Similarly, ESRS Courts Establishment Proclamation and Judicial Administration Council's Establishment Proclamation contain detailed rules regarding rules and procedures for appointment, suspension and termination of tenure of judges and sanctions for disciplinary violations.

Though there is no as such grave practical challenges attached to the implementation of the above standards entrenched under international human rights law and ESRS Revised Constitution, there are minor cases where judges were suspended from duty against what the law provides. The regional Courts Establishment Proclamation provides regional High Court and Woreda Court Presidents with the power to administer judges, registrars and defense attorneys in their respective jurisdiction. Legally, such power does not include the power to suspend judges for any ground. Of course, the Revised Constitution recognizes suspension of judges from duty, until dismissal decision

[44] ESRS, Bureau of Finance and Economic Development, "Assessing Development Gaps in Somali Regional State of Ethiopia", , 2013, p.176

[45] ESRS, Bureau of Finance and Economic Development, ESRS Growth and Transformation Plan (2010/11-2014/15

[46] Ministry of Capacity Building Justice System Reform Program Office, cited above at note 14, p.160

[47] HRC, General Comment No. 32, cited above at note 4, para.19

[48] Ibid

[49] Article 67 of the Revised Constitution of ESRS

[50] Id, Article 69

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of the regional Judicial Administration Council is approved by the State Council.[51]

Practically, the fact that Presidents of Woreda and High Courts act as judges as well as administration officials with responsibilities and obligations towards the President of the Regional Supreme Court has created a leeway for Presidents to make personal decisions for suspension from duty of judges – which is not legally recognized. 63% respondents, who are judges in the Woreda and High Courts in all the three zones, believe that Presidents have such power. Among these, 45% further assert that they know cases where judges were suspended from duty for different grounds – but based on letters written from presidents. Legally speaking, this indirectly affects judicial independence and may create space for court administrators' incursion in to the decision making process by individual judges.

d) Impartiality of the Judicial

Both ICCPR and ACHPR recognize judicial independence as one of the most important aspects of the right to a fair trial. Regarding the content, in its explanation of ICCPR provision, UN HRC explained that impartiality has two aspects: individual and institutional.[52] The Committee Held that:

> "[Individual impartiality of judges requires them] … not to allow their judgment to be influence by personal bias or prejudice, nor harbor preconceptions about the particular case before them, nor act in ways that improperly promote the interest of one of the parties to the detriment of the other.
>
> Second, [under institutional impartiality] the tribunal must also appear to a reasonable observer to be impartial. For instance, a trial substantially affected by the participation of a judge who, under domestic statutes, should have been disqualified cannot normally be considered to be impartial."[53]

In the context of the research areas, there are significant legislative frameworks that are meant to ensure impartiality of the judiciary as an institution and individual judges as decision makers. The Revised Constitution guarantee judges to exercise their functions directed solely by the law without any interference, pressure or influence whatsoever.[54] In order to ensure institutional impartiality of the judiciary, ESRS Courts Establishment Proclamation provide guarantees related to withdrawal of judges in objective circumstance that are likely to compromise individual judge impartiality such as, consanguinity or affinity with one of the parties, spousal relationship with one of the parties, if the judge had acted as advocate, tutor or agent of one of the parties, etc.[55]

Despite the existence of such legislative frameworks, society opinion and experience on impartiality of the judiciary is bleak. For instance, 53% of clients and lawyers who have or had cases pending before one of the judicial organs in three zones the research is undertaken believe that in or another way the judges reflect bias, influence or pressure in their respective cases. To the contingent question posed to such respondents on 'whether they have any knowledge of the procedures for withdrawal of judges as provided under the region's laws, 78% response is 'Not at all'. The remaining 22% contend that they are aware of the law, but fear further threat, pressure, bias or prejudices to their case in case they invoke it. Respondents most often rely on the appeal system to have remedies for the problem.

