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**PROBLEMS OF SOCIAL COURTS IN  
OROMIA REGIONAL STATE AND ITS  
IMPLICATION ON THE RIGHT OF THE  
DEFENDANT.**

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## **Introduction**

The Judiciary is one of the three organs of a government in countries like ours.

As far as the judicial organs of our regional state (oromia) is concerned there are 64 51 Kebele social courts, those are enforced the judicial power in addition to regular courts which are found at deferent levels of jurisdiction.

When we compare the legal power given to this institution in respect to their numbers as well as their coverage areas from, these, we can infer that they need sufficient consideration and continuous follow up, in terms of infrastructure, reinforcement, proper legal training and human power capacity building.

The oromia social court judges have many defects in the actual practice of court proceedings i.e. inefficiency in the bench, court mal-administration, leaving the substantive and procedural law a side, abuse of power and corruption are some of them.

These highly challenging the judicial activities of wereda state courts and most of the cases brought to the appellate court are reverse due to this effect in this regard, the rights of citizens both on civil and criminal matters are highly affected and the complaining denial of justice.

Thus it is this and the like which initiated the writer to conduct this research paper. Accordingly this paper contains four chapters. The historical background of social court system prior to the dergue period and post-dergue period.

The second chapter discusses on comparative analysis judicial power of oromia social courts in light of regular courts. This chapter contains seven sub-titles.

The third chapter attempts to analyze the judicial independence. The impacts of judicial selection appointment promotion, tenure and disciplinary measure of the region selection of social courts judges in oromoa regional state and disciplinary measures.

The forth chapter delis implication on the right of the defendant evaluation in light of oromiya city kebele social, Addis Ababa city government kebele social court, special emphasis and court practice judgment given by the court and their effectiveness and personal opinion and criticism on the judgment.

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## **CHAPTER ONE**

### **Historical Background of social court**

Ethiopia had passes through different judicial systems since ancient time the legal system was used to a applying in solving disputes



among people specially during the emergence of modern states, the state, where the political system is composed of weredas, zones court system dates back to the last stage of feudal system in the region of Haiesielase

The Ethiopian litigation system was highly related to cultural a traditional mode of litigation than the substantive laws.

During the Haiesielase regime of Atbia-Dagna or local judge were established by law this was the lower courts, Local courts low courts judges were not government employees. But were authorized by the proclamation to handle cases of small claims. These judges quite often held office. Because of their hereditary title of grant landholder or representative. However, on rare cases they were chosen from among the landowners of the locality by the government of the district.

Here after, the writer tries to discuss on the definition, concepts objectives and historical development of social courts in Ethiopian context.

### **1.1 Definition of social courts.**

In order to have good understanding of the definition it is appropriate to start with general definition of a court.

A court is an organ of the government belonging to the judicial dependent whose function is the application of the laws to controversies brought before it and the public administration of justice it is a body in the government to which the administration of justice is delegated, it is an incorporeal, political being, composed of one or more judges who sit at fixed times and places, attended by proper officers, pursuant to law full authority for the administrant of justice it coued also be defined as an organized body with defined powers meeting at certain times and places for the hearing and decision of cases and other matters brought before it and aided in thus it is proper and business by its proper officers.<sup>1</sup> on the other hand, a court is also a person or body of persons, whose task is to hear and submit a decision an cases at law, or the building hall or room in which such cases are heard and determined or the regular session of a

judicial assembly. In addition, it is also a similar authorized tribunal having military or ecclesiastical jurisdiction.<sup>2</sup>

Thus the foregoing, being the general definition of courts, social courts are the lowest hierarchy (level) of courts.

Their establishment is aimed to render the possible fair decision the

- Court of law. The establishment of social courts also enhances people's participation in the administration of justice. This may be justified in the
- Litigation by giving speedy trials and for wording ideas or opinions in the
- Litigation process at the fixed place in the Kebele/tabia and out of thus
- when necessary.<sup>3</sup>

## **1.2 Objectives of social courts**

Social courts shall have the objectives of

- To safeguard the rights and interests guaranteed by the constitution and laws.
- To make efforts to maintain peace and stability among residents of the Kebele community, and there by create conducive atmosphere for development, and making their best level efforts to raise the legal consciousness of the Kebele community.<sup>4</sup>

The objectives of social courts being the for a going, they are organized bodies with defined power, meeting at certain time and place for hearing and deciding cases brought before, them. They are established to contribute in the administration of justice at Kebele level and to grant services to the given Kebele people. Social courts prevent the violation of law, keep the people through convictions and social influence by creating conditions of intolerance to any anti social acts. Social courts are organs established to settle disputes and protect the people from unnecessary - - - expenses, develop the out look of the society and assist in promoting

the attitude of the people towards respecting law, strengthen the neighbor - hood of citizens or residents in a given place or area.

### **1.3 Historical Development**

The Ethiopian litigation system in was highly stickled to cultural and traditional mode of litigation than the substantive laws. This traditional mode of litigation was “tatagmugt” The literary meaning of the term “Tatayyag” is be interrogated “which is technically the traditional mode of litigation in court proceedings.<sup>5</sup>

On the other hand, period to the dergue regime Atbia-Dagna or local judges were established by law.<sup>6</sup> consequently in accordance with the proclamation No. 2/1942 Art 2/D/the communal court established in -the empire acted as Atbia -Dagna or local judges of lower courts in fact were authorized by the proclamation to handle cases.

- small claims.

These judges quite often held of i.e because of the their hereditary title of grant land holder or representative. However in rare cases they were chosen from among the landowners of the locality by the landowners governor of the district. Two assessors sat with the local judge were he could not affect a compromise in criminal cases. <sup>7</sup> This indicates that these local were authorized to adjudicate criminal cases.

The judges also had original jurisdiction over civil cases involving an amount of birr 25 or less and in criminal cases offences punishable with fine not more than birr 25.<sup>8</sup> the procedure they followed was simple and the decisions were applicable to sub district courts. However, the local judges courts by implication abolished by the 1965 civil procedure code of Ethiopia.<sup>9</sup>

#### **1.3.1 During the Dergue Period**

During this period the urban judicial Tribunal was established at urban areas by proclamation.<sup>10</sup> it was enacted for the determination of

ownership of urban lands and extra Houses. The Tribunal land jurisdiction to hear and decide on disputes involving urban land and houses arising between urban dwellers. The proclamation clearly declared that these judicial tribunals had no power to hear criminal cases.<sup>11</sup> In the same year the judicial tribunals were established in peasant associations.<sup>12</sup> In rural areas the judicial Tribunal was in power to hear and decide on some criminal matters defined by the proclamation, and had the power to impose a fine ranging from Birr 100 to Birr 300 or imprisonment up to 3 months.<sup>13</sup> By another proclamation the urban judicial tribunal was empowered to hear criminal matters in addition to its previous power.<sup>14</sup> By this proclamation different kinds of penalties were provided among which the tribunal was empowered to impose fines up to Birr 300, sentence of hard labor up to fifteen days and sentence of imprisonment up to 3 months.<sup>15</sup> By dissolving the judicial tribunals of urban and rural areas, the Dergue established a judicial body which was called social court in each Kebele of urban dwellers and peasant associations.<sup>16</sup> By this proclamation it was declared that social courts have been given jurisdiction only on specific offences.<sup>17</sup>

Moreover, the proclamation reduced sentence of imprisonment from 3 months to 1 month as compared to the previous judicial tribunal whose power to order compensation had no limitation; the amount of compensation was limited to Birr 500 under this proclamation.<sup>18</sup>

In general, this proclamation has changed the Kebele tribunal structure into the social court structure, which was forced to be a new structure and enhanced the administration of justice. However, due to the overthrow of the government in 1991, this proclamation was not in force for a long time.

### **1.3.2 During post-Dergue Period**

Under federal Democratic Republic of Ethiopia there are social courts established coming to the special reference of oromia regional state, three level of judiciary has been established namely, supreme high and first instance courts under article 64 the revised constitution.<sup>19</sup> However the revised constitution of the region out side the regular courts established and gives recognition to social courts both under article 90 and 101<sup>20</sup>. in the same manner The Proc. No. 66/2003 of oromia regional state which provides for the re-establishment in the same manner the pre and determination of the power of the social courts has given the power to entertain petty offence under Art 15-38 which are punishable with one month imprisonment of fine up to Birr 300 (three hundred birr)<sup>21</sup> the writer tries to make further analysis of oromia social courts in lights of regular courts as the maintain of this paper in the next chapter.

## **CHAPTER TWO**

### **Comparative Analysis of Judicial power of oromia social courts**

#### **In light of Regular courts**

Judicial power is a power of judiciary among the three organs of the government judicial powers in Ethiopia; both at federal and state levels are vested in the courts. The judiciaries established at both level are also independent and constitutionally guaranteed under FDRE constitutionally Accordingly, the judicial organs of the federal structure are structured as the federal supreme court, federal high court and federal first instance courts where as the judicial organs of their region are structured at the state supreme court the high court and the district (wereda) courts.

