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The Justice Sector Reform and Access to Justice in the Addis Ababa City Government (AACG)

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Abstract

The City Council in AACG among its duties drafts and enacts legislations concerning municipal affairs and jurisdictions; establishes judicial bodies; and defines their powers and functions in accordance with the City Charter. Thus, the Addis Ababa City Charter creates two levels of City Courts of dealing with municipal jurisdictions. There is no Supreme Court in the Municipal Court System, although a cassation bench is included within the Appellate Court. Cassation review of Appellate Court decisions can be brought before the Federal Supreme Court. This court has also the power to decide on matters of jurisdictional conflicts between the City courts and Federal Courts. The court system in Addis Ababa City reflects a similar division as in between federal and state courts, except being at two levels. The courts are supposed to minimize the case load of the City Courts and the Federal Courts. This paper explores the Justice Sector Reform and Access to Justice in AACG. It mainly centers on the reforms made in the city courts and the Justice Bureau with their jurisdictions, structure, composition, and functions. Furthermore, cases are also analyzed so as to substantiate the study. The findings of the research revealed that there are considerable jurisdictional gaps and the two level court structure has an impact on the appeal right of citizens. Finally, the conclusions and recommendations in the study are supposed to improve the functioning of the Addis Ababa Justice Sector.

Key Words: City Court, Justice, Jurisdiction, Appeal, Access to Justice, Addis Ababa

1. Introduction

A predictable legal environment, with an objective of reliable and independent judiciary, is essential for democratization, good governance, and human rights in Ethiopia in general and in the capital City, Addis Ababa, in particular. Nearly 25 years ago, in Ethiopia the justice system was in a state of crisis. The public was fearful and angry especially in the criminal justice system. Practitioners were weary and frustrated. Victims were re-victimized in the process. This

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widespread sense of dissatisfaction caused a fundamental re-thinking of the justice system reform in Ethiopia at different times.

Before the year 2003, the Municipal Courts of Addis Ababa were set up in two separate places, i.e. the Municipal First Instance Court in one place and the Appellate Court, which is the second and final level, in another separate place. To accommodate administrative reforms and changes, the name Municipal Courts was changed into "City Courts" and the First Instance Court was re-organized from one center to each sub-city to harmonize with the newly created sub-cities of Addis Ababa City Administration (AACA). However, the reform movement was neither supported by the Revised Charter of the AACG, except that the naming *"Municipal"* was changed into "*City",* nor by any regulation thereof. It seems that the City Courts were spread into each sub-city only informally. However, this reform movement, by itself though not supported by law, was an achievement compared to the inaccessibility of the Municipal Courts, before the reform movement.

With regard to the reform movement in relation to the City Courts, it is difficult to find formal documents indicating the real causes of re-organizing the courts into each sub-city. The only indication is that in order to harmonize the overall reform movement in the City, a committee in charge of the reform of the City Courts was formed by the City Executive itself. This reform movement was made to recognize the reorganized sub-city courts. Hence, this research addresses those obstacles of the justice system of AACG; and evaluates the improvement/ non-improvement of the justice system.

The specific objectives of the research are to: (a) - evaluate the Justice Sector Reform of AACG; (b) -evaluate the efficiency and access to justice of the City Courts in AACG; (c) -assess the jurisdiction of Addis Ababa City Courts; and (e) recommend possible policy solution towards an expanded framework for strengthening the justice sector reform and access to justice of AACG.

Addis Ababa is one of the oldest and biggest cities in Africa. The city was founded in 1886 at a time when Emperor Menelik and his wife Empress Taitu Bitul made their principal town at Entoto and started to follow the avenue of development after the Adwa victory, i.e. after 1882 (AACG 2012).

Addis Ababa has been playing a historic role in hosting the continental organizations such as the Organization of African Unity, later the African Union and the Economic Commission for Africa, which contributed to the decolonization of African countries, and later bringing Africans together (UN Habitat, 2008: 4). In addition, Addis Ababa is the seat of international organizations such as International Monetary Fund, World Bank, European Commission, United Nations Development Program and other international organizations. In general, there are 30 offices of international and continental institutions that are located in the city. Moreover, Addis Ababa hosts more than 93 foreign embassies and diplomatic mission offices. All these developments enable the city to obtain great position in international economic and political forums. On the other hand, the city has many sister cities which signed with it a joint cooperative agreements; and this has made its position more significant at international level (AACG 2012). Moreover, since Addis Ababa is the capital city of the Federal Democratic Republic of Ethiopia, it is the center of the social, political, commercial and cultural activities of the country (Ibid). Currently, the city is also an official seat of the regional state of Oromia, and is also called Finfine.

In terms of population, according to the 2007 Population and Housing Census conducted by the Central Statistical Agency of Ethiopia (CSA), Addis Ababa has a total population of

2,739,551, of whom 1,305,387 were men and 1,434,164 were women (CSA 2007). In the light of the current international reputation of Addis Ababa, concerned bodies need to attach a very great value to all issues of human rights whose stakeholders are mainly connected with the justice sector reform and access to justice which this paper focuses on.