In an interview made, most of the Woreda and Zonal Courts presidents emphasize lack of as such worrisome complaints made for withdrawal of judges or generally on judge's conducts and assert that is because the judges are solely directed by the law and there is strict follow-up procedure. Nonetheless, the research team learnt that, except boxes or notebook to put suggestion – which is again rarely considered in performance evaluation, there is no comprehensive mechanism put in place and that provide the public with opportunities – to express its opinions about judges' performance and to have legitimate remedies for judicial misconduct.

e) Enforcing Fair Trial Guarantees in Court Proceedings

The notion of fair trial basically includes legal principles and procedures in judicial processes that are aimed at safeguarding individual rights. Broadly interpreted, it includes rules applicable in case of deprivation of liberty, rules related to property and rules related to administrative procedures.[56] However, the discussion here is limited only to procedures and principles applicable in the administration of justice.

i. *Equality before Courts*

Equality before courts has two aspects. The first one is *equal treatment of parties* – which refers to equality before the law of parties and non-discrimination.[57] Broadly, it includes prohibition of distinctions regarding access to courts that are not based on law and cannot be justified on objective and reasonable grounds (such as, based on language, religion, political or other opinion, national or social origin, birth, property or other status).

[51] Article 67 (5) of the Revised Constitution of ESRS
[52] Id, para.21
[53] Ibid
[54] Article 67 (2) of ESRS Revised Constitution
[55] ESRS Courts Establishment Proclamation No. 1/1991
[56] M. Sepulveda, et al, "Universal and Regional Human Rights Protection: Cases and Comments", 2004, p.477
[57] Id, para.9

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The second aspect is *equality of arms* – which require enjoyment of same procedural rights by all parties in the same proceedings. This is also broad and includes lots of guarantees related to access to evidence, opportunity to contest arguments and evidences adduced by other party, equal right to appeal and guarantees that ensure equal participation of parties in judicial proceeding such as, free legal aid service and assistance of an interpreter. Exiting legislative frameworks in ESRS do not have as such significant gaps that may indicate a situation where an individual's right to access to justice will be frustrated for lack of legal guarantees.

Evaluation of the practice in the research areas, however, indicates challenges related with legal assistance. As far as the legal framework is concerned, the Revised Constitution recognizes the rights of accused persons to get legal representation at state expense if there is reasonable ground to believe that miscarriage of justice would result for the party is not represented by legal counsel of his choice for lack of means to pay for it.[58] To give effect to this constitutional guarantee, ESRS Courts Establishment Proclamation authorizes the president of Regional Supreme Court to organize the 'Public Defence Office'. Though the office has been established and has been providing counseling and legal representation services, its reach is limited to Jigjiga Town. As the Director of Public Defenders Office argues, financial/budget constraint is the reason behind limited reach of the service.[59] Thus, such services are unavailable in almost all woredas and zones the research covered – except Jigjiga Town.

Though there is no constitutional and other legislative framework guaranteeing free legal assistance service for parties in civil proceedings, it has now been conventionally accepted that such guarantees are taken as part and parcel of the right to access to justice. As the HRC has pointed out:

> "availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in a meaningful way … [thus] states are encouraged to provide free legal aid in other cases (i.e., including civil cases), for individuals who do not have sufficient means to pay for it."[60]

This seems the reason why the ESRS Advocates Licensing and Code of Conduct Proclamation and Regulation thereof impose duty on any advocate practicing before regional courts to render at least 50 hours of free legal service in a year to indigent persons, charity organizations, civic organizations, community institutions and to persons to whom court requests legal service. Any advocate, therefore, has to obligation to live up to this duty. Despite such legal guarantee, it is not, however clear how the regional Justice Bureau, which is mandated to monitor the observance of the duty by advocates, is making use of this option. There is no documented report that provides information on how the system has been put in to practice and the beneficiaries thereof.

