THE INTERNATIONAL JOURNAL OF BUSINESS & MANAGEMENT

The Role of Judiciary in Sustaining Development in Oromia National Regional State, Ethiopia

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Abstract:

Ethiopia to join to the fastest growing country in the world time is past, subsequently the justice system becomes grow, words like "due process," "fair hearing," "equal protection of the laws," and "equality before the law," all express a universal principle—a right to equal justice to be enjoyed by everyone. And, if Human Rights, is to be "practical and effective"; not merely "theoretical or illusory," it will contribute for the country's development. Currently the regional government motivated in promoting accessibility, ensuring fairness and increasing efficiency of justice that have positive impact on the development.

Thus, in this research the role of law in development and its implementation by the judiciary covered. Non-doctrinal legal research type is appropriate method in this research. Therefore, this research was a qualitative type. Descriptive and analytical survey methods were employed. The samples of zones, woredas and city administrations were selected on purposive sampling techniques. In selecting the respondents, a random sampling technique was employed. The findings of this research show predictability, time of disposition of justice, accountability of judges and accessibility of justice and independence of judiciary have been affecting the role of the judiciary in sustaining development in the regional state.

1. Introduction

It is a must to have strong judiciary in order to appreciate development because if the judiciary is not in a position to enforce laws, the laws cannot bring change to the life of the society. Thus, the role of judiciary is vital in the prevalence of rule of law and economic development. Judiciary has significant role in preservation of peace and guaranteeing national security which are key pillars in the national development (Mugerwa, 2015). This is practically proved in the study conducted in Argentina and Brazil by Word Bank, in provinces with strong judiciary firms doing business having greater access to credit (World Development Report, 2005). Other surveys show that lack of confidence on a court has effect on extending trade credit and engagement in business transaction with a person other than they know (Kenneth, 2006).

Ethiopia has become developmental state since recent time. Developmental state is a state that has the capacity to deploy its authority, credibility and legitimacy in a binding manner to implement developmental policies and programs for promoting transformation and growth as well as expanding human capacities (UNDP Ethiopia, 2012). Developmental state is a state that puts development at top priority of government policy and is able to design effective instruments to promote such goal; is a state that promotes macroeconomic stability and establishes an institutional framework that provides law and order, effective administration of justice and peaceful resolution of disputes (Henok G. Gabissa, 2015). From these definitions, it is possible to infer that in developmental state all machineries of the state should work to achieve development programs designed by state. Thus, the judiciary as one organ of state machinery, it has responsibility to engage in the achievement of development goals designed by government.

1.1. Review of Related Literature

The law and development movement was launched in 1960's in United State of American. The US Agency for International Development, the Ford Foundation and other privet American donors underwrote an ambitious effort to reform the judicial systems and substantive laws of countries in Africa, Asian and Latin America (JLSRI and UNDP, 2013) (Y. Matsuura, 2005). The movement was aimed at legal and institutional reform in developing countries. It adopts American Model that would help to facilitate economic development in the developing world (JLSRI and UNDP, 2013). The guiding assumption of this movement was that it considers the law as the fundamental tool in development process of a particular country. Moreover, the movement emphasize that legal reform is an engine for social change and law itself is an engine for change. Thus, according to law and development movement the law is an engine to change development process of a particular country by enabling the institutional capacities of the society.

The law and development movement emphasizes that an efficient legal and judicial system which delivers quick and quality justice reinforces the confidence of people in the rule of law, facilitates investment and production of wealth, enables better distributive justice, promotes basic human rights and enhances accountability and democratic governance (Department of Justice, Ministry of Law and Justice, Government of India, 2011). Strong legal and judicial institutions and effective rule of law including respect for property

rights and access to justice are important cornerstones for sustainable economic and social development (Coase, 1988). Thus, the role of judiciary is of paramount importance in the development.

Studies indicate that in developing countries the judiciary suffers from backlog, delay and corruption (Julius et al, 2003). This resulted in distrust of the system by private sectors and public in general. In most developing countries, legal systems support the freedom to exercise individual property rights, but legislations are meaningless without an effective judicial system to interpret it. Uncertainty with delay of the cases resulted in high costs of access to justice and doing business.

