

ADMINISTRATION OF JUSTICE BY SOCIAL COURTS IN ETHIOPIA: NORMATIVE AND COMPARATIVE ANALYSIS

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Abstract

Social courts have been grassroots judicial institutions, for a long time, playing their role in ensuring justice concerning petty matters. Despite debates on their constitutionality, social courts are still operating as the judicial wing of the lower administrative unit. The administration of justice by a social court is one of the under-researched issues. To fill this gap, this study employed a combination of normative and empirical methods to examine the effectiveness of social courts and the challenges they faced. Normative approaches were used to comparatively study regional social court laws while empirical approaches were employed to examine practices and challenges of social courts in the administration of justice. As the findings of the study revealed, despite its contribution to access to justice, the administration of justice by the social court is subject to multifaceted challenges attributable to the incompetence of judges, jurisdictional ambiguity, and lack of access to necessary facilities that negate its effectiveness and question its very existence. To overcome these challenges this article recommends a comprehensive reform that includes revisiting the laws and implementing capacity-building programs. The study also calls for a nationwide study of the administration of justice by the social court to fill gaps and facilitate the transfer of good practices.

Keywords: Social court, Local judge, People court, Bale gult, Atbia danga

INTRODUCTION

The development of the social court took a different shape in the history of Ethiopia. The social court has been a grass-root actor in the judicial system of Ethiopia for a long time under different nomenclatures. It was during the last days of the Dergue regime, following the promulgation of the Social Court Establishment Proclamation in 1989, which the name “social court” came into use for the first time in Ethiopia. To ensure access to justice, reduce regular court caseload, render speedy justice, provide a flexible and friendly judicial environment, and reduce litigation costs the establishment of judicial actors like social court at the lowest level of administration level is essential. Despite this, the status of the social court in the administration of justice throughout the period remains problematic and controversial. Its place, jurisdiction, applicable laws, constitutionality, independence, competency, and accountability remain largely blurred.

The issues relating to the administration of justice by social courts became more controversial following the adoption of the 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution which introduced a federal state structure with three tiers of courts.¹ Despite the silence of the FDRE constitution, the social courts are recognized as a judicial organ of Kebele (the lowest administrative division) by all regional constitutions and city charters.² In this sense, the social court is a grass-root judicial organ that outnumbers the regular court and daily routine affairs of society. The effectiveness of social courts and the challenges they face amid of administration of justice have not been adequately explored. Despite few pieces of research conducted on selected aspects of social courts (like jurisdiction and defendant rights,) or specific areas (like Addis Ababa and Oromia), the matter is not comparatively and holistically addressed.³

In this context, this article tries to explore the effectiveness and challenges of social courts in Ethiopia through normative and comparative analysis of regional laws, court decisions, and scholarly writings. The normative approach was utilized to comparatively analyze the social court laws of regional states and city administrations. Assessment of the administration of justice is a complex task which requires multi-methodological approaches that supplement legal data with interview-based evaluation and courtroom observation to measure effectiveness using multi-layer indicators. Accordingly, to substantiate the findings of normative analysis, data collected through courtroom observation and interviews of relevant respondents from Addis Ababa, Oromia, and Benishangul Gumuz Region (BGR) were utilized.⁴ For the empirical study, these regions were purposely selected with the conviction that their level of socio-economic setting and development represents the diverse picture of social courts in Ethiopia. To have a multi-dimensional view of the issues, data were collected from different stakeholders including social court judges, first instance

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¹ FDRE Constitution, Art. 78.

² FDRE Constitution, Art.79 and ff; Oromia Cons, Art 61 and ff; Afar Const, Art 64 and ff; BGRS Cons, Art 65 and ff; Somali Cons, Art 65 and ff; Harari Cons, Art 67 and ff; Tigray Cons, Art 59 and ff; Amhara Cons, Art.64 and ff; Gambella Cons, Art.67 and ff; Dirdawa City Charter, Art 31 and ff; Addis Ababa City Charter, Art. 39 and ff; Southern Region Cons, Art. 72 and ff.

³ Tesfaye W-Amanuel, *'The Need to Re-Visit the Jurisdiction of Social Courts in Addis Ababa City (The Law And Practice,'* (LL.B Thesis, St.Mary University, 2008); Tassew Gurmu, *'Problems of Social Courts in Oromia Regional State and Its Implication on the Right of the Defendant',* (LL.B Thesis, St. Marry University, 2008); Dereje Tilahun, *'Jurisdiction of Social Courts in Addis Ababa the Law and the Practice'* (LL.B Thesis, St. Marry University, 2010).

⁴ Though they make the empirical study more representative, Tigray and Amhara region are not included due security concerns.

judges, justice bureau officers, members of the judicial administration, supreme court judges, attorneys, Kebele Administrators, members of the Kebele Council, and customers of social court services. At the point of saturation, data was collected through interviews with a total of 53 relevant individuals with rich data and observation of 18 social courts. After data collection and analysis, inductive inferences were used to generalize the findings.

This article is structured into four sections. Section I provides a historical account of social courts by exploring their institutionalization process and historical development from the past unitary setting to the present federal regime. Section II discusses the level of effectiveness of social courts in the process of administration of justice in light of commonly established standards and principles. Section III presents challenges facing social courts in the administration of justice. The last section provides concluding remarks and recommendations.

1. THE INSTITUTIONALIZATION AND DEVELOPMENT OF SOCIAL COURT

In Ethiopia, the administration of justice had been dominated by the traditional system in which elders dispose of cases based on local customs and norms.⁵ For a long period, there was a mingling of executive and judicial functions in which the governor acted as a lawmaker, enforcer, and judge at the same time.⁶ The 1931 constitution was the first to vest courts with powers to deliver justice. Following this, in 1947, through the Establishment of Local Judges Proclamation, a system of *Atbia Dagna* (local judge) was introduced at each locality to reduce court congestion caused by minor disputes.⁷ As Allen's description of the role of *bale gult* clearly shows, the *Atbia Danga* was created out of the preexisting institution of *bale gult* (literally landlord).⁸ As a result of this, Norman Singer describes the institutionalization process of *Atbia Dagna* as an imposition of a traditional Amhara⁹

⁵ Abera Jembere, Teteyeqi: Traditional Ethiopian Litigation System (translation mine), Ethiopian Journal of Law, Vol. (), PP-221-23; Norman J. Singer, 'A Traditional Legal Institution in a Modern Legal Setting: The Atbia Dagnia of Ethiopia' (1970) 18 UCLA L Rev 308.

⁶ Robert Allen Sedler, 'The Development of Legal Systems: The Ethiopian Experience', 53 Iowa L. Rev. 562 (1967).

⁷ Administration of Justice Proclamation No.2/1942; Local Judges Establishment Proclamation.No.90/1947; Robert Allen Sedler, 'The Development of Legal Systems: The Ethiopian Experience', 53 Iowa L. Rev. 562, 565 (1967).

⁸ Robert Allen Sedler, The Development of Legal Systems: The Ethiopian Experience, 53 Iowa L. Rev. 562 (1967).

⁹ Here the term "Amhara" refers Christian highlander (including Christian Oromo) and not specific ethnic groups in the way in defined as the present time. See also Norman J. Singer, 'A Traditional Legal Institution in a Modern Legal Setting: The Atbia Dagnia of Ethiopia' (1970) 18 UCLA L Rev 317-318.

institution over the entire Ethiopian.¹⁰ Unlike *Atbia Dagna*, the power of *Bale Gult* was not limited to the judicial function; however, it provided free judicial function. In the post-1947 era, the *Bale Gult* ceased to exist by that name but merely continued to function as the *Atbia Dagna* in the area where it previously existed. This continued until the abolition of the feudalism system following “land for the tiller”.¹¹

The jurisdiction of local judges was limited to petty civil and criminal cases.¹² The local judge first tries to reconcile the parties and continues to adjudicate the case if reconciliation fails.¹³ The decision was appealable to the Woreda Court, which would try the case as *de novo*.¹⁴ The role of the Woreda court is not limited to determining whether the law was applied correctly in the trial court. It goes beyond investigating the question of fact and hears the case as fresh. The trial of the case as fresh by the Woreda Court upon appeal put the status of the local judge under question. In fact, the local judge does not strictly follow the formal law in the process of disposing of the case. Rather, it follows the local custom and tradition that was built up on the principle of natural justice and equity. In such a case, it is not feasible for the Woreda Court as an appellate forum to limit itself to the determination of issues of law, which was not at the core of the local judge's decision.

As the local judge was an attempt to institutionalize the arbitration practices of local elders, in some areas, elders jealously employed community sanctions to prevent the parties from bringing their case before *Atbia Danga*.¹⁵ There were also areas in which local judges and elders cooperated to render decisions concerning petty matters. In this area, the local elders work as assessors while the *Atbia Danga* act as judges to decide the case. Because it assimilated with the government, the local judge got no respected status like local elders. Especially, because of the lack of interest among the southern tribes to assimilate themselves with the oppressive government, getting a person who could act, as a local judge was challenging, and even after the assumption of the post, the rate of resignation was

¹⁰ Norman J. Singer, 'A Traditional Legal Institution in a Modern Legal Setting: The *Atbia Dagnia* of Ethiopia' (1970) 18 UCLA L Rev 317-318.

¹¹ Sedler (9) 600&ff.

¹² Administration of Justice Proclamation, Proclamation No. 2 of 1942, *Negarit Gazeta* 1st Year No. 1 (March 30, 1942); Norman J. Singer, 'A Traditional Legal Institution in a Modern Legal Setting: The *Atbia Dagnia* of Ethiopia' (1970) 18 UCLA L Rev 317-318.

¹³ Sedler (9) 606.

¹⁴ *De novo* is a Latin expression used in English to mean 'from the beginning', 'anew'. In this sense, the term it used here to indicate the appellate court will see the case as fresh or new disregarding all proceeding undergone before at the social court. See Sedler (9) 613.

