

**ADDIS ABABA UNIVERSITY COLLEGE OF
LAW AND GOVERNANCE STUDIES, SCHOOL
OF LAW**

**Executive Interference Against the Judiciary in
Ethiopia: The Case of SNNPR**

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May 2020 Addis Ababa,

Ethiopia

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Abstract

There are three levels of court structure in SNNPR, Supreme Court at the top, high courts in the middle and woreda courts at the bottom. It mainly reflects federal court structure and is constitutionally meant to exercise its judicial duty free from any interference.

There are challenges in court administration of the region. The fundamental problem lies in lack of judicial independence. This problem is also identified by ECJSRP baseline study 2005. The program mainly picked out three core problems. First, political interference is deep-rooted problem in the administration of justice. Second, lack of autonomy to administer the budget aggravates the problem in the sector. Finally, appointment, selection, promotion and disciplining of judicial members are also not free from executive interference. As judiciary in SNNPR is being part and parcel of the national justice system, it faces similar problem. Hence, these problems have direct and indirect impact in the regional justice system requiring reform in the sense of having an independent judiciary, which is among essential factors for economic development, democracy and good governance

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The research mainly relied on primary and secondary data. Secondary data sources include books, journals, court decisions and articles. Internet sources were also extensively used, particularly the literature for principles of judicial independence. Primary data source, i.e., legislations, Federal Supreme Court Cassation decisions and information obtained from researchers, judges and court leaders, public prosecutors, attorneys, top level government officials and parties to law suits as key informants for interview questions. Additionally, the researcher's personal observation has also been taken as valuable data for this study.

The findings on aspects of judicial independence in the region reveal that the judicial sector has encountered meager investment attention; increasing complexity of court management; challenges on the tenure security of judges and prevalence of inappropriate executive intervention including order of executive frequent and unjustified disciplinary measures taken against judges; and wide interference of law enforcing organs of the government by using finance, security issue, human power, disciplinary measures and media comments.

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This Thesis recommends for the setting up of independent bodies in the case of threats to judicial independence, constitutional protections for the judiciary aimed at providing the checks and balances between the powers of state, and the development by national judicial systems of self-regulating mechanisms that do not require external intervention. These conditions, which remain deep-seated to the regional justice system, call for further in-depth research and analysis.

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ACRONYMS

Region	The Regional State of Southern Nations Nationalities and People
Subordinate Courts	The High Court and Woreda Courts of Southern Nations Nationalities and People's Regional State
BPR	Business Process Re-engineering
BSC	Business Score Card
ECJSRP	Ethiopian Comprehensive Justice System Reform Program
CSA	Central Statistics Authority
ELJSA	Ethiopia Legal and Judicial Sector Assessment
EPRDF	Ethiopian People Democratic Revolutionary Front
SEPDM	Sothern Ethiopian Peoples` Democratic Movement
FDRE	Federal Democratic Republic of Ethiopia
BOFED	Bureau of Finance and Economic Development
DOFED	Department of Finance and Economic Development
Woreda Court	Woreda Court of Southern Nations Nationalities and People's Region
High Court	High Court of Southern Nations Nationalities and People's Regional State
Supreme Court	Southern Nations Nationalities and People's Regional State Supreme C
FIC	Federal First Instance Court
FHC	Federal High Court
FSC	Federal Supreme Court
HOPR	House of Peoples Representatives
HoF	House of Federation
JAC	Judicial Administration Council of Southern Nations Nationalities Peoples
JRP	Justice Reform Program of Southern Nations Nationalities And People's R
JLSRT	Judicial and Legal System Research Institute

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CHAPTER ONE

1. Background of the Study

Ethiopia is one of the oldest nations in the world. Even though, several regimes have been fluctuated in the country since ancient time, has been remained under an infant democracy, doubtful rule of law and stagnant economic development. Lack of independent and well functioning judiciary is among the contributing factor for backwardness of the state.¹ The effective reform of mal-functioning court system is central for one's nation to encourage overall development. It supports the realization of many development goals by protecting human rights, resolving social conflict, promoting economic growth and implementing state policies. Even though they did not realized rule of law, democracy and overall development, earlier regimes in Ethiopia had attempted to reform legal and justice sector.

The Dergue regime can be mentioned by legally ignoring the basic codes of the country. Though, all land was nationalized by imposition of law, which was done so without the due process of law. Legal revision was undertaken during the transitional period of 1991-1994 to replace the socialist laws of the nation and re-established a legal system. Reforms by revising the imperial codes were also undertaken so as to insure the consistency of such laws with the constitution of FDRE.