2. A Brief Review of Related Literature

2.1 Justice Sector Reform in Ethiopia: an Overview

Ethiopia is the oldest state in sub-Saharan Africa. It is unique among African countries as it has never been colonized to date. Before the first aggression of Italians and defeat at the battle of Adwa, Ethiopia had been governed almost entirely by a complex set of traditional customary and religious laws. Arguably, Ethiopia has a long history of legal frameworks, the most famous of which is the *"book of the kings"* the *Fitha Negest*. Today, religious and customary laws remain prevalent throughout the country *(Dakolias 2004: 1).*

In the 1950s and 1960s, Emperor Hailesilassie founded a university with a Law Faculty and initiated the drafting of core group of modern codes. The university's structure and legal codes were based on European model. The Emperor hired a *Franco-Swiss* team of specialists of comparative law which created a complete set of the latest standards of the late 1950s. The codes were, arguably, of an extremely high standard but these codes were not supported by adequate capacity building-efforts such as -trainings at the local level. Furthermore, following the development of the codes, procedural provisions were subsequently transplanted from England, India, and the USA, with little regard to the coherence of the system as whole (Ibid).

Emperor *Hailesilassies's* rule came to an end in 1974, when he was deposed by a military junta called *Derge*. The *Derge* established a highly centralized socialist state ruled by a military dictatorship and by brutal oppression of the people of the country. In 1991, a coalition of different opposition forces, the EPRDF overthrew the *Derge*. The EPRDF established a Transitional Government with a Transitional Charter which served as a constitution and embarked on a wide ranging-process of democratic decentralization (Ibid).

During the *Derge* regime, the basic codes were largely ignored. All land was nationalized and when legislation was imposed, it was done so without due process. After the demise of the *Derge*, the Transitional Government (1991-1994) undertook significant legal revision to replace the socialist era law and re-established a functioning legal system. Later on, a new federal constitution was ratified in 1994, and came into effect in 1995. The 1995 FDRE Constitution replaced the nation's centralized unitary government with a decentralized *Federal Democratic Republic* government. The federation consists of nine member states and two municipal districts (the Capital Addis Ababa and the Second City Dire-Dawa). The constitution disperses extensive power to the newly-created states (MoCB 2005: 1-2).

While many of the imperial codes of the 1960s were being revised, reforms have been also under way to ensure that such laws are consistent with the new constitution. Law reform activity has been undertaken to implement the many new rights and requirements delineated in the constitution and to create an environment more conducive to investment and development. The transition to a *Federal Republic* added further layers and dimension to the already diverse and complex legal system. This transition has greatly manipulated the demand placed both on government infrastructures and the legal system.

In Ethiopia, of the three branches of government, the judiciary has the least history and experience of independence, and requires significant strength to obtain true independence, equality and self-sufficiency (Ibid).

Practitioners and different international organizations have increasingly turned their attention to reforms so as to improve legal and judicial institutions and promote the rule of law and good governance. Among the various United Nations agencies, the United Nations Environment Program and the United Nations Development Program, as well as the World Bank and other regional development banks have been increasing resources to reform the legal and judicial institutions in the country (*Dakolias* 2000).

To date, however, most of these efforts have concentrated on developing new laws and creating new institutions, rather than building capacity for ensuring compliance with existing rules. Yet without compliance, laws and regulations are meaningless–or worse, they undermine respect for the rule of law–and cannot promote sustainable development. As a result, many developing countries and countries with economies in transition still suffer from weak legal and judicial systems, lack investment, and have poor development prospects, sustainable or otherwise. Ethiopia is not also immune from these challenges. Thus, donor-driven reform efforts need to ensure that their rule of law efforts includes sufficient training and capacity building to establish the institutional foundation for compliance and enforcement, through both instrumental and normative efforts (Ibid).

Like many developing countries, it is therefore, the judicial and legal sector in Ethiopia that presents a variety of significant challenges. It suffers from dismal condition of service, staff shortage, and lack of adequate training, infrastructure and logistical problems. Generally, the judicial system has three core problems. First, it is neither accessible nor responsive to the needs of the poor. Secondly, lack of serious steps to tackle corruption, abuse of power, and political interference. Thirdly, there is inadequate funding of the justice institutions which aggravates most deficiencies of the administration of justice (*Dakolias* 2000).

The perception of the independence of the judiciary is very low. The operation of courts is managed and supervised by the presidents of courts, who therefore, act both as judge; and administration official accountable to the president of the Supreme Court. Potentially this compromises the independence of the judiciary. Besides, the process of selection and promotion of judges is insufficiently transparent and lacks inputs from other legal professions (Ibid).

Furthermore, access to justice of all kinds of legal information is limited. Finally, the poor working conditions of judges threaten their independency, reduce their efficiency, and constitute incentives for corruption.

With the objective of changing the aforementioned chronic challenges of the justice system, the JSRP was introduced in 2002 under the authority of MoCB by assessing the performance of various institutions and to propose appropriate reforms (*Dakolias* 2000).

In March 2003, the CILC was contracted by the JRPO to undertake a base-line study of the Ethiopian Justice System; and make recommendations for reforms by identifying three core problems of the country's justice system; namely, inaccessibility; weak to tackle corruption and abuse of power; and inadequate funding (MoCB 2005).