As business survey conducted by World Bank indicated judiciary is referred as the top ten constraints to private sector development. There are basic elements that indicate the efficiency of the judiciary, the predictability of outcome, accessibility of the court by the population regardless of income level, adequate time of disposition, accountability and independence of the judiciary (Buscaglia, 1999 and Kenneth, 2006). Increase in delay of cases, backlogs, uncertainty, lack of transparency and perception of corruption lead to lack of public confidence in country's judiciary and hesitancy to rely on the judiciary in business planning (Buscaglia, 1999).

1.2. Problem Statement

There is corruption, nepotism and cronyism, irregularity of court decisions, poor service delivery irresponsiveness of the court system is some of the problems (Civil Service and Good Governance Bureau, 2013). Therefore, this research designed to assess the role of the judiciary in development program of the region. The researcher focused on the attributes of strong judiciary such as predictability of outcome of cases, time of disposition of cases, accessibility of the court, accountability and independence of the court. Based on these factors the role of the judiciary to realize development program of the region was accessed and the following questions were addressed.

- 1. Are the decisions rendered by the judiciary predictable and accessible?
- 2. Is the judiciary independent?
- 3. Does the judiciary dispose cases expeditiously and accountable to the public?
- 4. What is the cumulative effect of these variables in the development program of the region?

1.3. Objectives of the Study

The main purpose of this study was to assess the roles that have been played by the judiciary in sustaining development program of the region. And specifically, to analyze the predictability of court decisions, independence of the judiciary, access to justice and accountability of judges in Oromia national regional state courts and to study the cumulative effect of the above factors in development of the region and give possible recommendation to the concerned bodies.

2. Methodology

Non-doctrinal research is called socio-legal research; it highlights the gap between legislative goals and social reality and depicts the true picture of law in reality. It particularly deals with the gap that exists between the practice of the law enforcers, regulators and adjudicators (Vibhute & Filipos, 2009). In this research, the researcher used it because the study mainly revolves around the judiciary as an institution that interprets law. In undertaking the study both qualitative and quantitative research approaches were used. Descriptive research method was employed as it was the appropriate method which enables the researcher to assess and describe the role of judiciary in sustaining development program of the region.

2.1. Data Gathering Tools

This research employed semi-structured interview, focus group discussion (FGD) and unstructured questionnaire. The interview was administered to judges of the selected zones while FGD used for court clients. The interview made to judges that work at selected Zone of the Region. Interview is selected as data collection method in this research because it is the most effective method of gaining information about a person's perceptions, beliefs, feelings, attitudes, opinions, motivations, anticipations or plans (Pauline V Young, 1968). At the same time, it allows a certain degree of flexibility for the researcher to respond to the answers of the interviewee and therefore develop the themes and issues as they arise.

2.2. Sources of Data

Both primary and secondary data sources were used to conduct the research. Primary data was gathered from key informants (judges and officials of courts). These respondents selected because they do have irreplaceable role in justice administration. Beside this, selected customers of the courts at all levels as key informants for the reason that they are the direct beneficiaries of the service delivered by the judiciary. Secondary data sources included legislations, directives, and other relevant documents used. Published and unpublished materials also used to develop conceptual framework and to discuss review of related literatures that support the study.

2.3. Sampling Techniques and Procedures

From 6 purposively selected zonal High Courts, 2 *Woreda* Courts sampled from each and from each zone and *woreda* 5 judges for FGD and questionnaire, one official for interview was taken as a sample by using simple random sampling and availability sampling methodology. Up to 12 service receivers taken through accidental sampling method and participate on focus group discussion and questionnaire. Therefore, the total number of respondents was 1525.

