ACCESS TO JUSTICE IN THE ARSI ZONE OF THE OROMIA REGIONAL STATE IN ETHIOPIA AND ITS ASSOCIATED CHALLENGES

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ABSTRACT

Different people face different legal problems. The legal needs in a poor rural community will be quite dissimilar to the legal needs of an affluent suburban community in Addis Ababa or Adama. Both sets of needs for a just resolution of the existing conflicts, however, could be equally important and pressing since they both have a deep impact on everyday life. More abstractly, access to justice is defined as a 'commonly applied process that people address to cope with their legal problems'. A court procedure is an obvious example of access to justice. However, the definition includes both formal and informal procedures. This means that a mediation procedure, or a procedure before an informal Commission or another neutral third party, also qualifies as access to justice. An example of access to justice is a criminal procedure for a victim of a robbery. The beginning of the path may be calling the police and the end of the path may be a court verdict or a dropped case due to insufficient evidence. This research aims to measure the adequacy of the legal system to respond to the needs of individuals, communities, and societies in the Arsi zone of the Oromia region. The path to justice can be measured from the perspective of the user or the service provider. Holistic measurement of justice from the perspective of the users provides plenty of information on the performance and impact of the procedure. How many resources have the users spent attempting to obtain a resolution? Did they receive a resolution and is it seen as just? Are they satisfied with the quality of the procedure? These and other questions could be addressed using the data provided by the users. On the other hand, access to justice can be measured from the perspective of the service providers i.e. the courts, police, and the prosecutor's office. In this regard, the cost of justice, the quality of the procedures in the institutions, and the quality of the outcome that users expect from the justice system are the typical tools to measure access to justice.

In Ethiopia, access to justice is usually blocked by several factors i.e. lack of qualified manpower, budget, law moral, corruption, and the public's attitude and understanding of the justice system. This problem is exacerbated in remote areas of the country like the study area of this research. However, the solutions seem to be elusive because there are no actual studies conducted on the extent of the problem. Thus, this study would begin the first step in understanding problems of access to justice in weredas of the Arsi Zone of Oromia Region, to come up with tangible recommendations.

Keywords: Access to Justice; Justiciable Matter; Barriers to Justice; Alternative Dispute Resolution

INTRODUCTION

The motive behind this study is to discuss various issues that are obstructions or barriers in the way to justice in the study area of the research and to provide working solutions. This piece of writing deals with the abstract, introduction, the Research Methodology of the study, the main analysis, and findings of the study. Finally, as a concluding remark, the researcher will suggest the necessary recommendations.

RESEARCH METHODOLOGY AND METHODS OF ANALYSIS

A. Targeted Institutions and persons

To examine the extent of the problem of access to justice, the targeted institutions and persons should include firstly the Courts followed by other stockholders in the justice system including the public prosecutor, the justice offices lawyers, the police, and the clients at large. To this end, the researcher has included the Wereda Courts in Munesa, Shirka, Arsi Robe, Sude, and Tena. Besides, the public prosecutor's office or justice office and police of these areas are the subjects of the research. In terms of the targeted population the public at large, which is the user of the justice service in the mentioned weredas is included in this study.

B. Sources of Data

To get reliable and valid information, the researcher has used both primary and secondary data. The primary data is collected through a questionnaire, observation checklist, and key informant

interview with selected individuals and officials. The secondary data are collected from published, unpublished documents, annual reports, journal articles, books, newspapers, and other web-related materials. Also, the researcher has utilized proclamations, regulations, directives, and foreign legislations to explain the subject matter.

C. Data Collection Instruments

To accomplish the intended research work, the researcher has employed three methods of data collection (questionnaire, interview, and observation). Multiple instruments of data collection are used to overcome the shortcoming of each.

D. Methods of Data Analysis

The data which is collected from primary and secondary sources are analyzed, summarized, and presented both through quantitative and qualitative methods of data analysis. Data which is collected through questionnaire are analyzed and summarized. The data which is gathered through interviews, observation, and some of the open-ended questions from questionnaire parts are analyzed qualitatively. These being the main elements to identify the challenges of access to justice, the researcher also tried to employ internationally set standards (by country best practice models) to measure the subject matter of this study in the study area. Basically, access to justice is an issue subjected to international exposure which is not only the problem of countries like Ethiopia but also the developed ones. Hence, the researcher, by using various tools of gathering information, tried to measure the challenges of access to justice, by conducting a Holistic measurement of access to justice in the study area, by taking into consideration international requirements to measure access to justice.