¹⁵ Sedler (9) 612, 613.

remarkably high.¹⁶ The *Atbia Danga* provided gratuitous services, and this was another discouraging factor.¹⁷ Some argued for the abolition of *Atbia Danga*s by empowering elders to hear cases instead.¹⁸ Despite this, the criminal jurisdiction of the social court remains intact under the Criminal Procedure Code of 1961.¹⁹ It also retained its jurisdiction under the 1962 Court Proclamation.²⁰

Later on, in 1965, the Civil Procedure Code impliedly repealed the civil jurisdiction of *Atibia Dagna* by establishing only four levels of court and dividing civil jurisdiction among them.²¹ Despite this, the then Ministry of Justice, however, took the position that *Atibia Dagna* may exercise civil jurisdiction where the parties consent to submit to them. Following this, local judges continue to entertain civil matters based on the consent of parties to the dispute.²² In other words, the *Atibia Dagna* lost compulsory jurisdiction over civil matters following the promulgation of the 1965 Civil Procedure Code.

The local judge got back its compulsory jurisdiction over civil matters following the enactment of Proclamation No.104/1976. This proclamation reestablished *Atibia Dagna* with different nomenclature i.e., Kebele and Peasants' Association tribunals (aka people court) with the power to hear and dispose of civil and criminal matters as well as all matters relating to land distribution and expropriation.²³ Judges were elected by and from members of peasant or urban associations. The decision of peoples' tribunals was appealable. The People's Court was established as a means of ensuring public participation in the administration of justice. The 1987 People's Democratic Republic of Ethiopia (PDRE) Constitution kept the jurisdiction of the People's Court unaffected.²⁴ Later, the Social Courts Establishment Proclamation No.37/1989 repealed the people tribunal and introduced a 'social court'.²⁵ This was the time when the name "social court" came into the picture. Despite the change of name, the essence (such as jurisdiction) remains the same throughout

¹⁶ Norman J. Singer, 'A Traditional Legal Institution in a Modern Legal Setting: The *Atbia Dagnia* of Ethiopia' (1970) 18 UCLA L Rev 317-318.

¹⁷ Sedler (9) 612.

¹⁸ Sedler (9) 606.

¹⁹ The Criminal Procedure Code of the Empire of Ethiopia (1961), Art.223.

²⁰ The Courts' Proclamation No. 195/1962, Article 15.

²¹ Sedler *supra* note 9, 612; The Civil Procedure Code of the Empire of Ethiopia, Art.4 (1965)

²² Norman J. Singer, 'A Traditional Legal Institution in a Modern Legal Setting: The *Atbia Dagnia* of Ethiopia' (1970) 18 UCLA L Rev 317-318.

²³ The Penal Code of Ethiopia (1957), Art. Art 471, 522, 544.

²⁴ PDRE Constitution, Art.100(1).

²⁵ Social Courts Establishment Proclamation Pro.No.37/1989, *Negarit Gazeta*, 1989-10-16, Vol. 49, No. 5, pp. 58-7; Dereje Tilahun, *Jurisdiction of Social Courts in Addis Ababa the Law and the Practice*, (LL.B Thesis at St.Mary University, 2010).

the period. The judges of social courts were elected by a majority vote of the general assembly of residents of the Kebele. Apart from the civil cases whose pecuniary value does not exceed birr 500, social courts also entertain petty offences and impose a sentence of imprisonment not exceeding one month. Any party aggrieved by the decision could appeal to the Awurja court whose decision was final.

Following the downfall of the Dergue regime, the 1995 FDRE Constitution established three levels of regular courts vested with judicial power at the federal and regional levels.²⁶ In addition to this, it gave recognition to religious courts, customary courts, and other institutions like administrative tribunals with judicial functions.²⁷ It has also prohibited the establishment of special or *ad hoc* courts.²⁸ After the Dergue regime, Addis Ababa was the first region to establish a Social Court during the transitional period in 1993.²⁹ Since then, by their constitutions, most regions have established social courts as a judicial wing of the lowest level administration division (Kebele) to handle petty civil and/or criminal matters.³⁰ Despite this, the stand of the federal constitution as well as the legitimacy of the regional constitutions that established social courts remains debatable. Amid this confusion, based on the number of Kebele, over ten thousand social courts were estimated to exist in Ethiopia.

2. EFFECTIVENESS OF ADMINISTRATION OF JUSTICE BY SOCIAL COURTS

As boldly noted by the President of the International Criminal Court, Silvia Fernández de Gurmendi, “Developing indicators for a judicial institution is not an easy task as it requires assessing and understanding complex factors.”³¹ In recent years, globally (including in Ethiopia) there has been a move from a single-dimensional, productivity-focused approach towards a multidimensional, mixed-method approach to evaluate the performance of judicial institutions. In this context, the effectiveness of judicial services offered by the social court

²⁶ Federal Democratic Republic of Ethiopia Constitution Proclamation No.1/1995 (hereafter *FDRE Cons*, Art.50(2),78-81.

²⁷ FDRE Cons, Art 37(1), and 78(5).

²⁸ FDRE Cons, Art. 78(4).

²⁹ Dereje Tilahun, *Jurisdiction of Social Courts in Addis Ababa the Law and the Practice*, (LL.B Thesis at St. Mary University, 2010).

³⁰ FDRE Cons, Art.78 and ff; Oromia Cons, Art 61 and ff; Afar Const, Art 64 and ff; BGRS Cons, Art 65 and ff; Somali Cons, Art 65 and ff; Harari Cons, Art 67 and ff; Tigray Cons, Art 59 and ff; Amhara Cons, Art.64 and ff; Gambella Cons, Art.67 and ff; Dirdawa City Charter, Art 31 and ff; Addis Ababa City Charter, Art.39 and ff; Southern Region Cons, Art. 72 and ff.

³¹ J Selen Siringil Perker, ‘Judicial Performance Evaluation in Ethiopia: Local Reforms Meet Global Challenges’

was examined against standards and principles established through practice and used by countries and organizations to evaluate the effectiveness of justice. Accordingly, this section examines the effectiveness of social courts in the administration of justice against the criteria of competencies of judges (legal knowledge and skills), public confidence (trust, perception and satisfaction), accessibility, independence, accountability and transparency, professionalism, competencies, good conduct, speedy or time-effectiveness, cost-effectiveness, quality of judgment, and impartiality.

2.1 Competencies of Judges

The competency of judges plays a critical role in determining the quality of justice delivered by a judicial system.³² Competency here refers to judges' legal knowledge, interpretive skills, impartiality, and the ability to apply law thoughtfully and consistently. A correlation exists between judicial competency and the quality of justice because well-qualified, competent judges are more likely to interpret laws accurately, deliver fair judgments, and uphold principles of equity, thus strengthening public trust in the legal system. In this sense, the establishment social court alone does not ensure justice unless individuals with relevant knowledge and skills are appointed as judges. Ensuring access to justice requires competent judges who render decisions based on the relevant law, fact, evidence, and logical reasoning. In this sense, the quality of justice offered and the effectiveness of social courts in the administration of justice is highly dependent on the competencies of judges. Despite this, the competencies of social court judges are the subject of hot controversies within the wider society and scholars. It is evident from relevant provisions of law that, in contrast to judges of the regular court, social court judges are not required to have a law degree or diploma to be appointed as such. However, in Addis Ababa, only people trained in law can be judges of the social court.

Though the expression differs slightly, the competencies requirements for social court judges are essentially the same. Among others, the law requires the person to be a resident of the particular Kebele, willing to serve as a judge, diligent, of good conduct, and of ability to discharge judicial function.³³ In the Amhara region, the law does not set diligence, good

³² Santiago Basabe-Serrano, The Judges' Academic Background as Determinant of the Quality of Judicial Decisions in Latin American Supreme Courts, *Justice System Journal* 2019, VOL. 40, NO. 2, 110–125, <https://doi.org/10.1080/0098261X.2019.1613201>.

³³ Oromia Social Court Proclamation No.128, Art 9; Benishangul Social Court Proclamation No.126, Art. 13.

conduct, and honesty as proprieties test.³⁴ What is needed is the consent of the nominee and public trust. The public trust here may be broad (not clear) enough to include the requirement of good conduct and diligence. The minimum age limit differs across regions, ranging from none in the Amhara region, 18 years in Southern Region, 25 years in the BGR, to 30 years in Oromia.

The law is not clear about the educational qualifications of a judge of a social court. Though a degree or diploma is not required, the BGR law recommends that the law of Amhara region oblige the judge to have writing and reading skills.³⁵ Uniquely, in the South region, a minimum of Grade 10 and 6 completion is required to be appointed as a judge of urban and rural Kebele respectively.³⁶ Despite this, especially in rural areas, it is not uncommon to see judges without reading and writing skills. This is mainly because of the lack of incentives which can attract educated people. Judges without language fluency are significant in regions like BGR, Gambella, and Southern Region where the working language is different from the first language of residents. Because of inadequate writing skills, there are courts in which Kebele executive writes the judgment and serves to judges only for signature.

No social court laws expressly stipulate graduating in law and knowledge of the law as a prerequisite. Judges must be conversant in at least the basics of relevant substantive laws and procedures. However, none of the social court judges who participated in the study were law graduates. Given the purpose of social court which goes beyond providing effective and accessible justice to promote public participation in judicial function, thereby building public confidence, it may be illogical to expect judges of social court to be law graduates. However, at least they should attend short-term training on the basics of substantive and procedural laws. The law must be (but not) clear about the right of the judge to be trained and the duties of concerned bodies to render training. Though it is not enough, practically, the Woreda court sometimes provides training for judges of social courts on the basic substantive and procedural laws as well as fundamental rights and freedoms.