## **2.1 Judicial power In General**

Judicial power is the power of a court to decide and pronounce a judgment and carry it in to effect between persons and parties who bring a case before it for decision.<sup>1</sup>

Many choose to use terms “judicial power” this may be acceptable depending on the context, one must not confuse the two as distinct legal theories.

Were we define jurisdiction is the authority under which a court may exercise its judicial power we then define judicial power as the authority of the court to active given controversy. In other words, is jurisdiction that gives a court the, authority to act over a case brought before it, but it is judicial power that gives the court the authority to perform the various acts necessary to conclude the particular case. It is important to remember that without jurisdiction a court may it has .<sup>2</sup> judicial power is largely associate with individual liberty.” The lis no liberty if the judicial power be not separated from the legislature and executive” other wise there might be arbitrary government.<sup>3</sup> From this reading one can understand that judicial power is only granted when there is clear separation of power. The separation of judicial power from the two other branches of government are effectively able to control the legislature.<sup>4</sup> This indicates that insuring the independence of the judges



only when demand necessary or be delegated to the state courts.<sup>12</sup> the state courts having the concurrent jurisdiction exercise the jurisdiction of the federal.<sup>13</sup> High court and the federal first instance court in addition to state jurisdiction to make it clear, state courts having delegated judicial power over federal matters in their respective regions are found to be.

- a) State Supreme Court is equivalent to federal high court.
- b) State high court is equivalent to federal first instance court

## **B. Structure of Federal Courts**

The fore-going discussion being judicial power of federal courts it is also appropriate to see and make clear the court structure of federal courts. In this manner, when starting from the present federal structure of Ethiopia the power of the central government is decentralized and shared among the federal government on one hand and the state government on the other. In clear terms each government. Empowered to establish three organs legislative, executive and Judiciary on their respective spheres.<sup>14</sup>

Consequently the FDRE constitution provides for a three tier of federal court system, i.e. the federal supreme court the federal high court and the federal first-Instance courts whose jurisdiction is mentioned in the for going discussion. The federal constitution at the same time has established at three layered court system of state supreme, high and first instance judicial power is delegated and exercised by state courts.<sup>16</sup>

### **2.1.2 Judicial Power and the structure of Oromia state courts.**

When coming to the regional state of Oromia, the established regional courts have also their own structure and judicial power respectively. These regional courts were initially established during the transitional period by the proclamation No. 3/1993 Namely.

- A/ Regional Supreme Court
- B/ Zonal High Court



C/ wereda court.<sup>17</sup> and re-established by the proc No. 6/1995 later on.<sup>18</sup>

Thus pursuant to art 63/1/of the revised oromia. Regional state constitution judicial powers of the region are vested only in the courts.<sup>19</sup> Accordingly the judicial organs of the region are structured as the state supreme court the high court and the district court and have the following judicial power in accordance with Art 64 of the revised constitution respect rely.<sup>20</sup>

The state supreme court

- is the highest organ or state matters,
- It is equivalent to the federal high court over federal matters and has the judicial power to review by way of association a female decision of any regional court to correct a fundamental error of law (Hrt 64/2).

### **2.1.3 The State high court**

- is equivalent to federal first instance court 9Art 63(3). The decisions of high court in pursuance of federal first instance jurisdictions shall be appeal able to the state supreme court.
- Has appellate jurisdiction over the decision of the district courts.

### **2.1.4 The state wereda (District court)**

- Is the lowest court of the regional state exercising first instant jurisdiction on state matters It has also appellate jurisdiction over the decisions of Kebele social court. But, when coming to the actual practice of court regarding the jurisdiction, the state wereda court entertains criminal and labour case of the federal laws without having regard either by delegated power or explicit provision. This issue is still controversial among the lawyers.

### **2.1.5 The Relation between federal courts and oromia state courts.**

As the federal democratic republic of Ethiopia comprise the federal government and the state members, the power of the central government is decentralized and shared among the federal government and the state members the power of the central government is decentralized and shared among the federal government and state government.<sup>20</sup> Based on this principle each government is empowered to establish three organs namely legislative executive and judiciary or their respective spheres accordingly judiciary is the third branch of the government among the three organs of the government and the established judiciaries both at federal and state levels are independent by the FDRE constitution.<sup>21</sup> judicial power at both level are also vested the courts.<sup>22</sup> Both judiciaries have the same goals and objectives being under the federal judicial system. To ensure justice and supremacy of the law to speedy trial and - To promote uniform administration of justice. on the other hand as the division of power is in here at in federal system, the jurisdictions of the federal high court and of the first instance courts are delegated to the instance courts are delegated to the Oromia supreme ad high courts respectively.<sup>23</sup>

In the same manner, the oromia supreme and high courts concurrently exercise the jurisdiction of the federal high court.<sup>24</sup> To sum up, both the federal and oromia state court have the same goals and objectives to promote uniform administration of justice, transparency accountability and shared judicial power under the federal system.

### **2.1.6 The Relation between wereda state courts and Oromia social courts.**

Before discussing the relation between the two courts it is appropriate to distinguish them precisely.

Thus, starting from Wereda state courts they are the lowest courts of regional state exercising first instance jurisdiction in state matters and are established by the revised regional constitution.<sup>25</sup> Moreover, the

judicial organs of the region is structured as state supreme court, the high court and wereda court by the regional proclamation No.6/1995.<sup>26</sup> to make it clear, state. Wereda courts are the third court level of judicial organs of state exercising first instance jurisdiction in state matters and have operate jurisdiction over the decision of Kebele social courts.

When coming to the social courts they are courts which have been established at, the Kebele level pursuant to Oromia regional state pro No. 64/2003.<sup>27</sup> They are established out side the regular court system (structure) and are given recognition by the revised regional constitution.<sup>28</sup> But it shared be noted that oromia social courts are not regular courts due to the facts that regal courts are those courts structured in three tries (hierarchies) at courts system in state and federal levels and which are recognized as a state of federal judiciary body. Thus Oromia social courts do not have status of regular courts and this subject matter will be briefiey discussed in the next sub-topic of this chapter.

Therefore coming comeback to the subject matter the relation between wereda state i.e. the courts and Oromia social courts is stated as follows.

1. Both judicial organs have the same goals and objectives to promote Uniform administrative of justice respectively.
2. it is inevitable that the social courts wide a vital role in reducing the burden of the regular courts.
3. The social courts are duty bound to report their judicial performance every four months to the were do courts which have never been implemented
4. They also duty bound to execute the decision of the wereda state courts
5. The wereda state courts like were are duty bound to assist the social courts in giving training and seminars so as to make social courts efficient which haven't yet been enforced.
- 6.

### **2.1.7 The status of Oromia social courts**

There are big difference between oromia social courts and regular courts. Thus before making comparative analysis of oromia social courts in light of regular courts it is appropriate to discuses first under federal system. Accordingly starting from the court structure in Ethiopia, the independent judiciaries both at federal and state levels have been established b y the FDRE constitution.<sup>29</sup> More over this constitution provided for the three level hierarchies of federal courts i.e the federal supreme court, the federal high court, the federal first instant courts on one hand and the three state supreme high court and first instance courts on the other as stated in the fore going discussion under this chapter.

Similarly, the oromia regional state revised constitution proc No. 46/200 has established the independent judiciary in the region.<sup>30</sup> More over this regional constitution has provided for the three level of courts i.e. the federal supreme court the federal high court the federal first instance courts on one handle and the three tire courts system of state courts i.e. the state supreme court the high court and the district court.<sup>31</sup> Besides this Oromia Regional courts reestablishment proc No. 6/1995 has provided for the same hierarchy of courts in the region.<sup>32</sup>

When coming to the powers of the courts judicial powers both at federal and state level are vestell in the courts.<sup>33</sup> Accordingly, the federal courts have inherent judicial powers over federal matters where as the state courts have inherent power over state matters in their spheres.<sup>34</sup> More over the federal courts establishment proclamation has provided that the federal courts have judicial power over federal matters.<sup>35</sup>

On the other hand the Oromia regional state revised constitution has provided that judicial power of the region is vested only in the courts in the same manner as that of FDRE constitutio.<sup>36</sup>

Therefore in summarizing the discussion or the status of regular courts both the federal and the Oromia regional state constitutions

provide for the three levels of hierarchies of courts and the judicial powers are vested in courts (Both at federal and state levels).

Having in mind this constitutional principle, now the writer tries to evaluate the constitutionality and status of oromia social courts in light of regular courts that is said to be the heart of this paper. Accordingly, starting from the social courts which are found to be out side. The regular court structure, the oromia regional state revised constitution pro No. 46/2001 has established and given recognition to these social courts both under Art. 90 and 101.<sup>37</sup> consequently, the social courts have been re-established by the regional proc. No 66/2003 .<sup>38</sup> More over this proclamation has given the criminal jurisdiction to social courts which empowers them first instance jurisdiction on petty offences.<sup>39</sup>

However, the criminal cases entertained by social courts and which are punishable with one-month imprisonment or fine up to Birr 300 (three hundred birr) under art 15-38 of this proclamation, is not the judicial power of social courts. Because the pre-existing penal code of 1957 or, the new revised penal code of 2005 is the federal law which the federal courts have inherent judicial power federal matters.<sup>40</sup> .