THE CHALLENGES OF ACCESS TO JUSTICE IN THE ARSI ZONE OF THE OROMIA REGIONAL STATE

The main purpose of this study is to identify the challenges of access to justice in the *Arsi* zone of the Oromia Regional State in Ethiopia. I.e., it studied the subject matter in the Arsi Zone with particular emphasis on five identified *weredas* incorporated in the mentioned zone and on the institutions that are charged with the duty or the power to render justice or the so-called Justice Institutions namely the Courts, the Justice Bureau, and the Police.

Accordingly, the following are the available *weredas* in the *Zone*: Asako, Asella, Bekoji, Colle, Digalu Tijo, Dodota, Gololcha, Lode Hetosa, Merti, Munesa, Arsi Roobe, Seru, Shirka, Sude, Tana, Tiyo, and Ziway Dugda. However, after seriously considering various similarities or attributes related to the *weredas* such as the location, available datum, distance, budget constraint, the hierarchy of government structure, and so on the researcher has decided to study the subject matter in 5 of the most representative *weredas* out of the existing weredas namely, Munesa, Arsi Robe, Shirka, Sude, and Tena.

The next step taken by the researcher is identifying the methodologies that have to be applied to identify the challenges of access to justice in the *weredas* mentioned above. As clearly stipulated on the part of the research methodology, being guided by existing literature and international standards outlined by access to justice research institutions the researcher has identified 4 basic elements of access to justice that serve as a tool to measure or influence or guarantee access to justice in a certain legal system. These are Legal Knowledge of Citizens, Legal Framework, Advice and Representation, and factors associated with Access to justice institutions. The next logical step undertaken by the researcher is to study the situation of the institutions vested with the power to render justice in each *wereda* from the perspective of the above elements.

The main tools of research used in due course are Interviews, Questionnaires, Existing data (statistics), and Focus Group Discussions. The researcher has operated not a few numbers of interviews with 5 respondents in each *wereda* who are the service users of justice institutions or litigants. Each of them is identified based on merit (such as gender, literacy rate). Then questionnaires were distributed to 1 judge, 1 Public prosecutor and one policeman in each *wereda*. The questionnaires are prepared regarding the elements of access to justice mentioned above and are different to different respondents. Hence, the questionnaires are coined in a way that they can generally encompass all the mentioned elements in all the justice institutions and are to be responded to by Judges, Public Prosecutors, and Policemen.

Also, the researcher has reviewed the existing data (whenever necessary and per the nature of the element in question) in the institutions mentioned above and finally the researcher has conducted informal focus group discussions in mentioned *weredas* of the *zone* on the challenges of access to justice in the *Arsi* Zone of Oromia Region attended by personnel from the institutions mentioned above. The final step in this study is writing the analysis of the study and identifying the results thereby suggesting the necessary conclusion and recommendations.

FINDINGS OF THE RESEARCH ANALYSIS

As per the outcome of the analysis of the facts collected through the instrumentality of interviews, questionnaire and Focus Group Discussions, the following are found to be the major challenges or barriers to access justice institutions in the *Arsi Zone* of the Oromia Regional State:

Challenges Related to the Element of Legal Knowledge

- The lack of adequate legal knowledge or information or education by the clients in the justice institutions. This lack of knowledge is evident from their inability: to know their basic rights and duties before the eyes of the law, the fundamental laws of the country (such as the constitution), most importantly the rules of substance and procedures in the justice institutions, and even the type and functions of the justice institutions. In turn, among other things, the lack of legal knowledge is exacerbated due to the low level of literacy (education) rate. Obviously, individuals with an adequate level of education would have more opportunities to access justice institutions and vice versa. The simple logic here is if a client is illiterate s/he would not be capable of reading and understanding the law or appreciating their rights and duties or where to enforce them which ultimately fails to access justice institutions.
- The lack of legal knowledge is also reflected on the side of the personnel of the justice institutions such as judges, public prosecutors, and policemen. Almost all the institutions are predominantly staffed by individuals whose level of education is a diploma certificate and below. The level of education directly reflects the depth of their training on the law and also their level of analyzing and interpreting the law. Though the majority of the judges are LL B., Degree holders, the data collected on the public prosecutors (1 from 2 is a Diploma holder), Legal officers and the Policemen affirm a low level of education (which is a Diploma and below). Among other things, the basic sources of knowledge for such staff are the codes, proclamations and cassation volumes which are only scarcely available in their institutions. The logical correlation here is, if the interpreters or adjudicators or enforcers of the law themselves are not adequately equipped with legal knowledge, one can so easily understand the huge barrier that will be created for citizens the majority of whom are with a low level of both basic education and legal knowledge.
- The lack or non-availability of adequate legal knowledge or information produced in the