“The transition to a Federal Republic and decentralization, which begun in the 1995, added further layers and dimension to an already diverse and complex legal system. This transition has already greatly manipulated the demand placed both on government infrastructures and the legal system. Of the three branches of government, the judiciary has the least history and experience of independence, and requires significant strength to obtain true independence, equality and self-sufficiency”²

The Ethiopian justice system suffers with a variety of significant challenges. Among others there are two main problems. First, lack of serious steps to tackle corruption, abuse of power, and

¹ Roberto Laver, 'The World Bank and Judicial Reform: Overcoming "Blind Spots" in the Approach to Judicial Independence' (2010) Duke Journal of Comparative & international law <<http://www.nytimes.com/2010/05/18/world/europe/18impunity.html>> accessed 27 September 2019

²Ministry of Capacity Building, [Ethiopian Comprehensive Justice System Reform Program Base Line Study Report, 2005]

political interference. Second, inadequate funding of the justice institution aggravates most deficiencies of administration of justice.³The community perception of the independence of the judiciary is very low. The operation of courts is managed and supervised by the court presidents, who therefore, act both as judge and boss. Potentially this compromises the independence of the judiciary. Besides, the process of selection and promotion of judges is insufficiently transparent and lacks inputs from other legal professions. The performance evaluation of the court administration and case management is weak. Finally, the judge's poor working condition threatens their independencies, reduce their efficiency, and constitute incentives for corruption.⁴With the objective of changing these challenges in the justice system, the JSRP was established in 2002, under authority of Ministry of capacity building by assessing the performance of various institutions and to propose appropriate reforms.⁵

“A predictable legal environment, with an objective of reliable and independent judiciary, is essential for democratization, good governance, and human rights in the country as a whole and in SNNPR, in particular”⁶

A full package Court reform may need different efforts including legal reform. But this study focuses on practical aspects of independence of judiciary in SNNPR as a central theme of the rule of law, which protects courts in their adjudication from influence and pressure of executive branch of government contrary to the law.⁷ Thus, insuring independence of judiciary in a particular state is “among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings”.⁸

The 1995 Constitution of the FDRE as well as the revised constitution of SNNPR ensured to constitute a federal system of self-determination of nine regions or states to which judicial,

³ ibid

⁴ ibid

⁵ Dakolias Maria, 'Legal and Judicial Development: the Role of Civil Society in the Reform Process' (Fordham International Law Journal, 2000)

⁶ World Bank, 'Justice System in Ethiopia: proceedings of the Workshop on Justice System' (2004) <<http://www.siteresources.worldbank.org>> accessed on 27 September 2019

⁷ Council Decision 2008/12/ of 17 June 2008 Further strengthening the rule of law in the OSCE area <http://www.osce.org/documents/mcs/2008/12/35586_en> accessed 27 September 2019

⁸ See Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE <http://www.Osce.org/documents/eea/1990/04/13751_en.pdf> accessed 4 October 2019

legislative and executive powers are devolved. It allocates power and duty among the three branch of the government.⁹ It also prescribes the mandate of federal as well as sub-national judicial organs. The constitutions of both level further guarantees the independence of judiciary. Unfortunately, however, the record of court reform efforts inline with constitutionally affirmed issues of judicial independence in the country in general and in SNNPR in particular has not been very heartening.¹⁰ This shows that ensuring constitutional safeguard for judicial independence alone cannot justify it in practice. Apart from the issue of independence, the federal and regional constitutions, further creates three levels of courts: first instance (woreda) court, high court (zonal) and supreme (regional) courts.¹¹

2. Statement of the Problem

Ethiopia has been facing a lot of problems. The crisis in the justice system, which has, for several decades, remained a serious concern for the public, is among the problems. Even though, the law reforms including the new and basic constitutional rights have been implemented in an aim to boost investment and development, the overall justice system remains miscarriage and fraud full. The judiciary has been neglected, least independent and self-insufficient. In addition to the political instability, which specially is a main factor behind ethnic federalism in SNNPR, dependent corrupted and mismanaged judiciary increases public fear, anger and mistrust on the sector. The cumulative effect of all those factors nowadays leads towards mob justice.