3. Data Analysis

No.	Questionnaires	Level in Percent				
		Very	High	Medium	Low	Very
		High				Low
1.	A fair access to justice in your local court	4.6	19.3	24.8	39.4	11.9
2.	The impact of money on justice in your local court	33.9	31.2	13.8	17.4	3.7
3.	The impact of political connection on access to justice	11.9	12.8	28.4	37.6	9.2
4.	The influence of patronage in decision making	23.9	24.8	22	20.2	9.2
5.	Impact of political influence on decisions	18.3	22	24.8	27.5	7.3
6.	The level of your confidence on the judiciary	3.7	12.8	34.9	41.3	7.3
7.	The level of speedy decision in your local court	12.8	27.8	34.9	19.3	4.6
8.	The level of delay of justice attributed to the judge.	18.3	39.4	32.1	8.3	1.8
9.	Delay of justice attributed to the problem of work culture	23.9	24.8	33	13.8	4.6
10.	Delay of justice attributed to formalism of procedural laws	10.1	18.3	30.3	29.4	11.9
11	Delay of justice attributed to parties at suit	6.4	20.2	36.7	26.6	10.1
12.	Disclosing the corrupt judges	6.4	12.8	21.1	23.9.	35.8
13.	Accountability system for the judiciary	17.4	22.9	32.1	17.4	10.1
14.	Whether you have ever been asked to pay bribe to the	Yes	86.5	No	16.8	
	judiciary to facilitate your case					

Table 1: Role of the Judiciary Source: Author

3.1. Impartial Judiciary

On the issue concerning the impact of money on impartiality of justice service in local court of the respondent's reply was 65.9% very high and high, this shows that people can hardly afford the legal expenses, delays make justice almost unavailable and legal serve to poor is a shamble in reality due to money required to receive the service. Similarly, participants of focus group discussion and the interviewees stated that since the judiciary is one of the state organs the role that has to be played in the national development plan by the court is very high because the courts interpret the law, implement and enforce the law. If the law is esteemed there will be peace and stability within the region and where so development will be enhanced.

They also suggested that the litigants are not free from the acts that affect justice and get the justice service fairly and timely, they will not be free from unnecessary presence at the court, the parties do not served in due time instead they waste their time at court that they should engage on their economic activities, exposed to unnecessary expenses, they lost confidence on court, particularly investors will not get a trust on the judiciary to invest their capital and enable the parties to opt another option to seek justice.

The most common practice in the region is that "money buys justice". Respondents noted that the rich have easier access to legal recourse and can affect the outcome of proceedings. In practice, many citizens are denied their rights because they are poor.

A tension between justice and efficiency arises from the need to provide adequate remedies and at the same time guaranteeing timely outcomes and low costs. However, the justice service receivers requested whether they have confidence on the judiciary or not 48.6% of the respondents act in response low and very low.

Court fees, expensive lawyers and corrupt judges will all tend to encourage parties to use alternative mechanisms or simply not to litigate. The cost of using a dispute resolution method depends on the value of access fees, on how much one has to spend during the litigation process, on the probability of winning and on how litigation costs are apportioned.

Courts may be biased due to corruption because they are favoring certain classes of litigants or they lack independence from the state bending to its wishes when the government is a party in the dispute that ultimately destroy public trust on the judiciary.

3.2. Predictability of Decision of the Court

On the issue whether there influence of patronage in decision making in the court while renders decisions that affect the predictable decisions the respondents' reaction was 48.8% as high and very high. Similarly, participants of focus group discussion and the interviewees stated that the challenges to decide similar cases in the same way for the reasons. These are legal awareness and capacity of judges is not the similar, problems in relation to those persons write pleadings and same judges are aspiring in court only for the salary rather than serving the citizens.

Predictable decision refers to the situation where similar cases decided in similar manner or for similar case similar decision. A court that does not make decisions impartially according to law but is instead subject to improper influence whether from the executive or any other source will make unpredictable and biased outcomes. Properly having regard only to the evidence and the law will deliver consistent and predictable outcomes upon which citizens, business and investors can rely to order their affairs. Outside investment is considerably more likely if investors can turn to an independent judiciary and rely on predictable judicial decisions.

The most important thing to say about this indicator is that transparency and predictability of the legal system in most areas are quite low. Laws on paper are different from law as practiced. Neither laws nor legal procedures are adequately understood. This issue seems especially pronounced in *woredas* where the transformation of the legal system has been slow both rapid and reach. This shows that

the decisions of the court passed on similar cases by various judges are unlike hence the decisions of the court do not meet with the expectation of the people.