It is worth to mention here efforts made by Jigjiga University Free Legal Aid Center (JJU FLAC) to provide legal assistance, counseling and consultation for indigent and vulnerable groups of society in the region. The center at Jigjiga Town is fully functional since 2011 and additional centers are operating in three Woredas of Fafan Zone; namely Awbare, Gursum and Kebre Beyan. Through these branches, the center has been providing legal aid services for significant number of parties who have no other options. Still, the reach of FLAC is limited to only four Woredas in Fafan Zone and the rest of Woredas and zones this research has covered have no such opportunity.

ii. *Public Hearing of Cases*

Public hearing guarantees the open administration of justice unless exceptionally done in camera for reasons of morals, public order or national security or when the interest of private lives of the parties so requires. Public hearing further requires that any judgment made must be made public unless the interest of juveniles requires otherwise or the proceeding concern matrimonial dispute or the guardianship of children. The guarantees here are applicable in any proceeding – whether criminal or civil. As the HRC assert, "publicity of hearings ensures the transparency of proceedings and provides an important safeguard for the interest of the individual and of society at large"[61]; which directly is related to the right to access to justice.

Thus, apart from those exceptional circumstances where proceedings may be held in camera for reasons of morals, public order, national security or interest of private lives of the parties, a hearing must be open to the public and must not be limited to a particular category of persons.[62] In this respect too, there is fairly adequate legal guarantee in the context of the research areas, particularly in relation with criminal proceedings.[63]

Observation made by the research team, however, indicate that significant number of proceedings (particularly, in civil cases) are held in judges office only the parties to the case attending. This in effect is trial in camera for unjustifiable reasons. In an interview with the presidents of Woreda, High and Supreme Courts, they all admit the problem is caused by lack of resources to establish enough rooms for

[58] Revised Constitution of ESRS, Article20 (5)
[59] Interview with Mr. Kader Sheik Mohammed - Director of ESRS Public Defenders Office
[60] HRC General Comment No. 32, cited above at note 4, para.10
[61] Id, p.27
[62] Id, para.29
[63] Article 20 (1) of ESRS Revised Constitution

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public trials and lack of adequate facilities in the existing rooms that have been delaying proceedings – thus, necessitating trial in office rooms.

iii. *Prompt Disposition of Cases*

Disposition of cases promptly basically entails ensuring efficiency in terms of delivery of justice. Efficiency, however, shall not be at the expense of rule of law; i.e., cases has to be entertained (both in civil and criminal matters) within reasonable time and on the basis of rules and principles of law. As the HRC noted, excessive delays in criminal or civil proceedings that cannot be justified by the complexity of the case or the behavior of the parties is against the principle of the right to fair trial.[64]

As far as the legal frameworks are concerned, the Revised Constitution ESRS guarantee the right to be tried within a reasonable time for accused persons.[65] Though such constitutional guarantee exist only in relation with criminal cases, unreasonable delays cannot be accepted in civil cases too – as he HRC reasoned out above.

Regarding the practice on the ground, the research team could not get adequate performance repots at Supreme Court level or at the level of particular judicial organs. In an interview with presidents of Woreda, High and Supreme Courts, they all maintain that there is a good case clearance rate at the region in general as well as in the judicial organs in the research areas. Report at regional level assessing three years progress of the first Growth and Transformation Plan (GTP I), also indicate that generally; case disposition rate in the region reached 95%.[66] Nonetheless, perception of the public and lawyers on the issue is different. According to the data gathered, 52% of persons which had cases decided by courts or have cases pending as well as 41% of lawyers practice before regional courts challenges case disposition efficiency of courts in the research area.

f) Accessibility of Judicial Organs

i. *Effective Access to Appeal*

The right to review of cases by a higher tribunal is explicitly guaranteed under ICCPR.[67] The guarantee, however, is limited to criminal cases. UN HRC also asserted that the right to review by a higher tribunal "does not apply to procedures determining rights and obligations in a suit at law or any other procedure not being part of a criminal appeal process (this specifically refers to civil cases)[68]. Thus, while access to appeal in criminal cases has international human rights law guarantee, access to appeal in civil case is left to domestic legal order.