local language. The language of the law (legalese) is by itself intrinsically technical which requires a good understanding of the English language. On the contrary, the service users or clients are with a low level of education who cannot understand Basic English let alone the language of the law. Aggravated on that, the problem persists on the side of the personnel of the justice institutions. Hence, among others, the best mechanisms to alleviate the problem would be the production of adequate legal materials or information on the law (codes, proclamations, regulations, and cassation decisions) in local languages. In the case at hand, the working language of the justice institutions in the study area is *Afan Oromo*. The researcher believes that the production of laws in local languages eradicates not a few numbers of barriers related to language and knowledge.

- Low level of availability of legal education or information in the *weredas* under the study areas. In this regard, the responses collected reveal that there are no public awareness programs or direct legal education programs available to the public at large, either by the initiative of the government or via the instrumentality of non-governmental interested actors. In this regard, such actors could take advantage of various types of mass media to promote legal education in the *weredas* where the respondents come from. On the other hand, the justice institutions also must undertake either formal or informal legal awareness programs within the surrounding communities or to their clients.
- There is a long-existing high degree of confidence or mistrust on the side of the public to take advantage of or consider the justice institutions as a source of legal knowledge.
- The lack of adequate budget, skilled manpower (law professionals), and resources in the justice institutions at the *wereda* level to undertake public awareness programs directly or indirectly to increase the legal awareness of their clients or the public at large.

The Challenges of Access to Justice related to the Element of Legal Framework

- The lack of clear rules and guidelines (standards) put in place by the justice institutions that are essential in defining or outlining the proper (objective) application of the laws incorporated in the constitution and other laws strictly related to the workings of the justice institutions such as the laws of evidence, civil and criminal procedure laws. This becomes a barrier to access justice institutions because the presence or availability of substantive and procedural laws does not by itself guarantee that the institutions are efficiently rendering justice. It is when these substantive and procedural laws are objectively applied

or practiced that one can say the institutions are discharging their duties efficiently. And the objective application of such laws strictly requires the availability of clear internal guidelines in the workings of the justice institutions. The non-availability of such guidelines, in addition to being a barrier to access justice institutions, will result in problems like subjective or arbitrary decisions or administration of justice, delayed justice, Partiality (discriminatory) decisions, improper use of discretionary powers by judges and prosecutors, and so on. For instance, in the absence of such manuals, the judges and prosecutors may become less reliant on the law and heavily depend on the margin of their discretion in due course accusation, adjudication or fixing of judgment, and so on.

- The lack of promotion of comprehensive research and knowledge development programs on indigenous mechanisms of dispute resolutions and the rules and procedures applied in such systems, which intend to study and incorporate such good practices of rules and procedures into the formal system of law and adjudication. This failure is, on the one hand, associated with the justice institutions in that they do not generally undertake such activities on the indigenous communities surrounding them, and on the other, it is also associated with the staff of such institutions to research, understand, and use such good practices of indigenous origin. The grain of the truth here is, the more such values, tenets, norms, or social realities of the surrounding community are reflected in the formal system of law or procedures of dispute settlement, the more trustworthy and accessible the system becomes to indigenous communities. Especially, in relation to police work, such as prevention of crimes and settlement of some disputes that cannot be sustainably alleviated by application of formal laws such as tribal disputes, the experience (rules and procedures) of indigenous knowledge becomes crucial.
- The lack of regular or adequate or formal capacity building training to the staff members of the justice institutions (judges, prosecutors, and policemen) on a legal framework that is destined to boost their knowledge on the relevant laws to their profession such as, the Constitution, law of evidence, criminal law, human rights law and civil and criminal procedure laws. For instance, the training given to the police should emphasize the constitutional rights of suspected persons, accused persons, detained persons, the principle of human rights law in due course of enforcing police work and the principles envisaged under the criminal procedure law in due course of arrest, interrogation, accusation and imprisonment and so on. However, the study shows that the available training is basically

physical trainings.