In reforming the justice system, three phases were employed: training, upgrading, and law reform and harmonization. In the training phase, judges, justice personnel, police officers and prison administrators were made part of the reform. To solve the immediate shortage of training manpower about 3,000 judges were in *Woredas* and took training during this phase. In addition, the program was focused on upgrading the skills of low level judges and prosecutors during

court proceeding time. These programs were organized at both Federal and State levels. The Law Faculty of Addis Ababa University and the Ethiopian Civil Service College (currently known as, the Ethiopian Civil Service University) have carried out upgrading programs. Regarding court administration ways and means were explored for the effectiveness of the management of the courts. Eleven pilot projects were conducted under the FSC in collaboration with Donor Agencies. The program was later extended to lower Federal Courts and some State Courts (Ibid). Law reform and harmonization were undertaken by MOJ and JLSRI which were the role players in implementing the law reform and revision program to harmonize existing laws as well as updating the existing codes which was part of the important process (Ibid).

As a departure from its predecessors, the FDRE Constitution under its Article 78 has established a dual judicial system with two parallel court structures at Federal and the States. Accordingly, judicial powers, both at Federal and State levels are vested in the courts. The same constitution under the same Article provides that supreme federal judicial authority is vested in the FSC; and empowers the HPR to decide by a two-third-majority vote to establish subordinate federal courts, as it deems necessary, nationwide or in some parts of the country.

There is a FSC in Addis Ababa with federal jurisdiction and until recently, the FHC and FIC were confined to the federal cities of Addis Ababa and Dire Dawa. Federal High Courts were established in five States. Recently, Federal High Courts and First Instance Courts are also established in sub-cites of Addis Ababa. Furthermore, Federal Courts at any level may hold circuit hearings at any place within the state or *"area designated for its jurisdiction"* if it deemed *"necessary for the efficient rendering of justice."* Each court has a civil, criminal, and labor division with a presiding judge and two other judges in each division.

The FSC includes a Cassation Bench with the power to review and overturn decisions issued by lower Federal Courts and State Supreme Courts containing fundamental errors of law. Besides, Article 2(1) of the Federal Courts Proclamation Re-amendment Proclamation No. 454/2005 provides that, judicial decisions of the Cassation Division of the FSC on the interpretation of laws are binding on Federal as well as State courts.

2.2 The Structure of Addis Ababa City Courts

The Addis Ababa City Council is the Supreme Authority in the City Administration found at the upper apex of the city's power structure (City Charter, Article 10(10(a). In addition to other enumerated powers, the City Council has the power to establish judicial bodies, and defines their powers and functions (City Charter, Article s 14(1) (e) and 41). Pursuant with Article 39 of the City Charter, the AACG has City Courts and *Kebele* Social Courts. Hence, the Addis Ababa City judicial body has been established as per the City Charter. Furthermore, the Charter has established four tribunals with *judicial power. Accordingly, t*he tribunals are established by the Charter are Labor Relations Board; Civil Service Tribunal; Tax Appeal Commission; and Urban Land Clearance Matters Appeal Commission (City Charter, Article 40).

The Addis Ababa City Charter creates two levels of City Courts' structure, exercising municipal jurisdictions. There is no Supreme Court in the Municipal Court System, although a cassation bench is included within the Appellate Court. Cassation review of Appellate Court decisions can be brought before the FSC. The FSC has also the power to decide on matters of jurisdictional conflicts between the City courts and Federal Courts.

The FDRE Constitution under Articles 78 to 84, dealing with the structure and powers of the courts both at Federal and State levels, has provided a three level Federal and State Courts' structure. At the federal level, the court system is comprised of FIC, FHC and FSC. At the state

level, the court system is State First Instance (*Woreda* Courts), State High Courts (Zonal Courts), and State Supreme Court.

The Addis Ababa City Charter has established only two levels of court's structure unlike the court structures of the federal and regional states. If seen with the federal and state courts', the two levels court structure of AACG affect the right of citizens to access justice at the proper levels of court systems. The impact is that, if a case decided at the City First Instance Court is reversed at the Appellate Court of the city, a party whose case is reversed has no chance to appeal on the substance of the case except applying for cassation for fundamental error of law.

As far as the right to appeal is concerned, the FDRE Constitution under its Article 20 (6) clearly provides that "*All persons have the right to appeal to the competent court against an order or judgment of the court which first heard the case*". Similarly, the Federal Courts' Establishment Proclamation No. 25/1996; and other laws including the Civil Procedure Code includes the right to appeal to the proper level of courts. Obviously, such a court structure of the city could negatively affect citizens' rights to appeal. And yet, procedural remedy is neither established in the City Charter nor in the Addis Ababa Municipal Courts Establishment Proclamation. In addition, application for cassation in case when a decision is reversed at the Appellate Court will not serve as an appeal for litigants since applying for cassation deals only with fundamental error of law not with the substance of the case.

Generally, the Addis Ababa City residents have no solution for gaps created by such court structure. Due to this, litigants have only one chance i.e. applying for cassation for fundamental error of law. In any case, by no means applying for cassation will not replace the right to appeal on the substance of the case. The implication is that, litigants in the City Courts have been deprived of their rights to get justice in the proper court structure.

3. The Methods

The study features qualitative data analysis of data collected from both primary and secondary sources. The primary data sources were respondents/ informants in the study area while the secondary data sources were various relevant documents. Multi-method data- collection was employed to augment the validity of the data gathered and analyzed. Currently, in Addis Ababa City, there are ten First Instance Courts (one in each sub-city); one Appellate Court at the city level. Hence, the researcher took all the Courts (through a census method) and one Appellate Court as samples of the study. Systematic random sampling method was employed for selecting interviewees among the judges. Two judges were chosen from each court. Likewise, five prosecutors of the Justice Bureau were interviewed after being selected through systematic random sampling.