In Ethiopia, the FDRE Constitution as well as the Revised Constitution of ESRS establishes three tiers of courts. Regionally, there are State Supreme, High and First Instance Courts.[69] Based on the Regional Constitution's clause this leaves details to be determined by particular laws, ESRS Courts Establishment Proclamation clearly set the structure and jurisdiction of regional courts. As far as appeal right is concerned, the Proclamation provide clearly legal guarantees to make appeal to the next higher court, up to cassation.

Accordingly, supreme judicial authority is vested in the Regional Supreme Court, which also includes jurisdiction over matters which fall under the jurisdiction of the Federal High Court (by delegation).[70] On the other hand, State High Court has appellate jurisdiction over decision of Regional First Instance Courts.[71] Thus, it is safe to conclude at this juncture that, there are domestic legal orders that legally guarantee access to appeal in the context of the region in general and in the research area in particular. Such guarantees are applicable both in criminal as well as civil cases.

ii. *Physical Accessibility of Courts*

Determining the structure and hierarchy of the judiciary is matter left for States that will be decided by domestic legal order. Nonetheless, States need to consider the structure and organization they set do not compromise the principle of competence, independence and impartiality of the judiciary. What is more, States need to ensure that geographical location of courts or other judicial divisions is well suited to the service recipients (i.e., clients). As a matter of fact, courts (particularly, first instance jurisdiction courts) located in remote places (both in rural as well as large cities) frustrate the right to access to justice unless there are other scheme devised (such as, circuit benches).

As it has been said above (in relation with access to appeal), the Federal as well as regional laws are fairly enough in terms of legally guaranteeing access to appeal – both in civil and criminal cases. As far as the legal guarantees concerning the place of sitting of courts is concerned, the Regional Courts Establishment Proclamation provides that: Regional Supreme Court's sit in the regions capital, i.e., Jigjiga, the Regional High Courts at the centers of the Zones and Regional First Instance Courts sit in the centers of Woredas.

Challenges in the research area surface when one consider the legal guarantees concerning the place of sitting of courts vis-a-vis the actual physical location

[64] HRC General Comment No. 32, cited above at note4, para.28
[65] Article 20 (1) of ESRS Revised Constitution
[66] ESRS, Bureau of Finance and Economic Development, cited above at note 81, p.176
[67] Article 14 (5) of ICCPR
[68] HRC in its General Comment No. 32, cited above at note 4, paras.45-51
[69] Article 78 (3) of FDRE Constitution and Article 68 (1) of the Revised Constitution of ESRS
[70] Ibid
[71] Ibid

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of different levels of courts in the research area. The Revised Constitution consider administrative unit centers as the appropriate place of sitting for courts and ESRS Courts Establishment Proclamation provide detailed rules to this effect. Practically, this means courts' location is determined on the basis of where the center of the administrative is; and, do not necessarily take in to account whether such placement is accessible for the community/society living in that particular administrative unit. In other word, courts sit in urban centers or municipalities or similar administrative units – without regard to where the majority of population in that particular administrative unit reside. This evidently raises concerns related to access to justice.

For instance, in Jigjiga Woreda – which is also the capital of the region- only one Woreda Court located at the outskirts of the town is there for almost 277, 560 peoples living in the town.[72] There is no other bench or division located in more accessible places either for the urban or rural population in the Woreda. The same is true in other major Woredas the research has covered. The table below summarizes the number population in each Woredas within the research area by urban-rural residents and Division of court available. All the courts sit in urban centers, i.e. the Capital of Woreda or Zonal Administration.