³⁴ Amhara Social Court Proclamation No.246, Art. 9.

³⁵ Benishangul Social Court Proclamation No.126, Art. 13(2); Amhara Social Court Proclamation No.246, Art. 15(1).

³⁶ Southern Social Court Proclamation No.66, Art. 13(1(C)).

2.1 Jurisdiction of Social Court

Generally, the material jurisdiction of the social court is limited to petty matters which frequently happen within the society. The difference across the region is minimal regarding the pecuniary material jurisdiction of the social court.³⁷ In the Sothern region, Benishangul Gumuz, Oromia, Dire Dawa, and Addis Ababa without distinction based on the type of property the pecuniary jurisdiction is limited to 500, 1000, 1500 2500, and 5000 birrs respectively.³⁸ In the Amhara region, the pecuniary jurisdiction of the social court is different based on the movability of property. Accordingly, the social courts have material jurisdiction on civil cases involving moveable property up to 15,000 and immovable property up to 25,000.³⁹ The law of the Amhara region is silent about the pecuniary jurisdiction of the social court over civil matters like tort which does not involve property. Relatively, social courts in the Amhara have higher pecuniary jurisdiction. As the real value of money is decreasing because of inflation, higher pecuniary jurisdiction is reasonable. During the interview, most social court judges and Woreda court judges believed in the necessity of increasing pecuniary jurisdiction.⁴⁰ During the enactment of the proclamations, the jurisdiction of the social court may be fair. In recent years, because of the devaluation of money, both federal and regional governments have increased the pecuniary jurisdiction of first-instance courts under their respective court establishment proclamations. The same logic should work for the social court. During the interview, a few judges called for improved performance of social courts through competencies development and structural

³⁷ Oromia Social Court Proclamation No.128, Art. 15; Benishangul Social Court Proclamation No.126.

³⁸ Oromia Social Court Proclamation No.128, Art. 15; Southern Social Court Proclamation No.65, Art.17; Benishangul Social Court Proclamation No.126, Art. 24.

Amhara Social Court Proclamation No.246, Art.19; Oromia Social Court Proclamation No.128; Southern Social Court Proclamation No.65; Benishangul Social Court Proclamation No.126; Ababa City Government Revised Charter Proclamation No. 361/2003.

⁴⁰ Interview with Gemechu, Benishanul Gumuz Metekel Zone Dibate Woreda Galessa Kebele Social Court Judge, January 10, 2023; Interview with Fekede Belina, Benishanul Gumuz Kemash Zone, Kemash Woreda Kemash City Social Court Judge, January 10, 2023; Interview with Wajira Habte, Benishanul Gumuz, Metekel Zone Dibate Woreda Bereber Kebele Social Court Judge, January 11, 2023; Interview with Lemesa Adimassu, Benishanul Gumuz, Metekel Zone Dibate Woreda Bereber Kebele Social Court Judge, January 15, 2023; Interview with Yiber Tadesse, Benishanul Gumuz, Metekel Zone Dibate Woreda Berber Kebele Social Court Judge, January 15, 2023; Interview with Fikadu Godesso, Benishangul Gumuz Region Metekel Zone Bullen Woreda Judge, January 16, 2023; Interview with Jebessa Woljira, Benishangul Gumuz Region Metekel Zone Manudra Woreda Judge, January 16, 2023; Interview with Melkamu Aki, Benishangul Gumuz Region Metekel Zone Mandura Woreda Court Judge, January 16, 2023; Interview with Timket Kefyalew, Benishangul Gumuz Region Metekel Zone Ura Woreda Court Judge, January 17, 2023; Interview with Limnew Worku, Benishangul Gumuz Region, Assosa Zone, Assosa City Court Judge, January 17, 2023; Interview with Desalegn Gure, Benishangul Gumuz Region Assosa Zone Bambassi Woreda Court Judge, January 17, 2023; Interview with Gabule Galo, Benishangul Gumuz Region Metekel Zone Dibate Woreda Court Judge, January 18, 2023; Interview with Alemberhan Misikir, Benishangul Gumuz Region, Assosa Zone, Ura Woreda Court Judge, January 18, 2023.

adjustment (which includes fulfilling necessary facilities) before increasing the pecuniary jurisdiction.⁴¹

The social courts have also jurisdiction to examine and adjudicate non-pecuniary civil matters concerning branches and roots of trees, repairing fences and houses, search for lost property (things or animals), installation of water pipes and electric lines, the right of way (servitude), abuse of ownership rights,⁴² rainwater, preventing running water, and duties of above and below landowners.⁴³ Social courts have jurisdiction to issue a certificate that indicates the true status of residents including financial status, residential status, unemployment certificate, and marital to facilitate service offered by the government.⁴⁴ In the latter cases, usually, there is no party to appear as a defendant, and hence the social court hears witnesses, investigates the petition, and passes judgment. Additionally, in the BGR region, social courts have the jurisdiction to entertain disputes between members of the Kebele administration or cooperatives.⁴⁵

Regions followed a different approach in stipulating non-pecuniary civil subject matters that fall within the jurisdiction of the social court. In Oromia, the law separately defined each civil matter that falls under the jurisdiction of social court and this may pose the problem of contradiction with the relevant civil code provisions.⁴⁶ In the BGR region, the law has not referred to the civil code provisions but simply lists those civil matters that fall under the jurisdiction of the social court. As data collected through interviews with social courts and woreda court judges revealed, the failure of the law to define the civil matters falling under the jurisdiction of the social court has challenged social court judges to understand what it means.⁴⁷ This is one of the reasons why the social courts usually entertain matters which are out of their jurisdiction. In SNNPR, the law is silent about non-pecuniary subject civil matters (except for the issuance of the financial status of the

⁴¹ Interview with Bayualem Adimassu, Benishangul Gumuz, Assosa Zone, Ura Woreda Assosa City Kebele Social Court Judge, January 15, 2023; Interview with Amanuel Baye, Benishangul Gumuz Region Assosa Zone Ura Woreda Judge, January 16, 2023; Interview with Amare Genet, Benishangul Gumuz Region Metekel Zone, Mandura Woreda Court Judge, January 18, 2023.

⁴² Oromia Social Court Proclamation No.128, Art. 21.

⁴³ Oromia Social Court Proclamation No.128, Art. 14-23; Amhara Social Court Proclamation No.246, Art. 19; Benishangul Social Court Proclamation No.126, Art. 24.

⁴⁴ Oromia Social Court Proclamation No.128, Art. 15(2); Benishangul Social Court Proclamation No.126, Art. 24(2); Amhara Social Court Proclamation No.246, Art. 19(3); Southern Social Court Proclamation No.65, Art. 17(2).

⁴⁵ Benishangul Social Court Proclamation No.126, Art. 24(1(e))

⁴⁶ Oromia Social Court Proclamation No.128, Art. 14-23. See also Art.1218-1222, and 1245-1247 of the 1960 Civil code which deal with the same matters.

⁴⁷ Benishangul Social Court Proclamation No.126, Art. 24(2).

applicant) over which the social court assumes jurisdiction.⁴⁸ In the Amhara region, the laws referred to relevant civil code provisions to clarify the matter concerning the social court assuming jurisdiction.⁴⁹ The best approach is the one adopted by the Amhara region. The social court has also jurisdiction to handle petty criminal matters.⁵⁰ In some regions like Oromia and the Southern Region, the jurisdiction of the social court is limited to civil matters. However, in other regions, social courts have jurisdiction over petty offences defined under the Criminal code.

The social court shall hear only matters that fall within its jurisdiction. At any stage of the proceeding, where it is aware that it has no jurisdiction over the matter, the social court shall dismiss and refer the case to legitimate tribunals.⁵¹ However, because of the ambiguity of the law and the incompetence of judges, the social court on many occasions entertains matters that fall out of their jurisdiction.⁵² The major reason for revocation of the judgment of the social court by the appellate court relates to entertaining matters that fall out of jurisdiction. Deciding on matters that fall out of their jurisdiction like possession of land, the boundary of land, and possessory action are common problems of social court.⁵³

⁴⁸ Southern Social Court Proclamation No.65, Art. 17.

⁴⁹ Amhara Social Court Proclamation No.246, Art. 19(3).

⁵⁰ Amhara Social Court Proclamation No.246, Art. 19(3); Southern Social Court Proclamation No.65,

⁵¹ Oromia Social Court Proclamation No.128, Art., Art.31; Benishangul Social Court Proclamation No.126, Art., Art.38.

⁵² *G/Meskel Demoze vs Astede Mokenen*, Cassation File No.36338 Tire 25, 2001 E.C; *Mulatu Anberber vs Tamneche Yosef*, Cassation File No.41608 Hamile 22, 2001 E.C, *Farming Machineries and Tech S.C vs Ethiopian Insurance Corporation*, Cassation File No.52041 Sene 29 2002 E.C; *Ethiopia Telecommunication Corporation vs Markos Abebe*, Cassation File No.54990 Hidar 18, 2004 E.C; *Ethiopia Telecommunication Corporation vs Worknesh W/mariam*, Cassation File No.56118 Hidar 16, 2003 E.C; *TATN Constructions and Business Activities Organization vs Eyayu Dejene*, Cassation File No.89530, Tikemet 21 2006 E.C; Interview with Fikadu Godesso, Benishangul Gumuz Region Metekel Zone Bullen Woreda Judge, January 16, 2023; Interview with Jebessa Woljira, Benishangul Gumuz Region Metekel Zone Manudra Woreda Judge, January 16, 2023; Interview with Amanuel Baye, Benishangul Gumuz Region Assosa Zone Ura Woreda Judge, January 16, 2023; Interview with Melkamu Aki, Benishangul Gumuz Region Metekel Zone Mandura Woreda Court Judge, January 16, 2023; Interview with Timket Kefyalew, Benishangul Gumuz Region Metekel Zone Ura Woreda Court Judge, January 17, 2023; Interview with Limnew Worku, Benishangul Gumuz Region, Assosa Zone, Assosa City Court Judge, January 17, 2023; Interview with Desalegn Gure, Benishangul Gumuz Region Assosa Zone Bambassi Woreda Court Judge, January 17, 2023; Interview with Gabule Galo, Benishangul Gumuz Region Metekel Zone Dibate Woreda Court Judge, January 18, 2023; Interview with Amare Genet, Benishangul Gumuz Region Metekel Zone, Mandura Woreda Court Judge, January 18, 2023; Interview with Alemberehan Misikir, Benishangul Gumuz Region, Assosa Zone, Ura Woreda Court Judge, January 18, 2023; Interview with Zelalem Tadele, Attorney at Law, Benishangul Gumuz Region, Assosa, January 15, 2023; Interview with Kassahun Addisu, Attorney at Law, Benishangul Gumuz Region, Assosa, January 15, 2023; Interview with Tolassa Mitiku, Attorney at Law, Benishangul Gumuz Region, Assosa, January 15, 2023; Interview with Desalegn Tefera, Attorney at Law, Benishangul Gumuz Region, Assosa, January 15, 2023.