The researcher conducted a face-to-face interview to further investigate additional information in line with the interviewees' schedule. The informants were selected based on their knowledge about the issue concerned. Thus, judges of the city courts were interviewed. The data obtained being mainly qualitative, the method used for analysis was thematic and narrative analysis. The data was organized and tabulated under themes that correspond to the research objectives so as to provide readers with logical understanding of issues.

4. Results and Discussions

4.1 Justice Sector Reform in Addis Ababa City Administration

The AACG has undergone different reforms. Among others, the CA has made efforts to reform the justice sector. Hence, under this section, the reforms in re-organizing the courts in each sub-city; reform movement in enacting and amending laws; reforms on the efficiency and access to justice; and reforms on CFM system of Addis Ababa City Courts have been presented.

4.1.1 Reforms in Re-organizing the Courts in each Sub-City

At the initial stage, the Municipal Courts of Addis Ababa City were established in two separate places, i.e. the Municipal First Instance Court and the appellate court. To cope up with administrative reform and changes, the name "*Municipal Courts"* were changed into *"City Courts"* and the FIC were re-organized from one center to each sub-city to correspond with the newly created sub-cities. However, the reform movement was not supported by the Revised Charter or by other subordinate legislation. Here, it seems that the City Courts were spread into each sub-city only informally. However, the researcher believes that this reform movement by itself, though not supported by law, is an achievement compared to the inaccessibility of the Municipal Courts before the reform movement.

With regard to the reform movement in relation to the city courts, it is difficult to find formal documents indicating the real causes to re-organize the courts into each sub-city. The only indication is that in order to harmonize the overall reform movement in the city, a committee was formed by the City Executive itself to handle the reform of the city courts. This reform movement was made to recognize the reorganized sub-city courts.

4.1.2 Reform on the Efficiency and Access to Justice of the City Courts

As courts attempted to implement delay reduction programs, they faced a perennial question: how are cases processing timelines and quality related? Initial research suggested that these two values are in conflict such that a gain in one comes at the expense of the other. "Expeditious criminal case resolution is found to be associated with court systems in which the conditions also promote effective advocacy. Because effective advocacy underlies due process and equal protection of the law, it is an integral aspect of the broader concept of quality case processing." In short, the study suggested that well-performing courts should be expected to excel in terms of both timeliness and quality (IFCE, 2007).

Inefficient parts of court proceedings can be identified and proposals for improvement can be developed based on analysis and description of work processes in the courts. In this regard, timeliness and foresight are crucial. Duration of the litigation process must be constantly monitored as well as pending cases that have been in the process for an excessive period. Appropriate measures must be taken in situations where the duration exceeds the norms. The standard operating procedures of an excellent court comprise important elements such as agreed upon time standards, establishment of case schedules in individual cases, the active role of the judge with respect to time management, limitations in the postponement of court sessions, effective scheduling methods for court sessions, and the use of differentiated case management and, if applicable, alternative dispute resolution techniques (Ibid).

It should be clear that an efficient judicial sector is a crucial component of democracy and good governance. Court case delays prevent the timely resolution of conflicts and also prevent others in need of resolution. Hence, courts' efficiency and access to justice are closely interlinked, and low level of efficiency prevents citizens from exercising individual rights. Delay in the judicial process leads to the erosion of individual and property rights. An inefficient judiciary therefore, prevents full citizenship and is a barrier to the consolidation of democracy too (Ibid).

Before the implementation of the justice sector reform, the sector had a number of problems. Among others, the sector was not committed to serving the public. There was backlog of cases; the public suffered from unfair justice; lack of judicial independence, accountability and transparency; corruption; and lack of accessibility (Ibid)

The Addis Ababa City Courts were not efficient in realizing issues of the rights of citizens, and this called for reform movement in the city. The reform movement which began in 2003 only focused on re-organizing the location and places of the courts, and improving(amending) the laws to govern the judiciary ignoring the important aspects of reforming the courts to enhance their independence, efficiency, and access to justice(MoCB 2005).

The Addis Ababa City Courts did not resolve cases qualitatively and timely due to the mismatch of judges with the number of cases. Hence, judges lacked interest in performing their function owing to insufficient salaries and other benefit packages. The City Courts were not efficient in performing their functions. The experience further indicates that lack of attractive compensation and other benefits had an adverse impact on the performance of the City Court (BPR, 2009).

To further prove these points, it would be significant to explore the performance of the courts from the year 2005 to 2009. For instance, from the year 2005 to 2006, there were 331 civil cases that were not resolved in the FICs of the city. Regarding criminal petty offences, there were 500 backlogs of cases charged by the Justice Bureau of the Addis Ababa City and not resolved until the reform year of 2009 by the City Courts. In addition, 9,371 criminal petty offence cases were initiated in those years but not resolved. 98 criminal petty offence cases were adjourned in the courts before 2005 and not resolved until the year 2009. Moreover, 2,298 criminal petty offence cases were adjourned from the year 2005 to 2008 but only resolved after the implementation of BPR. In the Appellate Court, 825 cases of all types were found undecided from the year 2008 to 2009 (Geleta 2012).