Similar by the federal courts establishment proclamation No. 25/96 provides that federal courts establish that federal courts have inherent jurisdiction over cases arising form international laws federal constitution and federal law<sup>41</sup>.

- Based on this legal context and constitutional principle even regional states have no inherent judicial power on federal matters except either exercising delegated or concurrent judicial power of federal courts over federal matters.<sup>42</sup>

Thus in light of the sprit of this constitutional, provision and federal courts establishment proclamation, it is possible to say that the Oromia regional state has enacted the proc. No 66/2003 and given criminal jurisdiction to the social courts contrary to the FDRE constitution of art 55/1/5/ 79/1/ and the regional revised constitution of art 63(1) which has resulted in (brought) the constitutionality and

legality of the status of oromia social courts in question other wise in the very beginning the oromia regional stated (caffee) it self before enacting the said proclamation, it should have observed its regional revised constitution proc. No 46/2001 of Art 49(3) (a) which states that the caffee shall have the powers and duties to “enact laws consistent with this constitution. The federal legislation.<sup>43</sup> the other very important issue and has to be considered as the final analysis of the status of oromia social courts is the subject matter of “The legally prescribed procedures” Regarding this Art 78(8) of the FDRE constitution prohibits the establishment of institution legally empower to exercise judicial functions which do not follow legally proscribed procedures.<sup>44</sup>

Despite such requirement the oromia social courts judges are only required to speak and write “Afan Oromo” (without any requirement for knowledge or skill in legal (matters) to be elected as judge under proc-No. 66/2003. <sup>45</sup> Thus, in this manner how can one expect such judge to have the capacity to follow the legally prescribed procedures? In other words it is very unlikely or hardly found on practice to expect fair decision from the social court judges on criminal matters that need to follow legal procedures and serious decisions. But who are only required to speak and write Afan Oromo this has also put the constitutionality and legality of the status of oromia social courts in question.

However, the oromia regional state (caffee) in the first hand before enacting proc. No. 66/2003, should have also observed Art 78(4) of the FDRE constitution and should have stipulated explicit provision in the proclamation providing for “legal skill” as one requirement (criteria) in addition to the working language of the region for becoming a judge and following the legally prescribed procedures effective.

To sum up as briefly discussed here above the judicial power granted to the social courts by the proc. No 66/2003, to entertain criminal matters and the capacity of the social courts judges to follow the legally prescribe procedures is not recognized by both the FDRE constitution of Art 55/1/5/79(1) 78(4) and the oromia Regional state revised constitution of

Art 63(1) the oromia social courts have no the status of regular courts and are not constitutionally guarantee that needs due attention for amendment.

### **2.1.8 The Power to Entertain Civil Matters**

Oromia social courts have been first instance jurisdiction on civil matter of dispute relating to a property the value of which does not exceed Birr 1,000 (one thousand Birr) or cases involving not more than this sum and other related civil matters in accordance with the proc No.66/2003 of Art 13/1-13-.<sup>46</sup>

Similarly, the oromia social courts have first instance jurisdiction on civil matter of any conflict or dispute that arose on (farm) land boundaries or land holding pursuant to oromia rural and use and administration proc. No 56/2002.<sup>47</sup> more over, this proclamation grants the right to appeal to wereda state court for a party whom has complaint on the decision given by the local court.<sup>48</sup> the proc. No 66/2003.<sup>49</sup>

However, regarding a dispute of farmland boundaries or land holding cases, the actual practice shows that the judicial power vested in social courts by proc. No 56/2002 is found to be one of the most critical problems and burning issues in the region due to the following regions.

- 1) No impartial and fair decision
- 2) The decision lacks clarity and sufficient evidences.
- 3) Abuse of power and corruptions are highly increasing in the social courts judiciaries.
- 4) In proper application of the law and other procedural irregularities (lack of capacity to follow legal procedures)
- 5) The upper hand and clear interference of Kebele executive
- 6) An appeal is not given in time according to the law to which the right of appeal recognized by the constitution is denied.
- 7) There is no accountability and disciplinary measure for gross incompetence and breach of duties. Thus when evaluating the enforcement of the proc. No. 56/2002, it is not effective and due to

the above mentioned short coming currently a number peasants are found to be land less and most of the disputes of land cases in the social courts are brought to the appellate, court which is highly challenging the judicial activities of wereda state courts. This critical problem affects not only the rights of citizens. But also puts “Good Governance” in question within the Kebele community.

### **2.1.9 The Power to Entertain Criminal Matters**

The Proclamation No. 66/2003 has also guarantee judicial power to oromia social courts on criminal matters of petty offences under Art 15-38 that has been briefed in the fore going discussion.<sup>50</sup> However, for the purpose of reminding again, the social courts are no judicial power on criminal cases of federal matters even by way of delegation except the state supreme and high courts.

Thus, from this reading one can clearly understand that the social courts without having judicial power of criminal matters entertain and render - un law full decision that affects constitutional rights of the citizens in other words, it is noting, but simple abuse of power highly affecting the legal and constitutional rights of the accused which needs due attention of the regional government (caffee).



## **CHAPTER THREE**

### **3. Judicial Independence, Elements of judicial independence, institution, Independence, Decisional Independence and personal independent**

#### **JUDICIAL INDEPENDENCE**

**3.1** Truly independent judiciary is a pillar of democracy it is an institution for the up holding of human rights and the right against corruption independence is the foundation of the legitimacy of judiciary including structural, organizational and administrative

Aspects of judicial system, which all plays a role in judicial independence. The concept of judicial independence is continued to the judiciary institutional and also attends to the independent of the individual judge. An independence judiciary must have the power to control over judicial administration matters i.e. the power to decide appointment, transfer tenure and discipline of judges further more, it must have the power to administer its structure are and other related matters without interference of any organ of the government. This is also for the social court of the region one of the fundamental factors that helps to realize the constitutionally guaranteed judicial independence is to have a judicial administration directed in away free from the in influence of government organs of officials. In other words, judicial independence is as essential constitutional principle that needs impartiality of justice system in which institutional independence, decisional independence and personal independence is protected by the law and administered by the judiciary.

The term judicial independence is the combination of two words, judicial and independence. Accordingly before defining the judicial independence, it is preferable to define the two separately.

To began with the werde” judicial” it is defined as “relating or connected with the administration of justice as a judicial office having the character

of judgment or formal legal procedure as a judicial. Act proceeding form court of justice.<sup>1</sup> when coming to the word “independence” it is also defined as the state of being free from control or the condition not subject to restriction or limitation.<sup>2</sup> Therefore, the term judicial independence is defined as an essential constitution principle that needs impartiality of justice system. Basically, judicial independence is related to the notion of conflict resolution by a neutral third party or some one who is trusted to settle controversies after considering only the facts and their reactions to the relevant laws. The judge who also decides the disputes should not has a relation with the litigants and direct interest with the parties and the outcomes of the case.

More over, Keith S Rosenn, defines the independence of judiciary as the degree to which judges actually decide cases in accordance with their own determination of the evidence of the law of justice free from coercion and blandishment authorities of private citizens.<sup>3</sup>

There are also some commentaries on the focus of judicial independence to define the term judicial independence. Accordingly, an independent judiciary has been defined as “a judiciary which dispenses justice according to the law with regard to the policies and inclination of the government of the day.<sup>4</sup> In this sense the general aspect of judicial independence therefore, focuses on the independence of the judges the decision making process.

The other aspect of the independence of the judiciary is more related to the principles stated by Montesquieu, the separation of powers. The principle laid down great emphasis on the need for judiciary to be kept apart from the legislative and executive function of the governments.<sup>5</sup> According to this theory, the three organs of the public decision makers should have certain independence in relation to each other however, the modern principle of separation power does not mean total separation of the organs of government, But means check and balance.<sup>6</sup>

The main essence of the judicial process is the principle of judicial independence. The meaning and contents of this principle vary from one country to another country upon the system of government local traditions and climate of political opinion and even in the same country.<sup>7</sup> therefore, the independence of judiciary has a number of definitions and more than one dimension, including structural, organizational and administrative aspects of judicial system which all play a role in judicial independence.<sup>8</sup>

### **3.1.2 The Elements of judicial In dependence**

There are several elements of judicial independence. These are substantive or functional or decisional independence personal independence, collective independence and internal independence.<sup>9</sup> However, in numerating the theoretical elements of the judicial independence, a distinction must be made between two aspects of the concepts of the independence of judiciary are the independence of the individual judges and the collective independence of the judiciary as a body.

The independence of the judicial judge comprise of two important elements substantive independence and personal independence substantive independence means that in making judicial decisions and exercising other authority but the law.<sup>10</sup> But, the writer wants to focus on the following elements of judicial independences decisional independence and personal independence.