Table 3: Population by Urban-Rural Residence and Division of Courts Available

Geographical Area	Population			Division of court available
	Uban	Rural	Total	
Fafan Zone	203,588	764,064	967,652	
Tuli Guled	-	-	-	Woreda Court
Awbere	-	-	-	Woreda Court
Babile	1,273	76,044	77,317	Woreda Court
Gursum	2,970	24,540	27,510	Woreda Court
Harshin	8,226	72,018	80,244	Woreda Court
Jigjiga	39,750	299,753	339,503	Woreda and Zonal High Court
Kebri Beyan	25,493	140,025	165,518	Woreda Court
Sitti Zone	64,263	392,823	457,086	
Afdem	9,286	55,745	65,031	Woreda Court
Ayisha	7,970	50,116	58,086	Woreda Court
Dembel	13,648	68,638	82,286	Woreda Court
Erer	12,657	64,971	77,628	Woreda Court
Shinile	19,799	82,775	102,574	Woreda and Zonal High Court
Nogob Zone	33,930	314,479	348,409	
Dihum	2,216	22,866	25,082	Woreda Court
Fiq	12,112	117,935	130,047	Woreda and Zonal High Court
Gerbo	6,742	38,671	45,413	Woreda Court
Hamero	1,217	59,260	60,477	Woreda Court
Lagahida	2,180	15,235	17,415	Woreda Court
Mayu Muluke	4,157	7,750	11,907	Woreda Court
Salahad	829	33,253	34,082	Woreda Court
Jarar Zone	62,584	415,584	478,168	
Degehamedo	1,265	57,222	58,487	Woreda Court
Degehabur	30,027	85,528	115,555	Woreda and Zonal High Court
Gashamo	6,659	88,532	95,191	Woreda Court
Gunagado	8,114	104,810	112,924	Woreda Court

Source: The 2007 Population and Housing Census of Ethiopia: Statistical Report for Somali Region

One can easily observe from the table above that, mostly, the number of population a single court without division or benches which are more accessible to peoples in remote areas within Woredas or within a specific zone. For instance, a high court in Jigjiga is for seven Woredas in the zone and there is no division in any other Woreda. Similarly, Shinile Zone High Court located in Shinile serves all the six Woredas in the zone and it has no division elsewhere in the zone. The same is true for Nogob and Jarar Zone High Court – which are located in Fiq and Jarar, respectively, without division in any other Woreda in the zones.

[72] "The 2007 Population and Housing Census of Ethiopia: Statistical Report for Somali Region", p.7

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Also, most of the Woreda Courts sit in Urban Centers which have less population compared to number of populations in rural areas. Of course, existing administrative structure and feasibility may require placing courts in urban areas. But, it has to also be ensured that rural population has effective access to justice without being held back by distance and remoteness of judicial organs. The same challenge is there when one considers the place of sitting of Regional Supreme Court. It is permanently located in the regional capital, Jigjiga, with no other divisions in any of the Zonal capitals in the region. Thus, except residents of Jigjiga Town, all other rural and urban residents in the region have to move to Jiigjiga to make appeal at Supreme Court.

It is not easy for one to find out the distance and cost implications of placing courts only in urban centers with out, at least, divisions in areas more accessible to beneficiaries. This, no doubt, compromises individuals' right to access to justice. As a solution for such problems, the Regional Courts Establishment Proclamation authorizes a court at any level to hold circuit hearings in any place or area within its local jurisdiction.[73] The problem remains that this option has never been put into effect in any one of the courts above.

g) Judges Access to Legal Materials

Normally, adequate funding and resource – both in terms of institutional resources and with regard to benefits to the judges and other judicial officers – ensure institutional competence, independence and impartiality of the judiciary. Unless, the functioning of the judiciary will be restricted and this will expose the institution as well as individual judges and officers to external control and other factors that compromise judicial independence and impartiality – such as, prejudices, corruption, etc. It is in recognition of this threat that the UN Basic Principle on the Independence of the Judiciary reiterates the need for:

> "Adequate resources for the functioning of the judicial system, including appointing a sufficient number of judges in relation to caseloads, providing the courts with necessary support staff and equipment, and offering judges appropriate personal security, remuneration and emoluments.[74]

Among others, the guarantee here entails obligations on State parties to allocate adequate budget and resource that enable judicial organs to function effectively. Basically, judicial organs has to be equipped with necessary resources such as, offices for judges, court rooms, legislations and other relevant legal materials, transportation services (as necessary), and other physical infrastructures needed for case and court management. Except challenges attached to judges access to legislations, most of the other resource constraints and their impact have been discussed in the forgoing sections.