Owing to the aforementioned problems, the CA has decided to reform the justice system similar with the federal and regional governments. Hence, institutional change through Business Process Reengineering (hereafter, BPR) is put in place (Ibid). After the implementation of BPR in the city, an attempt is made to make the city courts efficient and effective. In this regard, CFM System Reform is made in the City Courts. Hence, improvement has been made on the efficiency of the courts in rendering justice from initiation of cases to disposition. Because of the introduction of data base system, data and files have been well recorded, organized and used (Ibid).

The right to access to justice is the universal principle which has many obstacles to get it easily. Legal poverty is one of the most serious obstacles to access to justice. In the history of judicial reform, the rationale- of reforming the judicial system is to make it accessible to citizens, particularly to the poor. In this regard, with all its shortcomings, the effort in re-organizing the City Courts into the newly created sub-city administrations was a progress to ensure geographical accessibility of the City Courts.

As an important development and making the City Courts accessible to the residents, the bench of the City Appellate Court is increased from one to four. In addition, the FICs have been increased from six to ten benches so that residents of the city are now in a position to get the services of the courts in their respective sub-cities. As a result, the service delivery of the courts has been tremendously improved (Ibid). For instance, the following table shows the improvement made after the introduction and implementation of BPR.

Table 1: Time Used for Court Cases before and after the Implementation of BPR

No.	Activities	Time consumed before the implementation of BPR	Time expected to be consumed by the study of BPR	Actual time Consumed
1	Criminal litigation adjournment	3 years and 10 months	5 days	1 month
2	Civil litigation adjournment	43 days	4 hours	7 days
3	Hearing and judgment	7 years and 7 days	15 days	2 month
4	Enforcement	1 year	20 days	3 month

***Source*:** Computed from the Report of Appellate City Court of AACA, July 10, 2015

From the table above what can be deduced is that-NO COMMA HERE there is an improvement on the efficiency and accessibility of justice since the implementation of BPR in 2009. However, the implementation is not in line with expectations in the study of BPR as shown in Table 1.

4.2 Case Flow Management (CFM) System of Addis Ababa City Courts

CFM is the court supervision of the case progress of all cases filed in that court. It includes management of time and events necessary to move a case from the point of initiation (filing, date of contest, or arrest) through disposition, regardless of the type of disposition. CFM is an administrative process; therefore, it does not directly impact the adjudication of substantive legal or procedural issues (Case Flow Management Guide, 2007). CFM includes early court intervention, establishing meaningful events, establishing reasonable timeframes for events, establishing reasonable timeframes for disposition, and creating a judicial system that is predictable to all users of that system. In a predictable system, events occur on the first date scheduled by the court. This results in counsel being prepared, less need for adjournments, and enhanced ability to effectively allocate staff and judicial resources (Ibid).

It has been identified that one of the reasons for case delay in the City Courts is lack of CFM system and practice. Hence, CFM system is crucial to enhance the efficiency and access to justice in the City Courts. Before the implementation of BPR, City Courts in Addis Ababa did not practice CFM system to enhance their efficiency and performance (MoCB 2005). Accordingly, courts did not have a system of a modern CFM to control the progress of cases, a tactic to differentiate their cases in terms of time they consume, to have realistic pre-trial schedules of their cases, by preparing a fair and credible trial data to ensure the efficiency of the courts for cases from initiation to disposition (Ibid). Table 2 shows how cases are handled and disposed in the different level of city courts and tribunals of Addis Ababa. From the table what can be inferred is that, there are massive cases being filed to the city courts and entertained by the same.

Table 2: Cases Brought before and Decided by Addis Ababa City Courts

Institution	Major activities	Accomplishment in Ethiopian Fiscal Year			
		2001	**2002**	**2003**	**2004**
Appellate Court	Opining of appellate and cassation bench files	2,592	2,424	1,878	-
	Decision on appellate and cassation bench files	2,011	6411	1,832	-
First Instant Court	New opened civil case files	19,891	25,320	38,361	-
	Decided civil case files	221,054	24,978	-	-
	Decided criminal case files	26,324	58,615	48,835	-
Urban Land Clearance Matter Appeal Commission	Appellate file	25	8	12	28
	Decided file	94	8	5	29
Tax Appeals Commission	New opened files	77	182	265	252
	Decided file	60	31	265	235

***Source*:** Computed from the Report of the AACA Appellate Court, July 10, 2015

4.3 Addis Ababa City Administration Justice Bureau

As already hinted under Article 49 of the FDRE Constitution, the residents of AACA have been given with *'a full measure of self-government'.* Accordingly, by the Charter, the CA has been given with the power to make laws, execute laws and interpret laws.

The Justice Bureau of AACA was established as per Proclamation No. 1/ 2002. However, the Justice Bureau was re-established in May 2008, as per Proclamation No. 15/2008, a Proclamation to Re-establish the Executive and Municipality Service Bodies. According to this Proclamation, the Bureau has been given with the power of execution and co-ordination. Accordingly, the Bureau co-ordinates the justice sector (City Courts, the Judicial Administration Commission Office of the Social Courts, Tax Appeals Commission, Urban Land Clearance Matter Appeal Commission, and Addis Ababa Police Commission) at Common Process Council Stage. The researcher however believes that, this power of co-ordination given to the Justice Bureau could affect the independence of, particularly that of the courts. Hence, this co-ordination power given to the Justice Bureau need to be re-considered as it makes the courts under the subordination of the executive organ of the government of the CA.