### **3.1.3 Institutional Independence Social Courts**

Institution Independence /collective independence/ implies judicial participation in the central administration of courts.<sup>11</sup> The concepts of institution of (collective) independence may require a great measure of judicial participation in the central administration of the costs, including

The preparation of budgets for lower courts the extent of judicial participation may range from constitution and sharing responsibility with the executive to excusive judicial responsibility.<sup>12</sup> The development

of judiciary as a significant social institution in satisfaction with or important constitutional role requires that the concept of judicial independence is confined to the independence of the judiciary as a whole corporate body of the judiciary as a whole corporate body (Institutional).<sup>13</sup> and it also extends to the personal and substantive independence of the individual judges.

The institutional independence showed by widely recognized on the basis of law of every country according to the basic principle of the Nov 1985 UN Declaration.<sup>14</sup> therefore, the institutional independence should have

- Legal guarantee which means the independence of judiciary should be declared by law/constitutional Guarantee.
- Internal independence-independent from juridical superiors and colleagues.
- Judicial power Authority over- justice able matters.
- The power to control over judicial administration matters which comprise the power to decide appointment of judges judicial salaries, discipline of judges.
- The power over its autonomy of budget e.t.c .<sup>15</sup> is in addition to this it must have the power to administer its structure and other related matters without the composition or interference of any organ official.

### **3.1.4 Decisional/Substantive/ Independence**

Decisional/Substantive/ independence is one of the essential elements of the independence of the individual judge. It means, making judicial decisions and exercising other officials due to subject to the law. It is also the ability to make decisions according to the law not according to the external political factors.<sup>16</sup> the internal factors that influence the judicial decisions are pressures of the political organs of the government i.e. the legislative and executive personal relationship with respect to the parties' e.t.c

This principle is not only applicable during the decision-making but also applicable after the court has given its decision. All political

organs including individual/of the government should be bound by this principle. They are obliged to respect and implement the courts decisions.

### **3. 1.5. Personal independence**

Personal independence refers to the fact that judges have secured judicial terms salaries, and the judiciary contras on case assignment, court scheduling and judicial transfers to a different court.<sup>17</sup>

According to this principle every judge is free from any personal control by other government organs and judicial superiors. This is to many that the judge can enjoy and exercise his terms of office as to the law without his /her/ consent, transfer is impossible, There is also no any measure taken up on the judge unless he/she has made un code of act Removal suspension reduction of salary etc. of the judge should be vested in the judiciary.

Moreover, the security of judge should be directly regulated and protected by the law and administered by the judiciary. The protection of personal independence of judges includes protection against the parties to particular case to secure judicial immunity in the discharge of his/her official functions.<sup>18</sup>

To sum up, the personal independence of judges is protected and secured from

- Personal control against judicial tenure and appointment.
- Against actions forwards spoken or written
- Arbitrary transfer of judges by executive.
- Arbitrary determination of the judicial salaries this mean the determination of the judicial salaries should be guaranteed in possible ways by which this determination not imposed on its independence.<sup>19</sup>

### **3.2.1 Selection and Appointment**

#### **A. In case of regular court judiciaries**

In the accordance with the FDRE Constitution: Art. 81(3), the state council shall, up on the recommendation by the chief executive of the state, appoint the president and vice president of the state supreme court.<sup>20</sup> But the selection of other judges, i.e. sate supreme, high court and First Instance court judges shall, upon recommendation by the state Judicial Administration Council, be appointed by the state council. The State Judicial Administration Council before submitting nomination to the state council has the responsibility to solicit and obtain the views of the Federal Judicial Administration Council on the nominees and to forward those views along with its recommendations.<sup>21</sup>

Similarly, the Oromia Regional State Revised constitution Proc. No. 46/2001, Art 65(1-2) provides that:

- The President of the Regional government nominates the President and Vice president of State Supreme Court and Submits to the Regional Council (Caffee) for appointment.
- The selection of other judges, judges of all level of the courts (judges of the State Supreme Court, High court and District Court) is carried out through the Regional Judicial Commission and finally the nominees are submitted to Regional council for appointment by the president of the Supreme Court.<sup>22</sup>

In respect to nominees other than the president and vice-president of Supreme Court, the grounds (criteria) for selection and appointment to become a judge are listed down under Art 5 (a-h) of Proc. No. 6/95.<sup>23</sup>

In addition to this, a proclamation No. 54/2002 providing for the consideration for the Judicial Administration Commission of the Regional State of Oromia describes certain certain criteria of appointment for the judgeship under Art 13(1-2) of this proclamation. The criteria's are:

- ◆ Be loyal to the constitution of the Federal and the Regional Government.
- ◆ Have legal training and adequate legal skill.
- ◆ Have good reputation and conducts.
- ◆ Be fluent in the working language of the region.
- ◆ Not be convicted of a crime by a court of law.
- ◆ Consent to assuming judgeship.
- ◆ No person may simultaneously assume judgeship while serving in the legislative or executive branch of government or while a member of any political organization.<sup>24</sup>

However, subject to these criteria's for grounds of selection and appointment, "lack of transparency was found to be one of major problems in judicial selection and appointment by which some of the Regional State Judges had been selected for the legal training based on their loyalty to the executive and political organ of the state that had become controversial issue on judicial commission for recommendation of appointment and promotion of judges.<sup>25</sup>

From this phrase it was obvious that there were persons who simultaneously assumed judgeship while serving in the legislative or executive branch of government, which was found to be serious problems to judges who shall exercise their judicial function in full independence and shall be directed solely by the law.<sup>26</sup>

In fact, after the enactments of Proc. No. 54/2002 to provide for the Consolidation of the Judicial Administration Commission of Regional State, the judicial independence is relatively secure.<sup>27</sup>

## **B. Incase of Social Court Judges**

The appointment of Oromia Social Courts' judge is solely made by the administrative branch of the Kebele, Accordingly, judges of the social court shall, upon the recommendation of the chairman of the Kebele elected by a two third majority vote of the kebele council.<sup>28</sup> in this respect unlike the Regional Constitution, where there is involvement of the Judicial Administration Council in the appointment of regular court judges, judges of the social courts of Oromia are appointed only by the executive branch of Kebele.

On the other hand, when we see the requirements to be a judge or the Oromia social court, there is no as such legal and professional requirement as that of state regular court judges.<sup>29</sup> In other words, regarding the requirements to be a judge of social court, Art 8 (3) of the establishment proclamation provides that. "any resident of the Kebele except members of the administration council and voting member of the Kebele council, who speaks Afan Oromo can be elected as a judge of social court" <sup>30</sup> In addition to this, sub-article 8(4) (a) of the same provision provides that having the capacity of writing and reading" Afan Oromo" is the only requirement to assume judgeship in Oromia social courts.<sup>31</sup> However, in the actual practice there has been violations of individual rights in decision making due to the lack of professional legal skill. Further more most of the decisions of these social courts are reversed by the appellate court. The ground for such reversal among other things are improper application of the law, improper interpretation of the law and some other procedural irregularities which is to be discussed in the last Chapter Four of this paper.

In general, regarding the judicial selection and appointment of social court judges, there has been no judicial independence (institutional, decisional and even personal independence) due to the challenging and clear interference of the executive branch of the Kebele in addition to lack of legal skill which certainly leads to the violation of individual rights unlike of the regular courts' judiciary.



### **3.2.2 Removal of social court judges**

Regarding the removal of judges of the oromia social courts, Art 10(1) of the proc. No. 66/2003 provides that judges of the social courts can be removed on the grounds.

- When the term for which they are elected expires
- When he is proved incompetent or inefficient even though the term for which he was elected is yet to expire he may be removed by a majority vote of the decision of the Kebele council.
- Incuse where he abandons his residence in that Kebele
- Incase where he or she is elected to the Kebele administration council.
- In case where he or elected as a voting member of the Kebele council.<sup>32</sup> from the reading of this provision, it is easily understood that the proclamation has not provided for the grounds of incompetence or inefficiency of the judge.

One thing is true on the removal of the judges nothing has been provided for what does it mean by incompletely of in efficient as to grounds of removal of social courts judges that may lead to the arbitrary removal of the judge by the relevant authority.<sup>33</sup> In the same manner, the established standing committee under Art10 (5) of proc. No 66/2003 to investigate in to the in-efficiency of a judge and submit its findings to the Kebele has to Cleary defined guidelines and procedures to affect their dut.<sup>34</sup>

In general, the proclamation which established the oromia social courts is silent on the grounds of removal of judges consequence in light of regular court judiciaries the social courts judges are not independent and secured from the influence of kebele's executive organ that puts the institutional and decisional independence in question.

Now coming to the end of this chapter, the disciplinary measure is to be discussed as the subject.

### **3.2.3 Disciplinary Measure**

#### **A) In case of regular court judiciaries**

As far as judges courts provide a public service and one that contribute directly to the over all legitimate of stable institutions in the publicity judicial independent must be balanced with the democratic accountability and receptiveness. In clear terms judicial accountability is inseparable from judicial independence. Accordingly any judiciaries should behave in good conduct be impartial free from any corruption and Speedy trial to promote public confidence and justice system.