- The non-availability of the adequate legal framework (substantive and procedural laws) produced and disseminated in the local language.
- The non-availability of an adequate legal framework that is exclusively destined to be applied in extra-judicial mechanisms of dispute settlement. The role of alternative mechanisms of dispute settlement in guaranteeing the right to access justice institutions is undisputed and non-negotiable. ADR mechanisms, if constituted properly, or recognized as a mechanism of dispute settlement and administered by the necessary substantive and procedural laws, and most importantly if they have the power to enforce their decisions; the role they play in eradicating the numerous barriers related to the formal system of adjudication is undeniable. Such barriers of justice in the formal system are high cost, procedural complication, delay in justice, partiality, high backlog, no win-win outcome, popularity in confidence, and so on.

The Challenges of Access to justice Related to the Element of Advice and Representation

- The lack of knowledge by the clients of the justice institutions as to (1) where to go when they encounter disputes, (2) how to navigate through such institutes (3) where to seek advice and representation services either upon the payment of a professional fee or for free if they cannot afford it.
- The lack of an adequate number of privately operating lawyers (professionals) that are equipped with the required level of education and experience to provide the service of legal advice and representation at the *wereda* level, upon the payment of a professional fee.
- The lack of an adequate number of lawyers (professionals) such as government hired defense counselors or *pro bono* advice providers that provide the service of advice and representation for free for persons that do not afford to pay the cost at the *wereda* level.
- Lack of an adequate number of paralegals (non-professionals) that can still provide help or advice to clients. Nevertheless, they do not possess the required educational background and their advice is supposed to be untrustworthy, they can still play a role from experience and their role is bigger to advise on the most prevalent legal problems in their surroundings.
- The non-availability of non-governmental institutions such as Civil Society Organizations

(CSOs) that are interested in the provision of free advice and representation services at the *wereda* level.

- The non-availability of governmental actors (stakeholders) such as the Human Rights Commission (Ombudsman) to provide advice and representation at the *wereda* level.
- The economic situation and the relatively poor standard of living at the *wereda* level do not suit lawyers (especially those with a high level of education and experience) to sustainably live and work there and provide the service of advice and representation, except by way of HIT and RUN. As a result, clients are forced to access such lawyers wherever they are and in addition to the direct cost of service, the clients pay in terms of opportunity cost such as transport cost, hotels cost, counter-productivity (abandonment of their daily chorus).
- The presence of a problem of language barriers in due course of the provision and reception of legal advice as between the advisors and the client advisees.
- The fact that the justice institutions do not have an adequate budget to hire adequate numbers of professionals such as defense counselors that provide advice and representation at the *wereda* level.
- Uneven distributions of lawyers that provide advice and representation in rural and urban areas for they naturally gravitate to cities.
- The non-availability of schemes that are put in place in the justice institutions or courts to bring lawyers that provide advice and representation, at least temporarily, from urban areas to rural areas through the instrumentality of traveling lawyers programs.
- The non-availability of collaborative efforts of the justice institutions or the pertinent governmental stakeholders to work hand in hand with other governmental and non-governmental actors such as CSOs to promote the availability of adequate and cheaper advice and representation service to all citizens in need at the *wereda* level.
- The non-availability of various capacity building training to lawyers and especially paralegals (non-lawyers but still practicing advice) undertaken by the government or justice institutions at the *wereda* level.