3.3. Time of Disposition

The participants requested to reflect their perception on the level of delay of justice attributed to the judge 57.7% of them answer high and very, 31% medium and 10.15% low and very low. Hence, when we compare the limitation of legal procedures and other laws with the role of the judges in delay of justice much is attributed to judges. The respondents mentioned their observation towards the delay of justice attributed to the problem of work culture 48.7% as high and very, 33% medium and 18.4% low and very low. From this we can infer that the work culture of court is poor.

The partakers in questionnaires react on the issue of delay of justice attributed to formalism of procedural laws 28.4% of them high and very high, 30.3% medium and 41.3% as low and very low. From this it is possible to conclude that the attribution of the formalism of procedural laws is makes no difference for the delay of justice.

The participants of focal group discussion and interviewees argued that the judiciary has also a vital role in securing the country's peace. The court makes aware of the laws to the community through teaching and training. The decision of the court need to be given to the parties in writing to be transparent and to make aware of the parties regarding the procedures employed to reach on decision. The purpose of criminal punishment of offenders is to teach the other in order to make them refrain from committing other crimes (Deterrence effect). This enables the region to make the people to participate in development of the region and it will also contribute to minimize government costs that incurred for the purpose rehabilitations.

On the issue that whether delay of justice attributed to parties at suit or not the respondents react as 26.6% of them high and very high, 36.7% medium and 36.7% low and very low. The reason is the relative ignorance among the public of both the law and opportunities that exist for redressing injustices. This is not surprising in rural areas where poverty is widespread and illiteracy extensive, yet it is clear from our survey that it is quite common everywhere.

The respondents asked to react on the level of speedy decision in their local courts responded 40.3% of them act in high and very and 34.9% medium and 23.9 low. Likewise, participants of focal group discussion and the interviewees affirmed that at present the problems in relation to delay of justice are relatively resolved when compared to the preceding. The cases are decided without delay. This can be evidence for the speedy trial for decision of the court is improved.

However, the focal group discussants raised that the procedural rules are in Ethiopia and Oromia as well outdated and even they are not revised, judges are left with wide discretionary influence on both how justice is administered and the outcome of specific cases.

The complaints about the lack of due process also extend to law enforcement. For instance, as respondents put it evidence is doctored, there is no scientific procedure for recording evidence particularly at *woreda* courts false evidences highly affecting the justice and witness protection is not guaranteed. Although this complaint is specific to the judiciary, its ramifications are often wider. It tends to backfire on the perceived ability of the executive to enforce the laws and guarantee the security of citizens.

3.4. Accountability of Judges

The partaker in questionnaires asked to provide their understanding towards whether they have ever been asked to pay bribe to the judiciary to facilitate their cases 86.2% of them respond as yes. The interviewees argued that it is obvious that same judges have the problem of ethics. They are tied by patronage, corruption and neighboring hood at the same time they perform their duties. The measures taken to make accountable those judges are poor, mainly the measures taken upon the misbehaved judges is transferring from one area to another.

The reasons for the weakness of the judicial system are worrisome. Administration of justice is not only slow but often also corrupt as consequence people lack trust in the court system. Corruption was cited again as a serious problem undermining the autonomy of the judiciary. Respondents captured the feeling the problem is that authorities do not want courts to really be independent. There is no real independence of the judicial system and weak accountability of judges.

Likewise, the participants of focal group discussion argued that it is very difficult to conclude that all persons served at court are without any discrimination because the judges in the court perform by money, relationship and so on. By receiving money and by affiliations they divert the justice and give unpredictable decisions. Those persons who have money are buying justice and it is very difficult for the poor to win the rich. They also requested to reveal whether they are disclosing the corrupt judges or not19% of the respondents respond as high and very, 21.1% medium and 59.7 low and very low.

it is not enough to look at the legal system merely in instrumental terms, e.g. how it contributes to socio-economic development. A fair way of administering justice is not just a means but also an end in itself. Pertaining to the issue of accountability system for the judiciary, respondent's act in response 17.5% of them high and very high, 32.1% medium and 40.3% low and very low.