⁵³ Azzanee Indaalammaa fi Abdii Tasfaa, Bu'a-qabeessummaa Mana Murtii Hawaasummaa Gandaa Mootummaa Naannoo Oromiyaa Abdi Tesfa, Oromia Journal of Law Vol 9 No.1, (151-1881), at 176.

2.2 Procedural Fairness

Procedural fairness is one key factor in ensuring judicial accountability and transparency, and effectiveness and quality of justice. Numerous studies found that people's trust in law and judiciary is more sensitive to the perceived fairness of the procedures and treatment of "procedural justice" than the outcomes or decisions derived from the proceedings.⁵⁴ In this sense, the process of administration of justice by the social court is more relevant than substantive justice. The key elements of procedural justice and its actual state in the administration of justice by social court are examined as follows.

2.2.1 Hearing of Parties

Fair trial is the fundamental pillar that is essential to ensure quality justice.⁵⁵ The effectiveness and quality of the administration of justice are dependent on the existence of a fair trial. A fair trial includes a fair hearing of parties to dispute. Despite this, there are many limitations concerning the hearing of parties. Every party to the dispute has a human and constitutional right to be heard. As data collected through interviews, observation, and analysis of cases revealed, it is not uncommon for the social court to pass judgment without hearing the other party, usually the defendant. This creates not only injustice but also ruins public confidence.

2.2.2 Issue framing

Issue framing is the most crucial step that determines the quality of judgment rendered by the court. Defects in the issue framing affect the entire process including the hearing of witnesses. To pass the right judgment, the court should have to correctly frame the issue or point of dispute between parties. Issue framing is the basic determinant of the quality of justice rendered. Mistakes in issue framing are the main cause of defective judgment by social courts. Based on observation and interview, the widespread problem associated with framing issues in the study area includes framing the wrong issue (failure to point out the point of dispute between parties), framing the different issues for the defendant and plaintiff, and framing issues on matters not denied by the defendant and hearing witness. These

⁵⁴ J Selen Siringil Perker, 'Judicial Performance Evaluation in Ethiopia: Local Reforms Meet Global Challenges'.

⁵⁵ Christos Rozakis, The Right to a Fair Trial in Civil Cases, *Judicial Studies Institute Journal*, 96 (2004).

problems prove the incompetence of the social court, which needs to be rectified by training and education.

2.2.3 Hearing Witness

Effective administration of justice is impossible without the existence of a fair trial for parties to the disputes.⁵⁶ A fair trial includes a fair hearing of witnesses. Despite this, there are many limitations concerning the hearing of witnesses by the social court. Where there are issues framed because of the existence of a point of dispute between parties, the court shall hear both witnesses to prove or disprove their allegation. In case the defendant admits the claim of the plaintiff, or the documentary evidence is sufficient to prove, a hearing of a witness may not be necessary. Where the defendant does not admit, the court shall hear the witness of the plaintiff and if the witness proves the claim, the court shall then hear the defendant's witness. In case the witness of the plaintiff fails to prove the claim, the court shall decide without hearing the defendant's side. However, the examination of cases decided by the social court in the selected study area reveals the existence of problems concerning the hearing of witnesses. The common problems include deciding without hearing witnesses or hearing the witness of only one party, and failure to hear expert evidence or reports. The study conducted on the social courts in Oromia revealed the same.⁵⁷

2.2.4 Quality of Judgment

Quality of judgment is one core indicator on effectiveness of the administration of justice. Judgment is the principal document that proves the competencies of judges and the quality of justice rendered. Competent judges pass well-reasoned quality judgment. Judges of social court are not law graduates, and some of them are illiterate. Hence, a judgment well-reasoned and structured like the one decided by a regular court is not expected. The judgment reflects the legal knowledge and reasoning skills of the judge who passed the decision. Reasoned judgment not only ensures the quality of justice but also is an instrument to secure public confidence and ensure transparency. However, the content of judgments rendered by social courts reflects defects that prevail in this regard. The law requires a judgment of a social court to briefly specify the issues, the evidence, the core points of the

⁵⁶ Trechsel, Stefan, 'The General Right to a Fair Trial', Human Rights in Criminal Proceedings (Oxford, 2006)

⁵⁷ Indaalammaa and Tasfaa, *supra* note 45, 176

disputes, the reasoning of the court, and the legal provisions under which the case is disposed of.⁵⁸ However, the social court judges decide not based on law, but rather on their common sense, customary practices, and the principle of natural justice.⁵⁹ Most judgments were not well reasoned and supported by relevant law and evidence.⁶⁰ This is because of limited awareness of the law and reasoning aptitude. There are also non-legible judgments and judgments without a signature, stamp, summary of the claim and defence, clear issues, the relief requested, name of parties to the disputes, and several judges fulfilled.

2.3 Appointment and Removal of Judges

The manner of appointment and removal of judges as well as their salaries affect not only the independence but also the effectiveness of the administration of justice. The social court judges are appointed by the Kebele council upon the nomination of the Kebele administrator. Because of the close relationship, between lower administrative wings, the executive wing uses the social court judges as proxies to legitimize their actions.⁶¹

The level of protection for the term of social court judge has an impact on the administration of justice. Whether the term of office is fixed or unlimited, judges' terms of office must be protected by law. To this end, the ground of removal, the process of removal, and the remedy of judges must be regulated to avoid interference under the guise of removal. Generally, no social court judge shall be removed from his office except on the grounds of gross incompetence (because of illness) and misconduct (breach of ethics like corruption), change of residence, resignation, retirement, expiration of term office, appointment as

⁵⁸ Oromia Social Court Proclamation No.128, Art.33(2), Benishangul Social Court Proclamation No.126, Art.39; Amhara Social Court Proclamation No.246.

⁵⁹ Indaalammaa and Tasfaa, *supra* note 45, at 175.

⁶⁰ Interview with Fikadu Godesso, Benishangul Gumuz Region Metekel Zone Bullen Woreda Judge, January 16, 2023; Interview with Jebessa Woljira, Benishangul Gumuz Region Metekel Zone Manudra Woreda Judge, January 16, 2023; Interview with Amanuel Baye, Benishangul Gumuz Region Assosa Zone Ura Woreda Judge, January 16, 2023; Interview with Melkamu Aki, Benishangul Gumuz Region Metekel Zone Mandura Woreda Court Judge, January 16, 2023; Interview with Timket Kefyalew, Benishangul Gumuz Region Metekel Zone Ura Woreda Court Judge, January 17, 2023; Interview with Limnew Worku, Benishangul Gumuz Region, Assosa Zone, Assosa City Court Judge, January 17, 2023; Interview with Desalegn Gure, Benishangul Gumuz Region Assosa Zone Bambassi Woreda Court Judge, January 17, 2023; Interview with Gabule Galo, Benishangul Gumuz Region Metekel Zone Dibate Woreda Court Judge, January 18, 2023; Interview with Amare Genet, Benishangul Gumuz Region Metekel Zone, Mandura Woreda Court Judge, January 18, 2023; Interview with Alembherhan Misikir, Benishangul Gumuz Region, Assosa Zone, Ura Woreda Court Judge, January 18, 2023.

⁶¹ Interview with Bayualem Adimassu, Benishangul Gumuz, Assosa Zone, Ura Woreda Assosa City Kebele Social Court Judge, January 15, 2023.

member of Kebele council and administrators, and death.⁶² there is a difference across regions on grounds of removal. Deciding without hearing the witness of both parties is a ground for removal in some regions, but not in others.⁶³ In the Oromia region, hearing cases in an area not determined by law, failure to notify the date and place of hearing, causing inconvenience because of failure to give a copy of the judgment, and attempting to perform or performing activities that limit the right to appeal are disciplinary fault that causes removal of judges.⁶⁴ In Amhara region, the conviction of a criminal offense is grounds for removal.⁶⁵ But the law of other regions is not clear regarding grounds for removal.

In addition to defining the ground of removal, the law must set a clear procedure for removal. The procedure differs based on grounds of removal. The procedure is not the same for removal which involves or does not involve disciplinary fault. The different procedures must be set for different grounds as necessary. Where the ground of removal is the incompetence of the judge, the notice allows the judge to improve himself. In case of resignation, notice given by the judge allows the administrator to make a necessary appointment to fill the gap. Removal based on the grounds of disciplinary fault requires necessary investigation about the presence of an alleged fault. Compared to other regions, the laws of Oromia and BGR are better in providing necessary procedures like an investigation to be followed for removal in cases that involve disciplinary fault. However, they are silent about the notice requirement. The laws of the Amhara region lack procedures for the removal of social court judges, and this creates a loophole. The law of the Southern region requires one month's notice in case of resignation but is silent about the necessary procedure (except the approval by the Kebele council) in other cases.