The Justice Bureau currently renders different services to the residents of the city. It implements the JSRP; it serves as a top adviser of the CA; it litigates before courts and institutions with judicial powers for the interest and right of the CA and the residents of the city. It represents the executive and litigates on behalf of the executive before judicial organs when the executive sues or be sued; it drafts contracts and agreements when asked; it conducts legal research; it follows the city's security matters, etc.

Under the Justice Bureau different processes have been established since the implementation of the JSRP. These processes are Compliant Investigation and Pleading Core Process; Security and Administration Affairs Core Process; Legal Drafting, Legal Awareness Creation and Advice Core Process; and seven other support processes (AACA Justice Bureau 2015). Table 3 for instance shows the accomplishment of the Legal Drafting, Legal Awareness Creation and Advice Core Process.

Table 3: The Legal Drafting, Legal Awareness Creation and Advice Core Process Accomplishment

No.	Major Accomplished Activities	Year			
		2009	**2010**	**2011**	**2012**
1	Legal Drafting	25	39	24	26
2	Awareness Creation				
	Face to face	-	-	9	8
	Radio	10	12	12	16
	TV	10	9	9	13
	Journals	10	7	8	12
3	Legal Advice	66	46	54	62

***Source*:** Computed from the Report of the Justice Bureau of AACA, July 25, 2015

The other important core process established by the Justice Bureau is the Compliant Investigation and Pleading Core Process. Since 2008, this process has been established at the city level and at all sub-cities. Hence, the Compliant Investigation and Pleading Core Process established at the city level follows civil matters whereas Compliant Investigation and Pleading Core Process established at the sub-cities level follows both civil and violation of regulations. As the analyzed data reveals, the implementation capacity for civil matters is 92.5% whereas violation of regulation is 97.9 %(Ibid). Table 4 shows the accomplishment of this core process.

Table 4: Compliant Investigation and Pleading Core Process Accomplishment

Year	Civil matters and violation of rules	Civil matters and violation of rules decided	Decisions in-favor of government	Decisions against government	Cases appealed	Government's interest protected in money	Closed files
2009	5,000	2,965	-	-	-	-	-
2010	15, 542	9,763	5,365	377	203	467,098,040.00	-
2011	3, 243	2,127	2,118	9	16	121,264,742.00	-
2012	7,503	5,177	3,615	116	-	216,623,232.69	366
Total	**31, 288**	**20, 032**	**11, 098**	**502**	**219**	**804,986,014.00**	**366**

Source: Computed from the Report of the Justice Bureau of AACA, July 25, 2015

4.4 Overall Challenges of Addis Ababa City Justice Sector

4.4.1 Jurisdictional Gaps and Impacts of the Two Level Court Structure

- **Jurisdictional Gaps**

Addis Ababa, as a Chartered City with constitutional powers to self-government, establishes the three branches of government, including the judicial body. However, the judicial branch is not organized in the manner that it deals with complex issues of civil and criminal cases. Initially, the courts were established to treat very simple cases of civil and petty offences so as to minimize the case load of Federal Courts. The jurisdictions that are clearly provided in the City Charter are interpreted by the FSC as if they had not been given to the Addis Ababa City Courts.

According to the President of AACG Appellate Court, this fact creates public mistrust and inconvenience to citizens who deserve justice in their locality (Melaku 2015).

The Addis Ababa City Charter has established the three branches of government. Of the three branches of the AACA, the judicial body is organized to be the most powerless. Initially, the City judiciary is not established to play a significant role in the complex economic interactions of the city. Rather, it was designed simply as a supporting body to the Federal Courts, exercising only simple issues of petty offences and civil cases. For these reasons, the Addis Ababa City Courts were considered as insignificant in serving the demands of citizens (Ibid).

According to the City Court's judge, the City Courts are inefficient and inaccessible, particularly for the poor. In addition, the City Courts are characterized by their poor court case management and administration. Not only this, the Courts are staffed, in most cases, with unqualified and the least paid supporting staff. Despite the administrative structural change and reform movement with a lot of its strong sides, it did not make effort to improve the aforementioned critical problems of the City Courts with the exception of reorganizing them in to the newly created Sub-Cities (Itana 2015).

As regards with the jurisdiction of the City Court, the powers of the City Courts have been taken away by the FSCCB through its decision. Among the different powers given by the charter to the City Courts is entertaining cases involving succession right; and declaration of absence or death. For instance, on issues of succession rights and declaration of absence and death, the Addis Ababa City Charter under its Article 41(1) (h) and (i) have provided that *"…the Addis Ababa City Courts shall have the following power over the applications for succession certificates and applications for the declaration of absence or death"*. Article 41 (1) (h) provided a phrase, "…..a*pplications for succession certificates"*. This provision is not clear whether it includes declaring the properties of the diseased and deciding on properties to be succeeded by the successor. Despite the existence of the vagueness of the provision of the City Charter, the Addis Ababa City Courts were entertaining issues of certificate of succession, ordering accounting of the properties of the deceased and deciding that the properties are properties to be succeeded.