On the contrary justice may not be properly served due to various.

Reasons such as an skilled lawyers in efficiency in the bench, court mal-administration e.t.c Having this in mind, the judicial Administration commission has been established both at federal and state levels accordingly in accordance with Art 63(4) of proc. No. 46/2001 of the oromia Regional state revised constitution. The judicial Administration commission has been established.<sup>35</sup> This commission has the power to investigate and take appropriate measures when ever a judge manifested in competence and in efficiency or has transgressed the disciplinary and code of conduct rules for judges and other appointed in accordance with article 14(3) (4) of the proc. No. 54/2002.<sup>36</sup>

In addition to this, the commission has issued code of professional conduct on performance and conducts of judges.

This code of conduct has 4(four) sections and 54(fifty our) articles.<sup>37</sup> Further more, the regional commission has issued the judicial. Administration commission rules of procedure and By law rules No. 2/2002 which has 3(three) section and 17 (seventeen) Art.<sup>38</sup>

Therefore, anyone who is aggrieved in the process of the performance of judicial business has the right to code compliant to the commission empowered to hear the case in accordance with Art 17 of the proc. No 54/2002.<sup>39</sup>

## **B) In case of social court judges**

As oromia social courts are institution having judicial power outside the state regular courts structure, they are left right neither accountable nor responsible either to state wereda courts or judiciary. Administration commission of regional state to regulate the performance and discipline of judges in other words, there is no disciplinary measure for gross incompetence, bad behavior and breach of duties. Due to these and other reasons inefficiency in the bench, court mal administration, procedure irregularities abuse of power, corruption and lack of good governance are highly increasing in the social. Courts, judiciary which needs due attention of the regional government with respect to lack of transparency.

- The court session is not public rather sometimes held outside the court room in the hidden area (drinking place and the like)
- The judgment not pronounced publicly (in the presence of both parties)
- No impartial and fair decision
- Cases are not decided within a reasonable time, they are adjourned even for a year for unconvincing reasons.
- Complaining for denial of justice in courtroom is convicted rather than considered to be a legal right.

To summarize this chapter, the writer in his finding has observed that

- The lack of transparency
- Lack of legal requirement
- Lack clear procedures and the non establishment of judicial administration in the process of judicial selection, appointment tenure and disciplinary measure of Oromia social court judges which has endangered judicial independence and affected public confidence in courts in other words there has been no judicial

independence (institutional, decisional and personal independence) due to the above challenging short comings. Thus to secure of the judicial independence of the oromia social courts.

1. There should be transparency, accountability, legal requirements and clear procedures.
2. Judicial administration should be established.
3. Legal skill should also be one requirement to be a judge of social court in addition to the capacity of the working language of the region.
4. There should be code of conduct for the social courts judges.
5. Legal training should be available for capacity building
6. The regional government should give high priority and due attention to its judicial system and good governance.

## **4. CHAPTER FOUR**

### **4.1 Implication on the right of the defendant**

### **4.2 Evaluation in Light oromia city kebele social court No. 128/99 and Addis Ababa city government kebele social court pr. No. 31 /2007.**

### **4.3 Special emphasis and court decision practice**

### **4.4 Judgment given by the court and their effectiveness**

### **4.5 Personal opinion and criticism on the judgment.**

In Black's law dictionary the meaning given to the word implementation is "To show (a person) to be involved

1. in (a crime misfeasance etc)
2. To be involved or affected implication (1) the act of showing involvement in something esp. a crime or misfeasance (2) an inference drawn from something said or be served necessary implication, An implication is so strong in its probability that anything to the contrary would be unreasonable.

### **For the word defendants meaning given**

A defendant's method and strategy in opposing the plaintiff or the prosecution, a doctrine giving rise to such a method or strategy one or more defendants in trial commercial law. A basis for avoiding liability on a negotiable instrument .

### **4.1 Implication on the rights of the defendant**

In Oromia regional state social courts have been given the first instance jurisdiction on civil and criminal matters concerning civil matter disputes relating to a property the value of which exceeds birr 1000 (one thousand) in accordance with Proc. No. 66/2003 article 13/1-3/1 it has also the power of the petty offences under article 15-38 has been briefed. (f).

Any litigation which is proceeding in the court of law should be treated based on the law of the country this is constitutional principal, beyond this principles it is valuation of law social courts are one of the system of judicial there judgment must not be out of the tow parts of the law of the country.

The substantive and procedural law. As practically overserved the critical problems in the judicial judgment of social courts are leaving the substantive and procedure law, aside improper application of law lack of a conies statement of the facts, improper way of forming issue or with out forming no reasoning No ax aiming the evidence of the accused, do not hear the witness testimony properly due to this their judgment has lack of clarity and consistency .In judgment writing language is the device one if there is no clarity in language of the decision lacks its importunacy.

In Oromia social courts there is in capable of the working language. Which highly affect or in pact the judicial activity it's and fair judgment of the courts.

It is understood the social courts should precede the case lods to it based on procedural laws or pro No. 66/2003 article.<sup>2</sup> wither it is civil or criminal according to civil procedural code. No. 52/65 A defendant should be called by the service of summons.<sup>3</sup> (civil procedure). But most of the social courts does not follow this procedure, what they do is they order the local militia of the kebele administrative to bring the defendants. Even he doesn't tell for what purpose he is brought. In civil or criminal case or when suit is instituted a summons shall be provide to the defendant to appear and answer the claim on a day be specified there in accordance with art 233 or 338. <sup>4</sup>. In most of the social court this is not practical, on the other way when the defendant appear to the court he is not treated as law says in civil matter they arrest the defendant they do not examinee his evidence or they do not give chance to produce his evidence in a civil case after the suit is instituted there is hearing of suit day. On this day the defendant may asked wither he admit the suit

or not and also there is examination of witness. In some of the social court this procedure is not usually they give decision without not examining the witness testimony or documentary evidence according to civil code there should be a fixed day for hearing the suit. <sup>5</sup> But all most all of the social court does not use this procedure. On this duty the parties should be in attendance in the court room in person or by their agents (if it is civil) or pleaders and the suit shall then be heard civil procedure article 69.<sup>6</sup> this is not applicable in some of social court of oromia regional state.

The other point is when the defendant is called and not appears to the court and proved that the sum heard ex prate.<sup>7</sup> It is not proved that the summons to be served the court shall direct order a second summons most of the social court do not follow this procedure with out providing the problem of the defendant they pass decision.

Setting a side decree Ex-party against defendant. Any defendant against whom a decree is passed or order made Ex-prate or in default of leading may with in one month of the day .When he become awareness the decree was passed or order most of the social court judge do not know this procedure if this kind of issue is brought to the social court, it may not get acceptance the only known method is took appeal to the next court it is understood that the appeal may not effective because of procedural error.

Appeal is the right against the final judgment in civil case or criminal case. Any court who renders the statement should give the appeal when it is asked by the party who has apposition on decision against him sometimes social courts are not willingness to give appeal specially when the case is defendants appeal or they may delay the excauation.

The social courts being outside the regular court structure have no judicial accountability for their judicial performances. Due to these and other reasons there is no way to regulate and taking judicial discipline for the breach of their duties .To this effect most of the exaction brought to the higher court fail in to problems.

Social courts have the power to entertained the case between the kebele administrative and individual special cases which are criminal matter, this kinds of case does not properly treated according to the law they do not keep the right of the defendant they consider the defendant as a agility man before the decision with out excusing the evidence they give decision on him the punishment may be money or arrest this has it is own implication on the right of the defendant.

As it is observed from the practical social courts entertain the criminal matter which is not their jurisdiction that affects constitutional rights of the citizens in other words it is affecting the legal and constitutional rights of the defendant. This also happens sometimes in civil matter special subsection matter this is no the juridical or of the social courts, it is the jurisdiction of regular court.

Social courts have the power to see the criminal matter which is petty offense when some one is accuse by this kind offence he has to appear to the court in person. Some time he is not call by summanse service he may brought to the court by the local militia. The problem is the way how the defendant proceed his dispute accounting to pro No. 66/2003 art 52” who so ever is in custody before judgment for all agedly committing petty offences under article 15-38 of this proclamation has the right to be discharged on bail by posting a security for Birr ten to fifty or on his own surety most of the time this is not a applicable in the social court of the region .In study of giving him bail they order to waite in the compounded of the kebele administrative office sometimes for more than 48 hours.

We have looked most of the case which is brought to the social courts of oromia regional state is suit concerning land bounders and possession of land. The other issue which is proceeding to social court payment of “Fertilizer (•••••) and selected seeds (••• ••) which is provided to the farmers by the government. It is given to the farmer by credit this payment should be completed before the month of march. This is the hot issue for state government every year. The farmers does



not pay there payment respectively when we see this in legal terms it is contract between the concerned authority and the individual that means there is agreement between them. If some one does not obey the agreement he should be accused. But concerning this issue without any suit the individual are brought to he social a court they are ordered to pay their debits if not they will be arrested until they pay.

Hear the right of the citizens is violated it is also abuse of power. It needs the government attention.