No social court laws in Ethiopia provide judges with the right to appeals against removal. Though ground of removal are regulated, when the administrator remove the judge for illegitimate reason, the judge lacks remedy. As the same time, judges also lack interest in defending itself because of absence of financial incentives to stay on the post. To conclude, the protection for the term office of social court judges is weak relative to the regular one.

⁶² Amhara Social Court Proclamation No.246, Art. 17; Southern Social Court Proclamation No.65, Art. 11(1); Benishangul Social Court Proclamation No.126, Art.18.

⁶³ Benishangul Social Court Proclamation No.126, Art. 18.

⁶⁴ Oromia Social Court Proclamation No.128, Art. 11.

⁶⁵ Amhara Social Court Proclamation No.246, Art. 17.

The term office of social court judge is five years subject to the probability of reappointment except in the Southern region where it is unlimited.⁶⁶

Social court judges are not employees since they do not receive salaries from the government. Rather, they are volunteers who give free community services without or with less pocket money costing their time, energy, and resources. Social court judges are blamed for favouring the government and acting as agents of executives. Though it is difficult to prove or disprove this allegation by evidence, it is simple to understand the impact of financial independence on the autonomy of judges. The absence of salaries can subject judges to inference and pressures of those with deep pockets. It also discourages judges from devoting their time.

2.4 Independence, Accountability, and Transparency

Independence, accountability, and transparency are the bedrock of the judicial system.⁶⁷ They are essential in ensuring the effective administration of justice by the social court. Though, the social court is not mentioned as such the independence of the judiciary is recognized by the Constitution.⁶⁸ All social court proclamations declared the independence of the social court while carrying out its judicial function. Despite this, data collected to show the independence, accountability, and transparency of social court are subject to significant limitations.

2.4.1 Independence of Social Court

The independence of the judiciary is the bedrock of any judicial system in the world.⁶⁹ In its absence, it is impossible to expect an impartial and objective decision from the court. The

⁶⁶ Benishangul Social Court Proclamation No.126, Art.15; Southern Social Court Proclamation No.65, Art. 2(5) and 11(1).

⁶⁷ Shetreet S. Judicial independence and accountability: core values in liberal democracies. In: Lee HP, ed. *Judiciaries in Comparative Perspective*. Cambridge University Press; 2011:3-24; Udai Singh and Apoorva Tapas, *Judicial Accountability: The Eternal Dilemma*, *Christ University Law Journal*, 1, 1(2012), 69-89; Prem Chandra & Ashutosh Garg, *Judicial Accountability and Transparency in India: Flaws and Road Ahead*, *GLS Law Journal*; Vol. 03, Issue 02; July - December 2021.

⁶⁸ FDRE Constitution, Art.79 and ff; Oromia Cons, Art 61 and ff; Afar Const, Art 64 and ff; BGRS Cons, Art 65 and ff; Somali Cons, Art 65 and ff; Harari Cons, Art 67 and ff; Tigray Cons, Art 59 and ff; Amhara Cons, Art.64 and ff; Gambella Cons, Art.67 and ff; Dirdawa City Charter, Art 31 and ff; Addis Ababa City Charter, Art.39 and ff; Southern Region Cons, Art. 72 and ff.

⁶⁹ William H. Rehnquist, *Judicial Independence*, 38 U. Rich. L. Rev. 579 (2004). Available at: <https://scholarship.richmond.edu/lawreview/vol38/iss3/6>; Barron, David J. (2020) "Judicial Independence: Origins and Contemporary Challenges," *Roger Williams University Law Review*: Vol. 25 : Iss. 1 , Article 2. Available at: https://docs.rwu.edu/rwu_LR/vol25/iss1/2; Boaz Oyoo Were, *Judicial Independence as a contemporary challenge: Perspectives from Kenya*, *Comparative law working papers*, volume 1, no. 1. 2017.

independence of the judiciary has a huge impact on the quality of the justice system. Countries with independent judiciary have better and stronger justice systems wherein human rights are respected, the rule of law is obeyed, transparency and accountability are ensured, development is ensured, and good governance is maintained. In Ethiopia, the independence court is the fundamental principle recognized under both the federal and regional constitutions and respective constitutive proclamations.⁷⁰ The independence of the social court is also guaranteed by the establishment proclamation.⁷¹ In this sense, social court judges are free from any pressure or inference in their decision. They are led or ordered only by the law.

The independence of Judiciary refers to the institutional independence of the court as one branch of government, the personal independence of the judge, and decisional independence.⁷² In other words, the independence of the judiciary may be institutional, personal, or decisional. Institutional independence refers to the independence of the social court as an institution whereas personal independence implies the freedom of social court judges as an individual to decide a case only based on fact, evidence, law, and reasoning. Decisional independence stands for the freedom of a judge to pass a decision without any interface or pressure from governmental and non-governmental actors including individuals and colleagues. The manner of appointment and removal, competencies, term offices, salaries, and available budget have an impact on the independence of the social court.

2.4.1.1 Institutional Independence

Institutionally, the independence of the social court is recognized by most regional constitutions and establishment proclamations. The social court is mandated to exercise its judicial function with full independence. This clause is wide enough to include all dimensions of independence of social court including institutional ones. As per the doctrine of institutional independence, the social court is free from the interference and pressure of

⁷⁰ FDRE Constitution, Art.79 and ff; Oromia Cons, Art 61 and ff; Afar Const, Art 64 and ff; BGRS Cons, Art 65 and ff; Somali Cons, Art 65 and ff; Harari Cons, Art 67 and ff; Tigray Cons, Art 59 and ff; Amhara Cons, Art.64 and ff; Gambella Cons, Art.67 and ff; Dirdawa City Charter, Art 31 and ff; Addis Ababa City Charter, Art.39 and ff; Southern Region Cons, Art. 72 and ff.

⁷¹ Benishangul Social Court Proclamation No.126, Art.10; Oromia Social Court Proclamation No.128, Art. Art.7; The Amhara region social court establishment proclamation is silent about the independence of social court. This may be associated with the nature of social court in the region which similar with arbitrator.

⁷² Lemlem Dejenu Mulugeta, Judicial Independence in Ethiopia and Its Challenge Vis-à-Vis the United Nations Basic Principle on Independence of Judiciary, Journal of Political Science and International Relations (Vol. 6, Issue 4, 2023).

another branch of government at any level in the exercise of its judicial functions.⁷³ To ensure their independence, the establishment laws make the social court accountable to the Kebele council which is the legislative wing at a lower level of administration.⁷⁴ The appointment and removal of judges shall be subjected to the approval of the Kebele council upon nomination or recommendation of the Kebele administrator.⁷⁵ In addition to this, members of the Kebele administrative committee/council and voting members of the Kebele council cannot act as judges.⁷⁶ The law also made clear that the term office of the social court is equal with Kebele council i.e., five years with the possibility of reappointment.⁷⁷ Despite the law on text, practically, the social courts lack the budget allocated to cover its administrative costs. They are financially dependent on the Kebele executives. They lack the necessary facilities like offices, tables, file cabinets, and others to carry out their mandate. Because of this, there is an area in which parties to the dispute are required to bring paper, a pen, and a file folder to get services. There are many social courts with no separate office to carry out their function. They are dependent on Kebele's administrator even for a minor essential facility. They lack an independent budget that is considered blood for their operation. How social court can be institutionally independent without having the financial independence to administer its budget? In some areas, they use the stamp of Kebele administrator to authenticate their judgment. It is also not uncommon to see the circumstance in which the social court let us know the Kebele administrator about the judgment that they pronounced.

The Kebele administrator usually nominates a candidate for an appointment without receiving public comment against the law. The nomination is sometimes based on issues of political affiliation and submissiveness, instead of competencies. As the collected data show, usually, those who are appointed as social court judges are elders, religious fathers, and a person with good conduct within the community. Regarding the removal of judges, per the law without prejudice to the normal grounds of incapacity (like death and judicial interdiction), social court judges can be removed upon death, change of residence to another Kebele, expiration of term office, election as a member of Kebele council or administrative

⁷³ Oromia Social Court Proclamation No.128, Art. 7; Benishangul Social Court Proclamation No.126, Art., 9

⁷⁴ Benishangul Social Court Proclamation No.126, Art.4; Oromia Social Court Proclamation No.128, Art. 5.

⁷⁵ Amhara Social Court Proclamation No.246, Art. 9; Oromia Social Court Proclamation No.128, Art. 9; Benishangul Social Court Proclamation No.126, Art. 15.

⁷⁶ Oromia Social Court Proclamation No.128, Art. 9(7); Benishangul Social Court Proclamation No.126, Art. 13(3).

⁷⁷ Oromia Social Court Proclamation No.128, Art. 7(6); Benishangul Social Court Proclamation No.126, Art. 14.

committee, and commission of misconduct. Despite this, there are some limitations on the removal of judges. Especially when a new administrator is appointed it is common to see the removal of social court judges, especially the president.

2.4.1.2 Decisional Independence

Decisional independence is the cornerstone of judicial independence which requires the judge to decide based on law, evidence, reason and consciousness without interference from third parties.⁷⁸ In the process of passing a decision, the court shall be independent of the inference and pressure of the legislative and executive branches. Despite the constitutionality and relevancy of the independence of the social court, practically the decisional independence of the court is subject to significant limitations. Executive interference is higher in a case like land and criminal matters which involve government interest. In the case which involves no government interest, there is no inference. In such cases, the judges decide freely based on their understanding of justice and law. However, there are cases in which judges decide with the inference and pressure of youth, armed groups, local elders, or Kebele administrators.⁷⁹

2.4.2 Accountability of Social Court

Accountability is a fundamental principle of constitutional governance in the 21st century.⁸⁰ In addition to independence, the 1995 FDRE constitution has recognized accountability as the basic principle of the judiciary.⁸¹ Despite this, whether a social court judge is accountable or not is controversial. The controversy arises mainly from the position of social court judges within the employer-employee relationship. Social court judges are not salaried employees, rather they are free judicial services providers. So, how can the law make free service providers accountable for their faults related to the service they provide? On what grounds can the government take legal action and ensure accountability in case

⁷⁸ Barron, David J. (2020) "Judicial Independence: Origins and Contemporary Challenges," Roger Williams University Law Review: Vol. 25 : Iss. 1 , Article 2.