The Challenges of Access to Justice Related to the Element of factors Associated with Justice institutions

The Challenges of Access to Justice Related to the Element of factors Associated with Courts in the Study Area

- *In adequate number and type of available benches:* the benches in the *wereda* courts are limited to both very few number and types of benches. This fact has numerous implication on the accessibility of courts in that if more number and type of benches are present in courts, they can more efficiently entertain a large number of cases and it also increases the quality and enforcement of their decisions or services for each case will be entertained in due time by a special bench which is presided by judges that are experts (who specialized) on such special subject matters. For example, in all of the *wereda* courts in the study area, there are only two types of benches which are civil and criminal respectively. Hence, all the civil matters, regardless of specialty are merged and entertained in the civil bench and the same holds to the criminal matters in the criminal bench. This among other things, creates a backlog, judges may not deal with cases based on merit or specialty and it encourages disinterest in judges and so on. In this regard, for instance, under the civil bench, there should have been a various subdivision of benches such as the Family bench, Labor bench, Children Affairs, ADR benches, and so on. This enables courts to maintain the attributes of efficiency, specialty, and technicality in due course of entertaining cause of actions, the ultimate summation of which enable the courts to become more accessible to clients.
- There is a relatively high rate of backlog in the *wereda* courts in that the courts, for various reasons such as inadequate budget, limited resources, shortage of professionals, and so on, are not capable of settling all the cases that are instituted in a given year.
- *The inadequate number and qualification of judges:* almost all of the *wereda* courts in the study area are not staffed with an adequate number of judges to entertain cases efficiently, swiftly, and based on areas of academic training specialty of judges. The average number of judges per court is 2 to 3. Even the average number of courts per *wereda* is one. One could so easily understand the hugeness of this barrier to access the courts by considering the ratio of the number of citizens in a *wereda* to the number of both courts and judges in that *wereda*, which is one judge to 30,000 to 35,000 persons in the *wereda.* The second segment of the challenge associated with this factor is the lack of an adequate number of

judges per court that possess the required level of education and experience at the *wereda* level. Not a few numbers of judges are with an educational background of a Diploma level certificate. This in turn, negatively impacts the quality of their services for the ability of a judge to properly understand and interpret the law directly depends on his or her level of education.

- *Inadequate numbers and Qualification of Legal Officers:* the officers are assisting staff in the working of judges. Again, they are not available in the courts adequately and do not possess the required qualification to that effect. For instance, the average number of officers per court is 2 to 3 and almost 2/3 of them are certificate and Diploma holders, and not a few numbers of them are trained in a non-law field of study.
- *The office of the Defense Counselor does not exist in the wereda courts*. This office should be staffed by lawyer professionals that are hired by the government to provide free advice and representation to those client defendants in the court who cannot afford to pay by themselves. The indispensability of this office in guaranteeing access to justice institutions becomes manifold when one strictly considers the fact that the majority of the clients at the *wereda* level are with a low standard of living that cannot afford to pay for legal services.
- *The non-availability of language interpreters in the wereda courts.* This also has an unbearable consequence on access to justice in that the language of the law is by itself over-technical and the majority of clients do not have the required potential to understand such language by themselves. In addition to that, there are not few numbers of clients that do not speak or understand *Afan Oromo*. Hence, in the absence of such interpreters, the mere presence of a client in the chamber of the court, without understanding the language of the law or the court, is meaningless (futile) and technically it does not amount to accessing the court.
- *The presence of a relatively high attrition rate of judges*. Attrition comes into forms-transfer and resignation. The associated causes are low level of salary and other related benefits and low standard of living at the *wereda* level. This also affects access to justice for (1) the resigning of one judge increases the burden of caseload on the remaining judges and (2) frequent transfer of judges from *wereda* to *wereda* makes them not permanently live life and do their jobs efficiently.
- *The courts at the wereda level are not duly constituted and equipped with all the necessary resources* (at the disposal of staff or clients) to properly or efficiently undertake their

purpose of incorporation. The non-availability of such resources does not only become a barrier to access the courts but also it impacts speedy trial, quality of service, the convenience of the work environment, and so on. Almost all the resources enumerated under Chapter Four of this paper are either unavailable or not adequately available or they are not accessible at all.