In general we have observed that the fundamental problem of social courts are the understanding of substantive and procedural law we understand the of effective of this, and the other is lack of experience and skill they are fundamental for the administrative of justice due to these problems dealing of justice is faced in social courts of the region. This is not only the problems of the social court but also it is the problem of the regular court of the region by now beside these problems there is also the interference of the administrative organs of the kebele, sometimes in same part of the kebele there is the interference of the wereda administrative. The social court judges must give decisions according to the law not according to the external political factors some times there is influence or pressures of the political organs of the government. It is easy to understand all these factors have implication to the right of the defendant.

#### **4.2 Evaluation in the light of similar courts pro. No. 128/99 of oromia city court and pro No. 31/2007 Addis Ababa city government kebele social courts .**

Social courts in Oromya Regional state being numerous and cover wider areas than regular courts, have been paying their roles in advancing the ideas of supremacy of law among citizens. As I have mentioned before there are 6451 kebele social courts, those are enforced the judicial power in addition to regular courts which are found at different level of jurisdiction.

When we compare the legal power given to these institutions in respect to their number as well as their coverage areas from these we can infer that they need sufficient consideration and continuous follow up, in terms of infrastructure reinforcement, proper legal training and human power capacity building.

Associated with the fact above, these institutions are very proximate to the local people (more offer users) help in reducing time wastage and unnecessary expenditures that incurred for transportation and others.

The parties who are presenting their cases to social courts are estimated from paying courts fee opposite the regular court at the level of the Kebele, but they pay courts fee when they came to regular courts by appeal.

It is understand the kebele social courts are establish by proclamation and exercise their power according to their pre determined jurisdiction by law. Even though, law establishes these institution and currently serving the public, Because of the independence in their structural set up, it remains being difficult as to determine whether it is the executive or the judiciary that has to take corrective measures if there is failure in their service. From this it can be said that the social court institutions are structurally in some where gray at between the executive and the judiciary regarding this issue the existing proclamation No. 66/2003 and other legislations do not address the matter.

This chapter deals with the analysis of actual practice of social courts in light of similar courts. The social courts of oromia regional state is the first instant court in civil matter and criminal matter. As any court it has procedural election of judges and power of the jurisdiction. In this chapter I am going to see procedural election and power of jurisdiction of these courts in light of oromia regional state city courts of kebele proclamation No. 128/1999 and Addis Ababa city government kebele social courts proclamation No. 31/2007. Therefore let ass compare and contract in case of election judges of these three courts.

#### **4.2.1 Election of Judges**

According to proclamation No. 66/2002 article 8 judges of the social courts are elected by the recommendation of the chairman of the kebele be elected by a two third majority vote of the kebele council.<sup>9</sup> The city kebele social courts judges are also elected by the recommendation of the kebele chairman and appear of the kebele. After the suggestion is give by the residence of the kebele people are elected by majority vot. If they are not suggested by the kebele residence the other may appointed again.<sup>10</sup>

The Addis Ababa city government kebele social court judges shall upon the recommendation of the judicial council be appointed by the council.<sup>11</sup>

Requirements for the appointment of the court judge are should be

- a) Above twenty-one years of age and resident of the kebele in which the court.
- b) Able to read and write in Amharic and attained 10<sup>th</sup> or 12<sup>th</sup> grade in his education.
- c) Commendable the resident sense of the kebele for diligence, honesty sense of justice and ethics.<sup>12</sup> The presiding judges of the court shall at least be a graduate of law in diploma and relevant work experience <sup>13</sup> out of three judges one shall at least be a women.<sup>14</sup> Every appointed judge, before starting his term of office, shall necessarily have the relevant legal training.<sup>15</sup> Requirements for social court judges of ormoa regional state both por. No. 66/2003 and 128/2007. Any residence of the kebele except members of the kebele administration council and voting member of the kebele council. Who is more than thirty (30) of age speaks Afan Oromo (for the rural area) (for the city social court not) and whose diligence and good reputation won him public respect and trust can be elected as a judge of both a social courts.<sup>16</sup> Each social court shall have three (3) judge and two)(2) acting judges in both social courts of oromia regional state but in Addis Ababa city social court this is not removal of social court judges in oroma,

they are removed due to the following grounds, when the term for which they are elected expires or by the kebele council if he is proved incompetent or inefficient even though the term for which he was elected is yet to expire.<sup>17</sup> For Addis Ababa city court kebele judges.

- A) Where he wishes to resign from his duty on his consent upon to months prior written notice to the office
- B) When physician decides that a judge can no longer carry out his responsibilities on account of illness.
- C) Where it is decided to remove him on grounds of gross incompetence or inefficiency
- D) Where a decision is rendered to remove the judge for violation of disciplinary rules.<sup>18</sup>

Oromia social court judge in both kebele may withdraw from hearing a case upon his own initiation or by the petition of either of the Parties on the following grounds.

- a) if the case relates to a matter sued or was sued or testified as a witness or if he has dispute with the parties or counter relationship that may not enable him to give a fair decision or if he has any other reason to conclude that injustice may be done or if he has seen the case by way of arbitration.<sup>19</sup> withdrawal of judges of social courts Addis Ababa city the judge be withdrawal from the city court where one of the following reasons is faced by where the judge is related one of the parties or advocate there of by consanguinity or by affinity when one of the parties is a person for whom he acted as tator legal representative or advocate or if he has seen before the case as a judge arbitrator and advocate in connection with the uses or the subject matter of the dispute if he has a case pending in court with one of the parties or the advocate there of.<sup>20</sup> when application is brought to the court that the judge should not sit for the reasons specified. For oromia social court the remaining two judges shall hear the application for withdrawal

and give a un ominously decision there on if the two judges fail to reach decision un mostly decision shall be given by a majority vote of these two judges and one of the acting judge.<sup>21</sup> where the request for withdrawal is made on one of the judge of the Addis Ababa kebele social court the application shall be examined and decided by three judges exceeding the concerned judge, However where the request for withdrawal is related to two or three judge including the presiding judge the chairman of the judicial council shall examine and decide the matter.

#### **4.2.2 In light of jurisdiction**

Both two social courts of oromia regional state have related power of jurisdiction in civil matter. In both the defendant is a resident of the kebele where the court is situated or the immovable property which is the subject matter of the dispute is found in that kebele or if the immovable property is situated in two or more kebele the social court before which the case was brought first shall have exclusive jurisdiction over the matter.<sup>22</sup> conserving criminal matter the ruler area social court has the power of jurisdiction of petty of fence case article 15-38 of the pro. 66/2003. <sup>23</sup> but the city court does not have the power of to entertain the criminal matter. In civil matter both courts have the value of which does not existed birr 1000/one thousand others.<sup>24</sup> or cases involving not more than the sum.

Addis Ababa city kebele social court shall have the power of jurisdiction in civil matter and petty offences article five(5) of the proclamation No. 31/2007. <sup>25</sup> in civil matter the court shall have jurisdiction over cases in volving property and pecuniary disputes an amount not exceeding birr five thousand (5,000)<sup>26</sup> according the charter proclamation No. 311/2003 article 41/2/(B) the court shall have the power to adjudicate cases of petty offence committed involution of hygiene and health regulations and related to same.<sup>27</sup>

### **4.2.3 In lights of provisions relating to procedure**

In both social courts of oromia regional state pleadings before the social courts shall be in writing it should be prepared in three copies if the party is not in a position to plead in writing the court may also accept oral statement claim or defense where an oral pleading is filed with the court the judges on the bench shall reduce it in to writing stating the name, age, sex, address of the parties whether a suit is filed orally or in writing it shall specify the value of the property or the amount of money involved.<sup>28</sup> The claim of petty offence shall be initiated by injured party or his representative while the subject matter of the suit relates to offences committed against person or his property.<sup>29</sup> If the case relates to a government or any other body by the representative of the organ.<sup>30</sup> or if the case is committed against the kebele property by the head of the kebele or administration council or the person represented by him in writing in the offence is committed against the residents in general.<sup>31</sup>

Due to the kebele social courts of Addis Ababa city government statement of claim brought to the court relating to civil case and petty offences shall be instituted in writing following the form that is prepared.<sup>32</sup> cases of petty offences stipulated under article 5 sub-article 2 of this proclamation shall be instituted by an appropriate body designated by the relevant law.<sup>33</sup> This court has procedures at first hearing day before the hearing of the statement of claim submitted through the registered the court shall propose the idea of arbitration to the parties by or during the appearance of the defendant when the parties agree by the proposal each party designates an arbitrator and notify to the court there agreement by an application and the court shall decide the day on which the result of the arbitration is submitted by assigning the registrar of the responsible person to mediate the parties.<sup>34</sup> The oromia social court does not follow this procedure the proclamation no 66/2003 and

128/2007 it does not say anything about, this was fundamental procedure. There is no limitation day for judgment in oromia social court but the Addis Ababa city government kebele social court, as soon as the pleading between the parties has been exhausted the court shall render its decision within thirty day.