Accountability of judges to the public is currently insignificant in practice. It was a frequent comment by respondents. Respondents, during focus group discussion noted that it is almost a commonly accepted that "without money, don't go to the court". Public inspection may exist in theory but does not have an impact on the accountability of judicial officers in practice.

3.5. Access to Justice

Access to justice is one of the lowest overall ratings in the whole sample areas not just the judicial arena. There are several reasons for the low scoring on access to justice across the sample areas. For instance, the capacity to administer justice efficiently is not there in every court, as suggested by respondents. Delay, therefore, is quite common and as suggested above, equivalent to denial of justice. The most common reasons, however, related to lack of concern for the citizens, commitment and capacity. Another component of

judicial independence is the accessibility of the court and its ability to initiate proceedings. The respondents answer on the issue of a fair access to justice in their local court 23.9% of them high and very, 24.8% medium and 51.3% low and very low.

Similarly, participants of focal group discussion and the interviewees stated that everyone has the right to access to justice but there are challenges that impede the citizen's right to get fair justice as expected. Among those challenges same of them are the judges luck similar capacity. As a result, on similar cases the judges decide differently and even contradicting decisions have been given. The other problem is those ignorant of law persons (informal clerks) are assisting the work of the court in producing statement of cases which ultimately affect the decision of the courts. As a result, the parties lose fair justice that they have the right to get.

Attorneys who have legal knowledge have no interested to serve their citizens rather they motivated to get money. Most of the time they push the parties to bring the case that should not be brought to the court to satisfy their finance interests.

There is also political intervention in the role of judiciary; sometimes the political officials order the court by letter for the recognition of their decisions, this diverts the very intention of the justice and affects the judicial independence. The most chronic problem that affects the justice is the ethics of the judges. For example, there are judges involve in selling of justice (corrupted judges).

3.6. Judicial Independence

The respondents requested to react on the issue of the impact of political connection on access to justice 24.7% of them respond high and very, 28.4% of them respond medium and 36.8% of them respond low and very low. Likewise focus group discussions argued that political interventions highly affect the self-confidence of the judges, those judges lack of confidence decide cases poorly. It is impossible to expect fair decisions without giving money to the judges. We do not have confidence on court.

The appointment procedure of the judges may have a notable effect on the independence of the court. As it is inter alia supposed to protect citizens from illegitimate use of powers by the authorities as well as to settle disputes between the branches of government, it ought to be as independent as possible from the other branches.

On issue of the impact of political influence on decisions of the court the respondents act in response 40.3% as high and very, 24% medium and 34.8% low and very low. The other reason is direct political interference. Political leaders want to avoid embarrassment and thus attempt to affect the outcome by threat or intimidation of judges. This seems to be particularly common in districts /woredas/ level courts.

3.7. Result of the Data

Private investors will only make long-term and highly specialized investments if they are secure that the contracts that support their activities will be properly enforced. Because specialized production often requires transaction-specific assets, contracts that support it are usually affected by the ability of the parties to exit the agreement.

The well-functioning judicial systems foster growth is by stimulating a more rapid accumulation of factors of production. In particular, investment in both physical and human capital will be encouraged by secure property rights, well-functioning legal and judicial systems and political stability. From the above information, we can conclude that the judicial system in the region not bad in fostering investment and protecting private property rights.

Dysfunctional judicial systems may also discourage savings and stimulate capital flight, reducing the volume of funds available to finance investment this issue also does not seen as a problem in this study in Oromia regional state. Well-functioning judicial systems, broadly understood to contemplate the drafting of contracts and the existence of accounting methods that allow verifiability by courts, are essential to reduce contractual hazards. Especially when the state is a part in the agreement, strong and independent judiciaries will be essential to stimulate economic activities that involve specific investment.

In countries where judiciaries are weak, laws are unstable and administrative discretion common, investment in these sectors will only take place if undertaken by the state. In this way, malfunctioning judicial systems lead either to lack of investment or to usually dysfunctional public production.