- The budget allocated to *wereda* courts is inadequate and this can be ascertained from the various consequences the reality of the courts show due to the same such as they are not properly staffed, the office and location of courts are not comfortable, judges complain of low wedges, the courts lack resources, they do not undertake researches or community projects and so on. The conclusion from here is, courts that do not have enough budgets are generally not accessible.
- The courts do not undertake regular training or capacity building programs for their staff members or their clients and they do not engage in popular education programs to promote legal awareness in the localities they are operating.
- The courts at the *wereda* level do not have a strategic partnership with relevant governmental or non-governmental stakeholders or with the remaining elements of the justice system such as the police stations, justice office, and so on to harmoniously administer justice in the locality they operate.
- Most of the courts in the study area do not hold Open-trials. It is the constitutional rights of litigants to be tried openly in the presence of an audience except in scenarios that, by their very nature, require Closed-trials. In turn, this is due to factors such as a lack of properly constituted and well-spaced trial halls.
- There is a relative delay in the duration of decisions, appeal, and enforcement of decisions.
- There is convincingly acceptable blame against courts from the public that they are generally corrupt and there is a low level of popular trust towards courts.
- The procedures followed in courts in particular and in their workings, in general, are cumbersome, not adequately transparent, and over technical.

The Challenges of Access to Justice Related to the Element of factors Associated with the Justice Offices in the Study Area

- The office and the infrastructure of the justice office at the *wereda* level are not properly constituted as an independent justice actor in the justice system rather it is organized as one

department in the compound of courts.

- The inadequate number and qualification of public prosecutors: the average number of public prosecutors per *wereda* is 2 to 3 and almost half of these prosecutors are with an educational background of a Diploma certificate or below. NB., regarding the impact of this factor on access to justice, the readers are invited to refer to the logic given to the same issue on the number and qualification of Judges.
- The Justice at the *wereda* level does not have a strategic partnership with relevant governmental or non-governmental stakeholders or with the remaining elements of the justice system such as the police stations, courts office, and so on to harmoniously administer justice in the locality they operate.
- The justice offices do not undertake regular training or capacity building programs to their staff members or their clients, most importantly the police department and they do not engage in popular education programs to promote legal awareness in the localities they are operating.
- The presence of a relatively high attrition rate of Public Prosecutors comes in the form of either transfer or resignation.
- The Availability of Formal Training: there is no continuous and formal training available to the prosecutors on the working of the justice office in general or on particular issues such for instance new developments in the administration of criminal justice.
- The prosecutors are not regularly trained in a way that they develop the required capacity to enforce constitutional and international human rights.
- There are no mechanisms and practices put in place in the justice office for controlling the exercise of discretion by the prosecutors in due course of exercising their discretion while performing their activities concerning, for instance, case withdrawal, or opposing of bail, and so on.
- There is no automated data management system put in place to facilitate the flow of information at different levels of the justice office.
- There is no enough human resource or other assisting staff that commensurates with the demands of the office.
- The justice office at the *wereda* level is not duly constituted and equipped with all the necessary resources (at the disposal of staff or clients) to properly or efficiently undertake their purpose of incorporation. **NB.** Refer to the details and the magnitude of availability

of resources in the justice offices at the *wereda* level on Chapter Four.

The Challenges of Access to Justice Related to the Element of factors Associated with the Police Stations in the Study Area

- Though there is no acute shortage of police officers, the government should do better to improve the educational level of the members of the police.
- The police officers are not provided with regular and formal training on police work in due course of administration of justice. Especially the police lack adequate and regular training regarding the law. To mention some, training on their rights and duties, training on the fundamental principles of the constitution or the constitutional rights of suspected, accused, or detained persons, or training on human rights law and the laws that are applicable in the day to day activities of the police such as the criminal procedure law which outlines the procedures that have to be followed in due course of an Arrest, Accusation, collection of evidence, Imprisonment and so on.
- The police officers are not adequately equipped with the skills of conducting a criminal investigation in line with constitutionally protected human rights standards.
- The police officers do not operate criminal investigation in collaboration with other professionals, such as psychologists, sociologists, community elders, and so on.
- The police administrations do not undertake projects aimed at promoting the right perception and cooperation of the community to work with the police in crime prevention and investigation.
- There are no formal control and follow-up mechanisms put in place to ensure that the police persons discharge their duties legally, ethically, in transparency, and diligently.
- There is no adequate practice of using indigenous rules and institutions for crime prevention and investigation.
- The police stations at the *wereda* level are not duly constituted and equipped with all the necessary resources (at the disposal of staff or clients) to properly or efficiently undertake their purpose of incorporation.

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