Power to execute decisions the Addis Ababa a city government kebele social court have the power to execute its decree, has the power to order the police code enforcement service, A judgment executing section shall be organized under the office of judicial council.<sup>35</sup>

The oromia social court decisions shall be executed unless the applied court orders stay of execution.<sup>36</sup> In oromia social court where a judgment debtors in a civil suit is not willing to pay his debt his property which is equivalent to the debt shall be sold by section and the debt shall be paid from the proceeds there of provided. However that the proper of the judgment debtor which is necessary to maintain him and his family for one month and the equipment which is necessary for his daily life shall not be sold by action.<sup>37</sup> in Addis Ababa city government kebele social court does not replay this provision.

Both courts have the power to take immediate action, who so ever in a court yard insults, nocks, at threatens the judge or the court or becomes impediment to the proper function of the branch is punishable with a fine of one birr up to five Birr or with simple imprisonment days the court imposes such punishment summary by recording the reasons.<sup>38</sup> the social courts of Addis Ababa city can with fine not exceeding birr one hundred fifty (150).<sup>39</sup> if he can not do this the court shall remand home the offender up to seven days where is relevant or an able to pay the fine .<sup>40</sup>

The presiding judge is employed and paid salary the others are paid the allowance in accordance with the decision of the cabinet at end of every month calculated on the basis of the day of sitting judges oromia social court does not have salary have only allowance. There is

court fees in Addis Ababa city government kebele social courts, but at oromia social court there is no court fees payment.

To generalize the writer of this prepare try to see oromia social court in light of Addis Ababa city government kebele social court what he the Addis Ababa city government kebele social understand court more competent than the oromia social court educational background and structure more better than the social court of oromia regional state. Before this chapter it is explained that there is lack of competence lack of sikke, and experience now it is observed that the reasons why this happened, because of the method of selection of judges, it was possible to up grade the election of social court judges of oromia at least educational background. There is lack of organization, Addis Ababa city government kebele social court is well organized it has employed registrar who facilitate the work of the court, which the oromia social court does not have, the other fundamental deferent between the court is Addis Ababa city government kebele social court has judicial council who appointee the social court judge this gives for the judge power of independence oromia regional state has to take experience from Addis Ababa city government to revise the social courts of the regional I have try to sec oromia regional state social court in light of Addis Ababa city government kebele social court based of jurisdiction power of entertainment of the case, How the case is proceeding in court and other points this is not only the point there are many other points out of these judicial resource for court administration, competence of social courts judges and accountability should be violated with the kebele social court of Addis Ababa city government .The election and educational background of the social courts oromia must have great authentication.



### **4.3 Special emphasis on the practice at social courts.**

Social courts are the lowest hierarchy (level) of courts their establishment is aimed to render the possible fair decision in the court of law. The establishment of social courts also enhanced people participation in the administration of justice. This may be justified in the litigation by giving speedy trial and for wording ideas or opinion in the litigation process at the place of judgment social courts prevent the violation of law keep the people through convictions and social influence by creating conditions of intolerance to any anti social acts social courts are organs established to settle disputes and protect the resident of the kebele from unnecessary expanses. The responsibility of the social courts are very wide practice its responsibility is not easy to achieve its responsibility needs well organization in its structure most of social court have no their own resources for court administration justice can not be properly served with out any resources. The oromia social courts have no their own budget office, court section and office furniture for the implementation of speedy trial. The kebele demonstration is duty bound to provide the materials necessary for the function of social courts<sup>1</sup>. In this regard the social courts<sup>41</sup> are not independent in principle the judiciary must have the power to control and administrates structure and other related resources. The Addis Ababa city government kebele social court law its own budget and official furniture and has its status.

Competence of judges also the back bone of the judiciary for these education back ground and work experience and skill are decisive requirement for to appointee judges. “speaking and writing Afan Oromo” as a requirement to be a judge of the oromia social court rather than requiring of professional legal skill.<sup>42</sup>

Most of the social court judges un able to write and read Afan Oromo and also read cases and law they are not familiar with the legal profession. These brought in competency to the court. In cap bible of working language of the region (Afan Oromo) is highly challenging the

judicial activities of the appellate Wereda courts in which most of the cases are reversed by the appellant court. The regional state regular court judiciaries have been trained and participated on different legal matters through oromia supreme court. However in the case of oromia social court judiciaries training is not satisfactory so as to make courts efficient training is one of the important point.

As the writer of this paper gathered information, training given to the social court judges is not satisfactory. Therefore without having such legal training and skill, no one can expect the social courts judiciaries are able to protect individual rights.

The oromia social courts having judicial power outside the state regular courts structure they are left and bound to be not accountable and responsible either to state wereda courts or judicial discipline of judges in other words, there is no code of conduct formulated for disciplinary measure as that of regular court judiciaries due to these and other reasons now days, there is inefficiency in the bench court mal administration, leaving the substantive and procedural laws a side, abuse of power and corruption are highly increasing in the social courts. This there is no way or right to lodge complaint for any one who is aggrieved in the process of the performance of judicial function or breach of duties. Any decision, given by any court expected be the executed in oromia social court there is a problem of execution due.

The upper hand and clear in interference of kebele executive same place wereda as well as the term of office of judges is not secured and determine by the will of the executive in most cases decisions are not properly executed in time which affects the rights of judgment creditors.

To summarize this the writer with my efforts will observed that there is problem instructor of the social courts in civil matters regarding the disputes of land holding or farm land boundaries needs due attention by the regional government regarding the competence and account ability of social courts judiciaries continuous legal training should be available

and code of conduct should be formulated the same to regular courts judiciaries.

To remind again, the social courts are given power to entertain disputes of farm land holding or boundaries in accordance with art 25/1/A pro. No. 56/2003.<sup>43</sup> However as has been observed from the actual practice the judicial power vested in social courts regarding disputes of land case is found to be unfair and ineffective more over the issue of conflict of farm land holding or boundaries had been one of the critical problems in the regions that challenges the judicial activities of any level of courts regarding, this fact the statistical data obtained from oromia supreme court last year indicates that. There are 2748 cases brought to appeal, from these 607 cases are reversed and 2141 cases are pending.<sup>4</sup> from this point of view it is obvious that the prevailing critical problem of conflict of farm land holding or boundaries has needs due attention of the regional government.

#### **4.4 JUDGMENT GIVEN BY THE COURT AND ITS EFFECTIVENESS**

To get better understanding let me tries to indicate and analyze different supporting sample of decided cases here under.

A. cast 1 (criminal) Getu Damisse Vs Girmu Hirpho

This case was brought to Abu Roge Kebele social court on 5<sup>th</sup> July 1998 E.C by the plaintiff compliant GETU Damisee Vs the defendant Giruma Hirpoh for the crime committed against possession of the farm land of the plaintiff and the relief sought was requesting conviction for the crime committed and claiming return of possession and payment of the estimated value of crop accordingly, the court after having entertained and heard the witnesses of continuing parties released free.

However, the plaintiff appealed against the judgment of court decision and his case was brought to the appellant Barraha woreda court. The apple at court after having entertained and investigated the appeal reversed the lower court decision for the reason that the criminal suit on disturbance possession is not the jurisdiction of kebele social court and subjected the right of the plaintiff to institute criminal suit to the

concerned court having jurisdiction.<sup>44</sup> In this regard the kebele, social court motioned decided the case without having the first instance jurisdiction on disturbance of possession of land which is the jurisdiction of the appellant court in accordance with art 686 of the reversed criminal code of FDRE. <sup>45</sup> The kebele social court having no jurisdiction on criminal suit of disturbance of passion should have dismissed the case in accordance with Art 46 of the proc. No. 66/2003.<sup>46</sup>

Case 2 (civil) Taku Kebtimer Vs Taju Kabtimer.

This case was brought to Meta Kombale Kebele social court on 16<sup>th</sup> Nov 1999 by the plaintiff Taju Kubtimer Vs the defendant Taku Kabtimer for refusal of transfer of land obtained through in heritage from his family /deceased father and mother).

Thus, the kebele social court after having entertained and heard the witnesses of both contending parties decided that both parties have to share equally the disputed land for the reason that land can not be transferred through in heritage.

The appellate Barrah Wereda court after having entertained and investigated the appeal reversed the lower court decision for the reason that the civil claim on succession not the first instance jurisdiction of kebele social court but rather the jurisdiction of state warder regular court. In general when the judgment of social court is evaluated in light of the judgment of the appellate court, the social courts are not only in competent in criminal case but also in civil case entertaining without having jurisdiction consequently, the judgment of the appellate court is said to be a good judgment.<sup>47</sup>

Case 3 ( criminal and civil) Megru Kalacha Vs Askala Tulu This case was brought to Warabi Tankall kebele social court on 11<sup>th</sup> march 1998 by the plaintiff Askala Tulu Vs defendant Megra kalacha for the crime committed against possession of the farm land of the plaintiff and civil claim for the return of possession and estimated value of crop. Accordingly, the court after having entertained and heard the witnesses of both parties convicted the defendant of fine of Birr 25 (twenty five) or 5

(five) days imprisonment and decided return of possession as well as the estimated value of corpsman tenuously in one fail. However, the defendant appealed against the judgment of kebele social court and brought the case to the Barrh wereda appellant court.