Finally, malfunctioning judicial systems hamper growth by stimulating an inefficient use of resources and technology, moving countries away from their potential or best practice output. High risk and large transaction costs move the country's price system away from international standards, distorting resource allocation. Because contract and property rights are not properly enforced, firms may decide not to pursue certain activities, forego the opportunity to specialize and exploit economies of scale, mix inputs inefficiently, not allocate production among clients and markets in the most efficient fashion, keep resources unemployed etc. Efficiency may also be affected if weak judicial performance segment markets to an extent that competition is significantly reduced.

Another obvious way dysfunctional judicial systems reduce the economy's efficiency level is by direct consumption of scarce resources. Litigation demands lawyers, time and attention from the parties and a well-staffed judiciary. These are highly specialized services and society has to spend sizable resources to train and educate judges, lawyers and other personnel involved.

4. Conclusion

Where the parties to the litigation are free from the acts that affect justice and get the justice service fairly and timely, they will be free from unnecessary attendance of the court, if the parties served in due time instead of wasting their time at court they will utilize it for their economic activities, minimize an unnecessary expenses, the confidence of the people on court will increase, particularly investors will get a trust on the judiciary to invest their capital and enable the parties not to choose another options.

Court fees, expensive lawyers and corrupt judges will all tend to encourage parties to use alternative mechanisms or simply not to litigate. Hence, the money buying justice should be ceased; the rich and poor should have easier access to legal recourse equally.

Backlogs and delays impact upon public trust and confidence in the court system. Speedy disposal of cases and fair adjudications will improve citizen's access to justice and the public image and respect for the courts which ultimately effect in public trust. The decisions of the court on similar cases by various judges must like hence the decisions of the court meet with the expectation of the citizens.

A court need make decisions impartially according to law and should be free from subject to improper influence from any sources that make unpredictable and biased outcomes and to make the investment considerably more and investors turn to an independent judiciary and rely on predictable judicial decisions. Transparency and predictability of the legal system in most areas must be in existence. The influence of patronage and nepotism in decision making in the court that affect the predictable decisions should be totally circumvented. The legal awareness and capacity of judges need upgrading, judges in the court be obliged to aspire to serve the citizens.

The problem of work culture and formalism of procedural laws necessitate improvement. The procedural rules in Oromia are outdated and even they are not revised, judges are left with wide discretionary influence on both how justice is administered and the outcome of specific cases thus, require revision.

Administration of justice is not only slow but often also corrupt as consequence people lack trust in the court system, corruption was cited again as a serious problem undermining the autonomy of the judiciary, consequently, the legal norm in the court should be familiarized and the attitudes and acts towards corruption must be alleviated. A greater accountability of judges to the users of the judicial system has been more important in increasing its efficiency; to this effect the people should disclose the corrupt and bad acts of the judges, there must be judicial independence and accountability of judges.

The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. It is the duty of state to provide adequate resources to enable the judiciary to properly perform its functions.

Political leaders want to avoid embarrassment and thus attempt to affect the outcome by threat or intimidation of judges particularly it is common in districts /woredas/ courts. The impact of political influence and direct political interference on decisions of the court must be circumventing.

The well-functioning judicial systems foster growth is by stimulating a more rapid accumulation of factors of production. In particular, investment in both physical and human capital will be encouraged by secure property rights, well-functioning legal and judicial systems and political stability. From the above information, we can conclude that the judicial system in the region is not bad in fostering investment and protecting private property rights.

Another obvious way dysfunctional judicial systems reduce the economy's efficiency level is by direct consumption of scarce resources. Litigation demands lawyers, time and attention from the parties and a well-staffed judiciary. These are highly specialized services and society has to spend sizable resources to train and educate judges, lawyers and other personnel involved. The judiciary is one of the state organs that have to play a pivotal role the national development plan; courts interpret the law, implement and enforce the law. If the law is esteemed there will be peace and stability within the region and where so development will better. Where peace and stability is ensured the society without fear will engage in economic activities this in general will result in countrywide development.

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