⁷⁹ Sufian Usman vs Kalisa Basha, Haramaya City Kebele 01, File No.2/01/0076/11, decided on 22/1/11 EC as referred on Indaalammaa and Tasfaa *supra* note 45; Tefera Tadesse vs Dereje Tefera, Ada Woreda Court, File No. 45224, Decision rendered on 28/01/07 as referred on Indaalammaa and Tasfaa (*supra* note 45); Interview with Birhanu Abebe, President of Haramaya City Kebele 01 Social Court on 06/06/11 Interview with Jemal Ahmed, Administrator Haramaya City Kebele 01 on 06/06/11; Zeituna Abrham vs Aweke Wondimu, Haramaya City Kebele 01 Social Court decided on 29/02/10 as referred on Indaalammaa and Tasfaa (*supra* note 45).

⁸⁰ McIntyre, J. (2019). Principles of Judicial Integrity and Accountability. In: The Judicial Function. Springer, Singapore. https://doi.org/10.1007/978-981-32-9115-7_13.

⁸¹ FDRE Cons, Art. 12(2) and 79(4).

judges who provide free services become incompetent, non-performing, or involved in acts of misconduct like corruption which affects public confidence? As the prevailing practices reveal, the only action taken against a social judge in case of incompetence, non-performance, and misconduct is removal from office. However, the deterrence effect of removal is less in the situation where judges lack financial incentives like salaries to stay in office. Besides, despite the dearth of practices, the social court judges are subject to corruption crime law.⁸²

Independence of the social court alone does not ensure access to quality justice unless it is supported and compromised by an accountability framework. The independence of social court should be balanced with accountability to avoid unnecessary consequences that happen because of imbalance. The law set different requirements to ensure the accountability of social court judges. Institutionally, the law made the social court accountable to the Kebele council.⁸³ Concerning decisions, social court judges are accountable to the city or Woreda or district court which is responsible for reviewing the judgment of the social court upon appeal by the aggrieved party. Their judgment may also be reviewed by cassation if contains a fundamental error of law. The social court is technically accountable to the courts of the upper level. The law also requires social court judges to submit performance reports to the Kebele council and Woreda Court every quarter.

Though the term has not expired, and the residence has not changed, the judge can be removed from office for reasons of incompetence and disciplinary faults. There is a difference among regions regarding disciplinary grounds for the removal of a judge. In the Amhara region, the only disciplinary ground for the removal of social court judges that is expressly incorporated by law is a criminal conviction.⁸⁴ In the Oromia and BGRS regions, the law is more illustrative and clear in listing disciplinary grounds for the removal of social court judges.⁸⁵ In Oromia, the disciplinary faults that result in removal include a hearing case out of place determined by law, failure to notify the date and place of the hearing, deciding without hearing the witness of both sides, deciding a case by nepotism, favoritism,

⁸² Corruption Crimes Proclamation No.881/2015, Art.2(2).

⁸³ Amhara Social Court Proclamation No.246, Art. 12; Oromia Social Court Proclamation No.128, Art. 7 and Benishangul Social Court Proclamation No.126, 18 and 19.

⁸⁴ Amhara Social Court Proclamation No.246, Art. 17(2).

⁸⁵ Oromia Social Court Proclamation No.128, Art. 11(5); Amhara Social Court Proclamation No.246, Art. 17; Benishangul Social Court Proclamation No.126, Art. 18 and 19.

or bribe, causing inconvenience by refusing to give a copy of the judgment for parties, performing or trying to perform activities which limit parties right to appeal,⁸⁶ Despite this legal clauses which try to ensure accountability of social court judges, hearing cases in deciding with hearing both parties and their witness, deciding based on nepotism or bribe, and refusing to give a copy of the judgment for parties are a common problem.⁸⁷ In this sense, the implementation of disciplinary action and accountability is poor. This is mainly attributed to the fact that the service offered by social court judges is free or with no payment. In addition, there is no efficient organ that supervises and audits the operation of the social court.

To conclude, the accountability framework is poor as judges are not salaried employees. The social court judges are free service providers, in this context, it is difficult to enforce legal liability against volunteers even in the case there is gross misconduct, incompetence, and non-performance. So far, as data collected through interviews reveals the only action taken against misbehaving, incompetent, and non-performing judges is removal from office followed by no legal action.⁸⁸

2.4.3 Transparency of Social Court

Transparency is the core of constitutional governance in the 21st century.⁸⁹ The 1995 FDRE constitution also requires the conduct of government affairs including judicial activities to be transparent.⁹⁰ Despite this, whether a social court is transparent is controversial. Transparency of the activities of the social court is the fundamental element in the administration of justice. In regular court, transparency can be ensured through different means including public trial or hearing, written judgment, and supporting judgment with law evidence, reason, and fact. The law of all regions establishing the social court calls for public trial unless such trial involves an issue that affects individual privacy and public order. Matters that fall within the jurisdiction of the social court are a minor issue that does not raise privacy and public order concerns. In this sense, the public trial is a principle in a

⁸⁶ Oromia Social Court Proclamation No.128, Art.,11(5), Amhara Social Court Proclamation No.246, Art. 17; Benishangul Social Court Proclamation No.126, Art. 18 and 19.

⁸⁷ Indaalammaa and Tasfaa, *supra note 45*, 182.

⁸⁸ Interview with Bayualem Adimassu, Benishanul Gumuz, Assosa Zone, Ura Woreda Assosa City Kebele Social Court Judge, January 15, 2023; Abdi, 182.

⁸⁹ Wang, Y., Tian, H. (2023). The Rationale Behind Judicial Transparency. In: Judicial Transparency in China. Springer, Singapore. https://doi.org/10.1007/978-981-19-7822-7_3; Grimmelikhuijsen, S., & Klijn, A. (2015). The Effects of Judicial Transparency on Public Trust: Evidence From A Field Experiment. Public Administration, 93(4), 995-1011. <https://doi.org/10.1111/padm.12149/>.

⁹⁰ FDRE Cons, Art.12(1).

social court trial. Despite the legal clause that calls for a public hearing, the social court judges try all cases on camera because of practical factors like the absence of enough office to administer public trials and lack of awareness among judges about their obligation to entertain cases in public. In addition, judgment supported by relevant facts, law, and reason has a positive impact on ensuring transparency. However, almost all judges of the social court are not law graduates. Rather, most of them are respected elders or persons within the community who lack legal background. As a result, judges of the social court are not able to support their decisions with relevant provisions of law. To the maximum in the process of writing the judgment, the judges amass the claim and defence of parties with evidence and equity to pass a judgment. The response of one of the respondents clearly shows that they don't support their judgment due to lack knowledge of the applicable law.

The transparency of the administration of justice by the social court is subjected to too much limitation. Public hearings and written judgments supported by law, evidence, and relevant facts are essential in ensuring transparency. However, as the data collected show public trial is absent. As stated before, the social court lacks a fully furnished room to carry out its activities. Sometimes, they share the office with the speaker administrator or police of the Kebele. In this situation, a public trial is unexpected though the law calls for a public hearing. Concerning written judgment, social court judge passes their judgment in writing despite the defect in content. All social court judges interviewed have no degree or training in law. Some of them cannot even write or read. So, judges without knowledge and skills of law can pass support judgment supported by law. When judges are interviewed if can they support their judgment with the law, most of them respond "How we can support without knowing the applicable law? We work by customary norm and equity, not law" In this sense, the written judgment does not support transparency of social court operation.

2.5 Public Confidence in Social Court

Securing public confidence is essential for any institution including the social court to accomplish its purpose of establishment. Public confidence has paramount importance, especially for a judicial institution that strives to ensure access to justice.⁹¹ The people do not go to social court unless they have confidence in the overall operation of the social court. Despite this, practically there are limitations on public confidence in a social court

⁹¹ Pikramenos, M.N., Public Confidence and the Judiciary in a Democratic Society. In: Economou, E.M., Kyriazis, N.C., Platias, A. (eds) *Democracy in Times of Crises*. Springer, Cham (2022).

that can be attributed to different factors. First and foremost, the factor that reduced public confidence is attributed to the weakness of the social court to execute or enforce its judgments. Per the establishment law, social courts are empowered to order arrest to facilitate and ensure the execution of judgment. However, sometimes there is the unwillingness of the police to enforce an order of the social court. There is a circumstance in which the police centre or prison administration refuses to accept and administer a person's order to be arrested or imprisoned by the social court. The prison administration and police centre sometimes disregard the power of the social court to order arrest and imprisonment and release the arrested or imprisoned person upon bail. The social court lacks legitimacy not only to enforce its judgment but also its lack power to ensure respect for the bench. As a result, it is common to see parties disturbing the bench with insults and disobedience.