However, the FSCCB, which is vested with the power to interpret the laws of the country, with (?) the exception for the FDRE Constitution, has passed a decision regarding the jurisdiction of the Addis Ababa City Courts on issues related with succession cases. Accordingly, on the decision Civil File No. 142015, passed on *Hidar* 29, 2002 Ethiopian calendar, which says *"…the Addis Ababa City Courts have jurisdictions only to issue the certificate of succession, and declaration of absence and death…"* Here what can be inferred from the interpretation of the FSCCB is that, matters relating to accounting the properties of the diseased and declaring as properties of succession are not given to the Addis Ababa City Courts. The problem with the decision of the FSCCB is that-it passed the decision after the City Courts had been practicing this jurisdiction for years and passed so many decisions that are negated by the FSCCB considering beyond its jurisdiction.

As to the researcher's personal observation, the purpose of giving the power to decide on the properties of succession to the Federal Courts is not persuasive since succession cases are not as such complicated cases. Furthermore, when we see this issue in relation to access to justice, it is completely unfair and injustice to make citizens appear before courts of two different levels of government for the same case which is costly in terms of money, time, and place especially in courts which are found in different locations and different levels of the government-. In this regard, the researcher disagrees with the above mentioned decision of the FSCCB- for it is not

rational in terms of access to justice- and for it is too late to correct the decisions passed by the City Courts in the past years.

The other important issue that has an impact on the jurisdictions of the Addis Ababa City Courts is whether or not the judges in the City Courts are sufficiently clear regarding the powers provided under Article 41 (1) (f) of the City Charter in relation to government owned houses which reads, *"…the Addis Ababa City Courts shall have jurisdictions on suits brought in connection with government owned houses administered by the City Government…"*

These *"…government owned houses…"* include houses taken by Proclamation No. 47/1975 during the *Derge* regime and had been administered by the CA. The researcher believes that the stipulation of the Article is a very clear provision that needs no further interpretation. Since the provision regarding the government owned houses is clear, there is nothing wrong in applying it by the City Courts of AACA. The problem is again, the FSCCB on its decision Civil File No. 33841 passed on *Tikimt* 6, 2001Ethiopian calendar (i.e. 16/10/2008 G.C) interpreted this provision in the manner that the jurisdiction of Addis Ababa City Courts is 'only related to issues such as litigations on house rents. However, the City Courts have been entertaining issues of ownership and have passed decisions for years. Here, it is not difficult to imagine the impact of the FSCCB's decision on citizens who have already acquired the right by the decisions of the City Courts, and third parties who bought houses from people who have already acquired their houses through the decision of the City Courts. It has also an impact on the CA since the already closed cases are to be re-opened in the Federal Courts. In this regard, the FSCCB again seems less concerned in rationalizing the impacts of its decision as equal as the governing power of its decision in all courts throughout the country.

The implication is that- it is not because the laws are vague, but the interpretations given by the FSCCB are derived by the thinking that the City Courts are not allowed to exercise complex issues. The President of the Addis Ababa Appellate City Court and the judges have also shared this view; and also believe that such decisions of the FSCCB would affect the rights of citizens; and morals of the judges of the City Courts who initially decided the case as per the provision of the City Charter. Hence, the researcher believes that as the decisions are precedents for future similar cases, it shall have negative impacts on the upcoming similar cases.

The City Courts are not organized in the manner that they exercise complex issues of civil and criminal cases. Initially, the courts were established to exercise very simple cases of civil and petty offences, simply to minimize, the Federal Courts' case load. Even the jurisdictions that are clearly provided in the City Charter are interpreted by the FSC as if not given to the Addis Ababa City Courts. Generally, the City Courts are organized to be the most powerless. They are not established to play a significant role in the complex economic interactions of the city (Ibid). For these reasons, the Addis Ababa City Courts were considered as insignificant in serving the demands of citizens.

- **The Impacts of the Structures of Addis Ababa City Courts**

The FDRE constitution establishes three levels of court structure, both in Federal and Regional States. This constitutional framework is in line with the principle of access to proper levels of courts. The point is that, citizens have the right to get justice in courts rationally structured to absorb their rights. The Addis Ababa City charter establishes only two levels of court structure contrary to structure of courts at federal and regional state. Such a two level of court structure negatively affects citizens' rights to appeal. And yet, procedural remedy is established, neither in

the City Charter nor in the Addis Ababa Municipal Courts Establishment Proclamation regarding this gap.

4.4.2 The Impact of the Co-ordination Role of the Addis Ababa City Justice Bureau

The Justice Bureau of the CA is given with the power to co-ordinate the justice sectors. Accordingly the Bureau co-ordinates the justice sector (City Courts, the Judicial Administration Commission Office of the Social Courts, Tax Appeals Commission, Urban Land Clearance Matter Appeal Commission and Addis Ababa Police Commission) at the stage called Common Process Council. The interviewed judges believe that, this power of co-ordination given to the Justice Bureau could affect the independence of the institution with judicial power, particularly the courts. Hence, this co-ordination power given to the Justice Bureau need to be reconsidered as it makes the courts under the subordination of the executive.

4.4.3 The Impacts of Addis Ababa City Courts' Rooms

The courts' rooms in the CA are not well organized. As a result, they are not convenient for the judges and the clients of the courts. The president of the Appellate Court has also reviled that, the rooms do not seem courts' room so that they are not attractive. According to him, there is lack of budget. Hence, the courts are not in a position to have well organized courts' rooms. Despite efforts have been made, still the problem is intact (Melaku 2015). One can, therefore, argue that the Addis Ababa City Courts lacks financial independence.