As the research team examined, there are observable challenges related to judges' access to legal information and materials. Almost all judges in the three zones complained about the lack or the non-existence of federal or regional legislations, other legal references such as, Federal Supreme Court Cassation Decisions and generally legal information on current legal matters. Neither the Federal Negarit Gazeta where laws adopted at the federal level are proclaimed nor regional law gazeta, i.e., Doll Gazeta, where regional laws are published are readily available to judges on permanent basis.

One would at least expect that the regional laws spread and made available to all judges in the region. This is not however the case. Similarly, Federal Supreme Court Cassation Decisions which judges shall mandatorily take judicial notice of interpretations are not available in all Woreda courts and most of the High Courts in the research area. Only few copies, which do not include recently issued volumes is available in the Regional Supreme Court. In an interview with the President of the Supreme Court, lack of financial means has been raised as major factor for the problem.

Besides, the research team has also observed that there is no strategy adopted at the regional level to make legal materials and information accessible to judges and other judicial personnel. At least, providing access to information technology system to judges would enable them to access digital copies of laws at the federal level which are this days available in several law websites.

Most Judges at Woreda Courts as well as Zonal High Court admit the challenge and held that, there were even occasions where they delay decisions on particular cases until copies of relevant and up to date legislations or Federal Supreme Court Cassation Decisions are found. In most cases, judge order the parties to the case to produce the legislation or the case which the party argue in support of his case. Unless, or sometimes owing to lack of information about new legislations, judges are forced to apply old laws which are no longer in force.

V. Conclusion

As it has been put forward, the right to access to justice is an indispensible component of individual human right guaranteed under international, regional and national human rights treaties. Thus, to ensure full protection of human rights, it is essential that individuals have accessible and effective legally established to vindicate rights. Such organ shall work on the basis of legally sanctioned rules and procedures – which shall in turn be compatible with minimum human rights standards.

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In this research, it has been pointed out that, though basic substantive and procedural laws enacted by both the Federal and ESRS exist in the research areas, the fact that most Federal Laws, such as the Civil Code, Civil Procedure Code, Criminal Procedure Code and others are not translated in to the vernacular Somali language has been impeding judicial works and individual's access to justice. Lack of comprehensive regional family code has been a major setback to ensure family rights, particularly, the rights of women and children in relation with matrimonial property and other family rights.

The selection and appointments of judges are not often based on merits and this compromised competence of judges and other court personnel in the research areas. Resource constraints in almost all Woreda and Zonal Courts has poor furnishing of court rooms and benches, shortage of legal materials, lack of up to date legal references such as Federal Supreme Courts Cassation Decisions.

Concerning guarantees related with ensuring equality of arms for all parties in judicial proceedings, though there is fairly adequate legal framework, there are challenges in relation with persons accused of crime. Basically, this is owing to the fact that the reach of regional 'Public Defence Office' is limited to Jigjiga Town and that there is no free legal aid service in most Woredas and Zones except the four Woredas in Fafan Zone that JJU FLAC cover.

Though the legal guarantees are fairly enough in terms of guaranteeing individuals access to justice, the location of courts mostly only in administrative towns without divisions or circuit benches in remote areas is a challenge. There is also no system or mechanism that is put in place to ensure judges access to federal or regional legislations and other legal references such as, Federal Supreme Court Cassation Decisions and generally legal information on current legal matters. These often led judges to require parties to the case to produce any legislation based upon which they support their case. Sometimes, owing to lack of information about new legislations, judges are forced to apply old laws which are no longer in force.

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