The second reason that negates public confidence is the manner of appointment and removal of social court judges. In the appointment and removal process of regular court judges, the Judicial Administration Commission plays a significant role. The Social Court Establishment Proclamation has also set requirements and procedures for the appointment and removal of judges. The person to be appointed should have to be a person with good conduct, competencies, diligence, reputation, and knowledge of customary and formal law. The public is also entitled to comment on the person appointed as such. However, in the case of social court judges, the appointment and removal are highly dependent on the need and interest of the Kebele administrator with no participation of the public. The administrator nominates the submissive person whom he can order as he likes and removes the judge when he is not obedient to the order. What matters is not public confidence in the person, but the administrator's confidence in the person. The same is true during removal. The politically-motivated appointment and removal of judges as well absence of transparency in the procedure thereof has negated public confidence. Usually, it is common to see a change of at least the president or chairperson of the social court when a new administrator is appointed. As the foreign experience of countries like Kenya and Zambia shows, the social court appointment and removal are made by constitutionally established Judicial Administration Commission.⁹²

The absence of regular public hearings is the third factor that reduced public confidence in the social court. The social courts do not hear cases regularly. Even within a single region,

⁹² The Republic of Kenya Small Claims Court Act Act No. 2 of 2016; Republic of Zambia The Small Claims Courts Act; Indaalammaa and Tasfaa, *supra* note 26, 151 and ff.

there is no regular working day and hour. Usually, the social courts set their working day based on their free will and internal bylaws. Some social courts work daily even at the weekend which is considered by Ethiopian society as a holiday or rest day. The reason for the lack of a regular working day is attributed to the law which set working days and the voluntary nature of judicial service rendered by social court judges. The judges serve without salaries even sometimes incurring the cost. They lack a suitable working environment like furnished and good size office with the necessary facility. The judges lack a financial incentive to be punctual and diligent. Because of this, usually, they fail to report for work on time. However, as the experience of Zambia shows judges of the social court are entitled to the allowance.

2.6 Conduct of Social Court Judges

The quality of justice rendered within the judicial system is highly dependent on the conduct of acting judges. The judge's conduct significantly impacts the quality and effectiveness of justice administered within the social court system. Because of the impact of the conduct of judges on the quality of justice, the law requires quality of good conduct for the person to be appointed as a judge. Expressing differently, the person accused of misconduct like laziness, dishonesty, corruption, and other matters of similar nature may not be appointed as a judge. The conduct of judges is one of the basic elements that determine the effectiveness of the administration of justice. Despite this, the misconduct of judges is one-factor reducing public confidence and limiting the effectiveness of social courts in ensuring access to justice. In the absence of a judge with good conduct, access to justice cannot be ensured. The data collected through interviews show the presence of social court judges who commit misconduct in one or another way. That misconduct includes corruption, refusal to give full file for parties who would like to appeal, and unnecessary and unreasonable adjournment. Per the relevant law, any parties aggrieved with the decision of the social court have the right to appeal. Despite this, there is a failure (unwillingness and refusal) to give a full file on a timely basis for parties who would like to appeal. There is also a failure to sign and stamp the copy of the judgment. As a result of refusal to give a copy of a file, there are circumstances in which the Kebele administrator or Woreda court orders the social court to give the file. Such refusal affects not only the rights of individuals but also ruins public confidence and opens room for different actors to interfere in judicial activities.⁹³ The social

⁹³ Indaalammaa and Tasfaa, *supra* note 45, 151 and ff.

court is required to give justice as speedily as possible. However, it is not uncommon to see multiple unnecessary and illegal adjournments. Before hearing, there are cases in which more than five adjournments. Such multiple adjournments ruin not only public confidence but also go against the very essence of a social court that is providing accessible justice concerning minor cases at a low cost within a short period.

2.7 Accessibility

Accessibility is another determining factor for the effectiveness of the administration of justice. The social court is established at the Kebele level which is the lowest structure in administration. As a result, geographically, they are nearly accessible to the community. However, the judges of social court don't report to work every working day. In a region like Oromia, the law states that the working hours of the social court are similar to the Kebele administration.⁹⁴ In this sense, they are expected to report to work every working day. The reality is different as the judges hear the case on two days per week. In a region like BGRS, the law is not clear regarding the issue of whether social court judges are duty-bound to report for work every working day. Despite the ambiguity of the law, in practices in the BGRS region, most social court judges report for work two days per week. The working days differ across and within the region. In some Kebele, the judge reports for work on the weekend.⁹⁵ In this sense, though usually, social courts are geographically nearest to the community, the absence of regular working hours has limited their accessibility.

2.8 Time and Cost-effectiveness

A speedy trial with lower transaction costs is the one indicator of the effectiveness of the administration of justice. Relative to regular courts, based on observation, the caseload is low in social courts. In addition to this, social courts do not follow the ordinary complex procedure in entertaining the cases. Rather, it follows a simplified version of the procedure constructed based on the principle of customary practice and/or establishment proclamation. For instance, in the Amhara region, the social court is not obliged to follow the ordinary civil and criminal procedure set by codes, instead, it undertakes its activities per the local

⁹⁴ Oromia Social Court Proclamation No.128, Art., 8(2(b))

⁹⁵ Interview with Gemechu, Benishanul Gumuz Metekel Zone Dibate Woreda Galessa Kebele Social Court Judge, January 10, 2023.

custom, tradition, and practices.⁹⁶ In the Benishangul Gumuz region, the law obliges the social court to follow the procedure set by the establishment proclamation.⁹⁷ The law of some regions fixed the maximum period within the court required to pass judgment. For instance, in Amhara, unless there obligatory condition, the social courts must render a decision within 30 days following the institution of the case.⁹⁸ In a region like Oromia and Benishangul Gumuz, the court shall pass judgment *immediately* or *within a short period* if the hearing is completed or matured.⁹⁹ Despite the difference in the wording of the proclamation, relative to a regular court, a social court is both time and cost-effective.

3. CHALLENGES FACING SOCIAL COURTS AND AREAS OF REFORM

The empirical inquiry reveals that the administration of justice by social court faces a multitude of challenges. Some of the challenges facing social court and areas that need reform are briefly examined as follows.

3.1 Legal Skills and Knowledge Gaps

The social court is subject to the problem of a lack of skilled manpower. Those serving as judges are not educated in the law. Most of them even lack formal education and language fluency to write and read. They are selected mainly based on the trust they secure within society or from administrators without the knowledge of the law. Because of this, they lack awareness about applicable laws and procedures. In rural areas, most of them are religious fathers whereas in urban areas some of them are young degree holders with no or limited knowledge of local customs. Also, there is no timely, adequate, and practical training and experience-sharing platform to improve the competence of judges. There are social courts which receive no training for more than decades.¹⁰⁰ Even in the area it rendered, the training is not adequate which can be either phone-based orientation¹⁰¹ or a short hour like one-hour

⁹⁶ Amhara Social Court Proclamation No.246, Art. 7.

⁹⁷ Benishangul Social Court Proclamation No.126, Art.27(1)

⁹⁸ Amhara Social Court Proclamation No.246.

⁹⁹ Benishangul Social Court Proclamation No.126, Art. 39; Oromia Social Court Proclamation No.128, Art. 33.

¹⁰⁰ Interview with Fekede Belina, Benishanul Gumuz Kemash Zone, Kemash Woreda Kemash City Social Court Judge, January 10, 2023.

¹⁰¹ Interview with Wajira Habte, Benishanul Gumuz, Metekel Zone Dibate Woreda Berber Kebele Social Court Judge, January 11, 2023; Interview with Lemesa Adimassu, Benishanul Gumuz Metekel Zone Dibate Woreda Bereber Kebele Social Court Judge, January 15, 2023; Interview with Yiber Tadesse, Benishanul Gumuz Metekel Zone Dibate Woreda Berber Kebele Social Court Judge, January 15, 2023.

training.¹⁰² There is also untimely training for example giving training for a judge whose main occupation is farming during the farming season.¹⁰³ The absence of competent judges is not only a simple problem but is the root cause of many limitations in the administration of justice by the social court. To address these challenges well-structured short-term education and training must be adjusted for judges of social court on major substantive and procedural laws as well as file documentation and trial administration. The content, time, and place of education and training must be designed in a way that fits the needs of judges. Training given to the farmer during the farming season is not timely and effective.¹⁰⁴

3.2 Lack of Access to Necessary Facility

The second challenge facing the social court is the lack of adequate and furnished offices with necessary facilities like chairs, tables, computers, printers, copy machines, shelves, laws, paper, pens, file cabinets, and other necessary facilities. None of the social courts observed by the researcher has furnished offices. The interview with the social court and Woreda court judges also confirm the same.¹⁰⁵ They are dependent on the Kebele Administrator for every facility including pen and paper. This has an impact on the independence and performance of the court. The facility support Kebele administrator is not formal, it is based on the begging and receiving principle. Because of the lack of a computer and printer, their judgments are handwritten which is non-legible in many cases. There is also an area in which the customer brings necessary facilities like paper and pen to get service.¹⁰⁶ Because of the lack of furnished office, the public trial is a myth in the social courts. The cause of the lack of facility lies in the financial dependence of the social court on the Kebele administration. Finance is blood for judicial performance. The social court cannot perform well without having its budget administered by itself. The social court even

¹⁰² Interview with Gemechu, Benishanul Gumuz Metekel Zone Dibate Woreda Galessa Kebele Social Court Judge, January 10, 2023.

¹⁰³ Interview with Gemechu, Benishanul Gumuz Metekel Zone Dibate Woreda Galessa Kebele Social Court Judge, January 10, 2023.

¹⁰⁴ Interview with Gemechu, Benishangul Gumuz Metekel Zone Dibate Woreda Galessa Kebele Social Court Judge, January 10, 2023.

¹⁰⁵ Interview with Fekede Belina, Benishanul Gumuz Kemash Zone, Kemash Woreda Kemash City Social Court Judge, January 10, 2023; Interview with Gemechu, Benishangul Gumuz Metekel Zone Dibate Woreda Galessa Kebele Social Court Judge, January 10, 2023; Interview with Wajira Habte, Benishangul Gumuz, Metekel Zone Dibate Woreda Berber Kebele Social Court Judge, January 11, 2023; Interview with Bayualem Adimassu, Benishangul Gumuz, Assosa Zone, Ura Woreda Assosa City Kebele Social Court Judge, January 15, 2023.