5. Conclusion and Recommendations

5.1 Conclusion

The FDRE Constitution under Articles 78 to 84, dealing with the structure and powers of the courts both at Federal and State levels, has provided a three level Federal and State Courts' structure. At the federal level, the court structure is comprised of Federal First Instance Court, Federal High Court and Federal Supreme Court. At the state level, the court's structure is State First Instance (*Woreda* Courts), State High Courts (Zonal Courts), and State Supreme Court.
As per article 49(2) of the FDRE Constitution, Addis Ababa City is vested with autonomous self-governance. In the research, it has been identified that a number of measures have been taken by AACG in order to reform the justice sector of the city. Particularly, after the implementation of Civil Service Reform and BPR in the CG, a lot of improvement in the area of service delivery and good governance have been recorded, but with a lot of pending cases that need to be improved.

Despite all the efforts made, there is, however, a challenge facing City Courts, court structures. The two level court structures could affect the right of the city residents to access justice at the proper levels of court systems. The impact is that if a case decided at the City First Instance Court is reversed at the Appellate Court of the City, a party whose case is reversed has no chance to appeal on the substance of the case except applying for cassation for fundamental error of law. As far as the right to appeal is concerned, the FDRE Constitution under its Article 20 (6) clearly states that "*All persons have the right to appeal to the competent court against an order or judgment of the court which first heard the case".* Similarly, the Federal Courts' Establishment Proclamation No. 25/1996; and other laws including the current Civil Procedure

Code provides for the right to appeal to the proper level of courts. Hence, the implication is that- litigants in the City Courts have been deprived of their constitutional right to get justice at the proper structure of courts.

Concerning the powers and jurisdictions given to the City Courts, the City Courts' jurisdictions are limited to the issues of petty offences, remand in custody, and exercising bail applications, while the power to trialing and deciding on such criminal cases are given to the Federal Courts. This practice is very likely to create - a sense of dissatisfaction and inconvenience on both litigants and judges. This existing problem, which is the result of legal and jurisdictional gaps, becomes worse when seen in relation to the inaccessibility of the City Courts. The inconvenience is not only to the criminal suspects and their attorneys, but also to the police departments, which are responsible for presenting the suspects to the Addis Ababa City and Federal Courts that are located in different and far places. Moreover, this practice creates a sense that the City Courts are not supposed to deliver proper justice by handling complex cases.
In addition, the Justice Bureau of the AACG has the power of execution and co-ordination. Accordingly, the Bureau co-ordinates the justice sector at Common Process Council Stage. Nevertheless, the researcher believes that- this power of co-ordination given to the Justice Bureau could affect the independence of the city courts and other organs with judicial power. Hence, this co-ordination power given to the Justice Bureau needs to be reconsidered as it makes the courts subordinate to the executive body.

5.2 Recommendations

After the implementation of Civil Service Reform and BPR in the AACG, a lot of improvements in the area of judicial service delivery have been recorded. In this regard, the JSRP has played a pivotal role. Hence, the CG should expand those improvements while working on improving the unimproved ones. Regarding jurisdictions and structures of the courts, the City Courts should be empowered to exercise complex criminal cases and any type of civil litigation in relation to the power of the CG.

The Addis Ababa City Courts' structure should be re-formed to have a proper court structure based on the constitutional framework of the FDRE Constitution. The reform can be implemented based on at least two alternatives. First, they should have a three levels of court structure; namely, First Instance, High Court, and Supreme Court. Second, they can have special benches within the City Appellate Court that entertain only appeals on the decision of the appellate court itself.

The City Courts' JAC is mandated to obtain the views of the Federal JAC on nominees and forward those views along with its own recommendation to the City Council. Such an arrangement totally puts the City Court under the control of the federal court which could eventually endanger the powers of the City Courts- and even the self-governance right of the city residents as stipulated under Article 49 of the 1995 FDRE Constitution. Hence, such double accountability of the City Courts needs to be revisited. To this end, the Addis Ababa City Council should amend Article 3 of Proclamation No 4/2003 of the JAC Establishment Proclamation by setting aside the membership of the federal court judge in the City Courts' JAC for the better exercise of *self-rule*.

The newly created sub-cities are so vast in area that a single court located in one place is not enough to serve the public at large, particularly the poor. Therefore, the sub-city court should be reorganized and re-located in to more than two locations in each sub-city to make them

accessible. Hence, the CG should allocate sufficient fund that helps establish additional court and benches in each sub-city of Addis Ababa.

The City Courts have been entertaining issues of government owned houses and succession cases for many years. However, decisions given by the FSCCB on issues of government owned houses and succession cases are not convincing as its decision deviates from the clear provisions of Addis Ababa City Charter. Here, one can imagine the impact of the FSCCB's decision on citizens' right and jurisdiction of the City Courts. It has also an impact on the AACG since the already closed cases are to be re-opened in the Federal Courts. In this regard, the FSC seems less concerned with rationalizing the impacts of its decisions in all courts throughout the country. Therefore, the FSC should rationally decide on cases considering the future impacts of the decision.

The Justice Bureau of the CG is in charge of co-ordination. But this power of co-ordination could affect the independence of the courts. Hence, this co-ordination power given to the Justice Bureau needs to be reconsidered as it makes the courts subordinate to the executive entity.

Finally, the researcher invites interested researchers and legal professionals for further in-depth study on the Justice Sector Reform and Access to Justice in the AACG.

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