The appeal court after having investigated the appeal reversed the judgment of kebele social court for the reason that in the first hand the criminal suit disturbance of possession being not the jurisdiction of kebele social court and secondly, decided civil claim, simulate equality in one file.

To this effect, the court ordered the plaintiff to institute the criminal suit and civil claim separately to the concerned court having first instance jurisdiction. Thus from this point of view, the social court having no legal skill are also challenged in the proper application of law un like that of that of the Barrah werdas regular court whose judgment is considered to be reasonable and good judgement.<sup>48</sup>

#### **Case 4**

W/ro Shawaye Gamachu Vs Waynshet Kebede east shawazon Akaki wereda Gamuchu kebele social court decision one of the case investigated this is succession or inheritance that brought to the social court on September 30 in 1997 by the plaintiff shawye gamachu on behalf of childe fikadu kebede for passion of farm land to get back the possession the defendant appose the plaintiffs suit that the social court has no power to entertain succession or inheritance case. After investigation. Both side witnesses rendered judgment against the defendant to return the possession of land. But the defendant appeal against the judgment of the court and brought the case to the Akaki wereda appellate court. The appellate court after having investigated the appeal affirmed the judgment of kebele social court. The case brought to oromia supreme court to cassation beanch. The cessation beanch reversed the wereda appellate court and the kebele social court decision. Also the plaintiff brought the case to federal cassation beanch, but the decision is not changed.

### **Case Five (5)**

Ato Taddese Mengesha Vs Mamire Tasfa mengesha with 12 persons.

Decision of East shawa Zone Adama Wereda Mukuyye Haro kebele social courts on due 16/1998.

This is a civil cast plaintiff Ato Taddese Mengesha Damite, Deffendants Mamire Tesga mangesha with 12 persons. It was a succession or inheritance case. This is not the issue why brought the case as a sample, as I said before one of the problem is language.

This decision is given in Amharic because the social court judges level not the ability to write in oromiffa, they give decision in Amharic constitutently it is legal the working language of the region can understand from this decision there is a language problem in same of the social court of the region.

### **4.5 Personal opinion and criticism on the judgment**

I would like to say some thing more on decided cases. It is obvious that there is no question that social court has a vital role in reducing the burden of the regular court. But, the social courts in oromia regional state are structured with judge from rural areas whose livelihood depends on agriculture which this its may have its on own impact on the failure of the judicial activities of social courts in addition to the incompetency of legal skill with respect to this while I was observing a few of kebele social courts proceedings I looked lots of adjournments in which cases are adjourned even for a year. When brought to appellate court it takes more than a year especially at oromia supreme copout and causation beanch it is morthan two years. To this effect, people were complaining in saying that access to justice is delayed and often denied and even there is no way or concerned organ to ledge their grievances more over some judges in social courts were observed taking confidence and dedication in judicial function these is because of many reasons lack of education background (lack of skill) having no their own Budget (social court) allowance paid for the social court is not sufficient and other

reasons when coming to the judgment, there are big differences between Oromia social courts and state regular courts in the method of decision making and the quality of judgment. To make it clear, unlike the regular court, the critical problems in the judicial judgment of social courts are.

- Leaving the substantive and procedural laws aside and following previous mal practices.
  - Improper application of law
  - Lack of a concise statement of the facts
  - Improper way of forming issuer
  - No reasoning and impartial judgment
  - Lack of indenting their jurisdiction
  - Lack of clarity and in capable of the working language which affect or impact the judicial activities and fair judgment of the regular courts.
  - Therefore, to over come these critical problems I provide the following personal opinion for possible solutions.
- A) Due attention should be given to constant legal training as well as training of the working language “Afan Oromo”
  - B) The judicial performance evaluation should be formulated in social courts.
  - C) Seminars and work shops should be held on the issue of human rights law.
  - D) Sufficient judicial resources should be available for the implementation of speedy trial and promoting public confident.
  - E) Due attention should be given to remuneration of social court judge.

The other point which is not forgotne are, operational problems, as to these issues, efforts should be made to resolve them through.

- 1) text of law and proclamation those define the judicial power of these institutions should be available to judges of the kebele social courts

- 2) Ways by which these judge may be paid salary or by other means should be designed in the future proclamation.
- 3) Judges should be given basic legal as well as periodic on-job training mechanisms by which those judges who have got training may stay in office full time should be devised as much as possible.
- 4) The participation of women and others who are capable for judge ship other then the kebele council should be encouraged.
- 5) The relationship between wereda courts and social courts must be strengthen by arranging short term training of lower cost by district court judges, by frequently sending feed back on appeals and by encouraging these courts to make periodic report of their performance.

To summarize this chapter, the writer has discussed broadly on the practice of social courts in general and also I have tried to show the court practice by sample of decided cases consequently in his finding he has observed that in the actual practice of social courts from this observation the judges are incompetent in court proceedings and judicial judgment judicial independence is not secured that also impacts the execution of judgment.

The judicial power vested in social courts on conflict of farm land or boundaries is found to be the critical problem in the region.

Thus I suggest the following possible solutions.

1. Due attentions should be given to capacity building
2. The judicial administration should be established in social courts.
3. Code of conduct should be formulated
4. The judicial power vested in social courts on conflict of farm land holding should be given to the first instance state courts.
5. Social court judge should be free from the interference of executive and political organs.



6. Educational background the social court judges must be grade up at least the preceding judges should be completed 12<sup>th</sup> grade if there is possibility diploma holde

## **Conclusion and Recommendation**

### **Conclusion**

I have discussed broadly on the comparative analysis of social courts in oromia regional state with Addis Ababa city administration kebele social courts and regular courts of the region. I have tried to see judicial power, selection appointment, tenure, and disciplinary measure procedures of oromia social courts in light of similar courts and regular courts in general.

In this regard, the writer in his findings has observed a number of prevailing critical problems in social courts .Among these some of them are.

- 1) The requirement to speak and write “Afan Oromo” to be elected us judges of social court has greatly affected the rights of citizens on criminal matters that need to follow legal procedures and serious decisions. To this effect the constitutionality and this effect the constitutionality and legality of the status of oromia social courts have been in question in accordance with Art 78(4) of the FDRE constitution.
- 2) Secondly, the judicial power vested in social courts to entertain civil case of a dispute of farm land boundaries and holding has been one of the most critical problems and burning issues in the region that also puts” good governance” in question.
- 3) The lack of transparency, lack of legal requirement absence of cleat of the established judicial administration appointment, tenure and disciplinary measure of oromia social court judges haven daggered judicial independence and affected public confidence in courts. In other words judges are removed form their judicial office arbitrarily without considering the constitutional procedure and conditions of law.

- 4) The social courts being outside the regular structure have judicial accountability for their judicial performance to the wereda first instance court due to these and other reasons there is no way to regulate and taking judicial discipline for the breach of duties. To this effect mostly in the actual practice the judgment of the appellate court is not executed properly and timely. Besides this on appeal is not given in time according to the law to which the right of appeal recognized by the constitution is denied.
- 5) There are excessive case logs in kebele social courts for the reason that the judgeship of social courts is not a full time work or is the work of break time in a week for which most of the farmers are from rural areas whose livelihood depends on agriculture. In addition to this, there are no independent judicial resources for court administration and implementation of speedy trial.
- 6) To sum up, the prevailing critical problems and the account practice in the social courts give some clues as to what the social courts current activities look like and couldn't achieve their objects.

Thus I recommended the following

### **Recommendation**

- Certified Legal skill should also be one requirement to be a judge of social court in addition to the capacity of the working language of the region.
- The social courts after all should not entertain criminal matters as well as civil cases involving disputes concerning land.
- There should be legal requirements and clear procedures for judicial selection appointment, tenure and disciplinary.
- Judicial Administration should be established to secure the independence of judiciary as well as to regulate the discipliner of judges.
- The social courts should have the status of regular courts to effect the 4<sup>th</sup> level of court structure.

- Due attention should be given to remuneration of social court judges because their livelihood is affected once they are elected.
- Sufficient and independent judicial resources should be available.
- To effect this the regional government should give high priority to its “judicial system and good governance’ similarly the oromia supreme court and regional justice. Bureau should actively play their own role to promote un form justice administration within the region.
- The power of the executive should be clearly circumscribed.

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 Case 4. W/ro Shawaye Gamach Vs Waynshet Kebede  
 Case 5. Mamire Mengesha Damitee Vs Taddese Mengesh

### **Annex**

1. Getu Damisse Vs Girma Hirpho,
2. Taku Kabtimer Vs Tiju Kebtimer
3. Mergra Kalacha Vs Askala Tulu
4. W/ro Shawaye Gmachu Vs Waynshet kebede
5. Mamire Mengesha Damitee Vs Taddese Mengesha

**I here by declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.**

**Name Tassew Garmu**

**Signed \_\_\_\_\_**