¹⁰⁶ Interview with Gemechu, Benishangul Gumuz Metekel Zone Dibate Woreda Galessa Kebele Social Court Judge, January 10, 2023.

lacks access to a necessary law. In some courts, even they don't have social court proclamations.¹⁰⁷ This is like a soldier without a bullet.

3.3 Jurisdictional Ambiguity

The third major challenge facing the administration of justice by the social court is confusion relating to the jurisdiction of the social court. Jurisdictionally confusion is a common problem facing the administration of justice's social courts in Ethiopia. The federal Supreme Court cassation decision reveals the same. The material jurisdiction of the social court concerning civil matters is limited to matters that fall within a given pecuniary limit and subject matter. The jurisdictional limit of the social court is the point of controversy and ground for appeal unto cassation. As the lower court and federal cassation decision concerning the cases reveals there is no common stand between courts.¹⁰⁸ Concerning possessory action, in the cases *G/Meskel Demoze vs. Astede Mokenen* and *Mulatu Anberber vs. Tamneche Yosef* the Federal Supreme Court (FSC) cassation took a firm stand that the social court lacked the power to entertain the issue of possessory action.¹⁰⁹ Regarding the jurisdiction of social courts to entertain cases in which one of the parties to the dispute is an organization registered by the federal government, the FSC Cassation took a different stand at different times. In the case of *Farming Machineries S.C vs. Ethiopian Insurance Corporation* without taking into consideration the fact that the respondent is registered by the federal government, the FSC decided that the social court in Addis Ababa lacks jurisdiction to entertain *insurance matters* though the claim is within the limit to of pecuniary jurisdiction of social courts.¹¹⁰ This is because under federal court proclamation (No.25) the issue of insurance is reserved for the federal court. Despite this, in the cases between *Ethiotelecom vs. Markos Abebe*, and *Ethiotelecom vs. Worknesh W/Mariam* without taking into consideration the registration of the Ethiotelecom by the federal government, the FSC decides that the social court has material jurisdiction over matters

¹⁰⁷ Interview with Fekede Belina, Benishangul Gumuz Kemash Zone, Kemash Woreda Kemash City Social Court Judge, January 10, 2023.

¹⁰⁸ *G/Meskel Demoze vs Astede Mokenen*, Cassation File No.36338 Tire 25, 2001 E.C; *Mulatu Anberber vs Tamneche Yosef*, Cassation File No.41608 Hamile 22, 2001 E.C, *Farming Machineries and Tech S.C vs Ethiopian Insurance Corporation*, Cassation File No.52041 Sene 29 2002 E.C; *Ethiopia Telecommunication Corporation vs Markos Abebe*, Cassation File No.54990 Hidar 18, 2004 E.C; *Ethiopia Telecommunication Corporation vs Worknesh W/mariam*, Cassation File No.56118 Hidar 16, 2003 E.C; *TATN Constructions and Business Activities Organization vs Eyayu Dejene*, Cassation File No.89530, Tikemet 21 2006 E.C.

¹⁰⁹ *G/Meskel Demoze vs Astede Mokenen*, Cassation File No.36338 Tire 25, 2001 E.C; *Mulatu Anberber vs Tamneche Yosef*, Cassation File No.41608 Hamile 22, 2001 E.C.

¹¹⁰ *Farming Machineries and Tech S.C vs Ethiopian Insurance Corporation*, Cassation File No.52041 Sene 29 2002 E.C.

which fall within pecuniary limit though one of the party is the federal body.¹¹¹ These two decisions may lie on the argument that the social court proclamation is a recent one that prevails over the court proclamation in case of contradiction. Labour Proclamation No. 377 empowered the first instance court to entertain individual labour disputes. Following this, in the case *Tatn Constructions vs. Eyayu Dejene*, the FSC Cassation decided that though the amount of claim is within the pecuniary jurisdiction of the social court, the social court lacks the power to handle labour dispute which is expressly given to the first instance court under proclamation which was enacted after the enactment of social court proclamation.¹¹² As the close inquiry of these cases reveals even there is no agreement among regular courts regarding the jurisdiction of the social court.

As data collected through the interviews with judges of different levels of court including social court and Woreda courts in Benishangul Gumuz prove, the jurisdiction of the social court lacks clarity and constitutes a ground for unnecessary litigation. The Woreda court repeals most decisions of the social court based on the grounds of lack of jurisdiction. The social court judges are also confused about their jurisdiction. The issue of whether the social court proclamation shall be read in line with the court proclamation or not is controversial. Reading social court proclamation independently and sideline with the court proclamation results in different conclusions concerning jurisdiction as they usually contradict each other. The power of the social court to handle the issue of possessory action, ownership, and land boundary issues is a confusing area.

3.4 Independence, Accountability and Transparency Defect

The independence, accountability, and transparency of the judiciary are subject to many fundamental defects because of executive hegemony. Relative to a regular court, the minor power of a social court does not attract the executive interest. As the data collected shows, executive interference in the decision of the social court is highly limited. None of the social court judges involved in the interview reported interference of the executive in their decision. Because of this, they decide freely per the law and custom by amassing claims

¹¹¹ *Ethiopia Telecommunication Corporation vs Markos Abebe*, Cassation File No.54990 Hidar 18, 2004 E.C; *Ethiopia Telecommunication Corporation vs Worknesh W/mariam*, Cassation File No.56118 Hidar 16, 2003 E.C.

¹¹² *Tatn Constructions and Business Activities Organization vs Eyayu Dejene*, Cassation Fil No.89530, Tikemet 21 2006 E.C.

with evidence. However, this does not they are free and there is no attempt by the administrator to use the court to decide and legitimize the executive decision to impose a fine on a resident who fails to participate in a development project like terracing constructed by the public. Institutionally, the social court is not independent. The social court is much more dependent than the regular court. The social court is dependent on the Kebele administrator for everything including necessary facility, and judgment execution. The social court lacks the financial independence to administer its budget and property.

Organizationally, a social court is accountable to the Kebele council. Technically, it is accountable to the Woreda court under the appeal system. However, the accountability regime is almost none. The maximum action taken against a non-performing and misbehaving judge is removal from office. So far, no legal action against taken such a judge to ensure liability. There are some social courts, which impose fine on non-performing judges by their bylaws.¹¹³ *Technically*, because of the long distance, parties usually lack the incentive to take their case to Woreda court through appeal. Hence, the appeal system is weak in ensuring the accountability of the social court. Even in case the case was taken to Woreda court through appeal, the Woreda court repealed the decision of the social court based on lack of jurisdiction without entertaining the subject matter. As a result, the substance of the decision of the social court is not subjected to review by the upper court.

The transparency in the social court is very limited. It lacks adequate office and legal awareness to carry out public trials. Their judgments cannot be published and are easily accessed by the public to comment. In addition, most of the time social court does not support their judgment. Moreover, the performance report submitted to the Justice Bureau and Woreda Court is not detailed enough to ensure transparency of the social court. There is no transparency about the income gained from court fees because of the absence of auditing. The social court lacks a registrar who can keep the file in order. Because of this, there is no formal documentation of the necessary file.

¹¹³ Interview with Wajira Habte, Benishanul Gumuz, Metekel Zone Dibate Woreda Bereber Kebele Social Court Judge, January 11, 2023; Interview with Lemesa Adimassu, Benishanul Gumuz, Metekel Zone Dibate Woreda Bereber Kebele Social Court Judge, January 15, 2023; Interview with Yiber Tadesse, Benishanul Gumuz, Metekel Zone Dibate Woreda Berber Kebele Social Court Judge, January 15, 2023.

3.5 Absence of Salaries or Financial Incentives

Social court judges provide service without salary. They are public servants appointed by the Kebele council upon the nomination of the Kebele administrator. In a capitalist society where there is no free lunch, how does a judge sacrifice his time and energy for nothing? Justice is the most expensive item in this world. How does the judge who delivers this expensive item provide judicial service for free? The absence of salaries was a big challenge for social courts even during the imperial and Dergue regimes. The social court proclamations have not been learned from the previous regimes. This is a big failure. Reasonable salaries or financial incentives must be allocated for judges of the social court. Without it, improving the effectiveness of the administration of justice by the social court is impossible. The absence of salaries not only discourages judges but also forces them to be involved in illegal activities like receiving bribes. Because of the absence of salaries, judges consider their function as a luxury time work. They don't engage in rendering judicial services as their regular occupation. No judges interviewed so far see being a judge as a regular occupation but as part-time pro-bono service.

CONCLUSION

Despite the ambiguity and silence of the 1995 Constitution, social courts are recognized by all regional constitutions and city charters as the judicial branches of Kebele. This study has examined the effectiveness and challenges of the administration of justice by social courts. As the finding reveals, the effectiveness of social courts in the administration of justice is not easy to conclude as it is diverse and faces different challenges in different areas. Generally, in addition to their unique limitations, social courts have been facing similar challenges to regular courts. The unique challenges of social court emanate from the fact that the judges are not law graduates, provide free services without salaries, and perform adjudicative and conciliatory roles according to diverse local customs. The effectiveness of social courts is subject to various constraints because of the absence of adequate training and incentives for judges, insecurity especially in the rural areas, low legal awareness of judges, financial dependence of the court on the executive, executive interference, and weak accountability schemes. In extreme cases, the problems go to the extent of questioning the very existence of the social court. To improve the overall productivity of social court in the administration of justice, the study suggests the delivery of short-term training on basic substantive and procedural laws for social court judges, settlement of jurisdictional

ambiguity through training and revisions of law, payment of reasonable remuneration for judges, and increment of material jurisdiction accompanied by capacity building programs. Besides, the impact of social courts on gender equality, human rights, and customary law needs further study.