The Ethiopian justice system, according to the Comprehensive Justice System Reform Program baseline study (2005), has three core problems.¹² First, political interference is deep-rooted problem in the administration of justice. Secondly, it has serious problems to tackle corruption and abuse of power in the administration of justice. And thirdly, inadequate funding of the justice institutions aggravates most deficiencies of the administration of justice. The perception

⁹Art 78 (1) and 79 of FDRE Constitution, The Constitution is ambivalent on judicial independence, "all judges shall be independent in the exercise of their conscience and shall be bound only by this constitution and the law." It further guarantees security of tenure during judicial terms and budget autonomy.

¹⁰Demelash Casey, Ethiopian Justice: The Ethiopian Justice System, Current Reform Efforts, Assessment, and Recommendations, (2012)

¹¹ Art 79 (3)of FDRE Constitution & Art 62 (1) of Revised Constitution of SNNPR

¹² Ministry of Capacity Building (n 2)

of the independence of the judiciary is very low.

Moreover, the process of selection and promotion of judges is insufficiently transparent and lacks input from other legal professions. The lack of training of judges remains one of the most important problems of the Ethiopian judiciary; court administration and case management are weak, and access to all kinds of legal information is limited.

As judiciary in SNNPR is being part and parcel of the national justice system, faces similar problem. Hence, these problems have direct and indirect impact in the regional justice; it has to be reformed in the sense of having an independent judiciary, which is among essential factors for economic development, democracy and good governance.

These conditions, which remain deep-seated to the regional justice system, call for additional in-depth research and analysis since the practice on the ground needs extra effort beyond consideration of the legal framework.¹³

3. Research Objectives

3.1. General Objective

The core objective of this study is to evaluate aspects of judicial independence in terms of its nature, form, motive and effect as an obstacle for delivering effective justice in SNNPR; and to suggest some solutions.

3.2. Specific Objectives

Its specific objectives are:

- To evaluate whether the regional Judicial Administration Council is free from executive interferences in selecting, promoting and disciplining of the regional judges,
- To examine the courts in the region in delivering justice in line with generally acceptable principles and to the expectation of citizens in terms of desired quality,
- To study whether the judiciary in the region is striving to create an effective and transparent judicial system that will ensure the prevalence of the rule of law and
- To provide recommendations for the regional judicial system on the basis of analytical results.

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¹³ World Bank, 'Ethiopian Legal and Justice sector assessment (2004)' <<http://www.siteresources.worldbank.org>> accessed October 2019

4. Research Questions

The research questions addressed aspects of judicial independence in terms of its nature, form, motive and effect of executive interference in the normal functioning of the judiciary, which in turn ensures rule of law, promotes democracy and safeguards legal rights of residents of SNNPR.

1. Are courts in SNNPR independently functioning in their judicial duty?
2. If the answer to the above question is in the negative, then how is this interference manifested in the regional courts?
3. Who is interfering in the administration of judiciary in the region?
4. Why is this interference prevalent in the sector?
5. What are the motivating factors behind the interference?
6. In which cases do this interference is manifested?
7. What is the effect of interference?

5. Research Method and Tools of Data Collection

5.1. Research Design

The study focuses on analyzing aspects of independence of judiciary and its impact on an individual and group level in SNNPR. Descriptive method is utilized to carry out this study. The rationale behind approaching this method is that it attempts to reveal aspects i.e. nature, form, motive and effect of judicial independence of the courts and JAC in SNNPR.

5.2. Sources of Data

The research mainly relied on primary and secondary data. Secondary data sources include books, journals, reports, court decisions, articles and electronic sources. Legislations and information obtained from conducting interview with some selected focal persons constitute Primary source. Random sampling was applied to conduct interview.

From each sample district, selected judges, higher court officials, public prosecutors, advocates, higher government officials, researchers, court staff members other than judges and parties to lawsuit were selected as a primary source of data. And the total number of informants are thirty-four other than parties to lawsuit. Furthermore, the researcher's personal observation was also taken as a valuable data source for this study.

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5.3. Area Sampling

For the purpose of this research, it was necessary to select some percent from the total number of courts in the regional state with a sense of representing 25% of the total population. Hence, Apart from regional Supreme Court, among nineteen high courts, three of them i.e. Hawassa city, Gamo zone and KambataTambaro Zone high courts with their respective sample woreda courts were selected. The reason behind selecting these courts is: first, their distance from the regional capital Hawassa; second, being core area, periphery and the combination of two; third, rural and urban area representation and then, size of zonal and city population.

The public prosecutors and attorneys from the four sample areas including the regional judicial center were included under the respondents list. Additionally parties to the legal suit in each sample area courts were also included in the research. Because of the nature of the cases and respondent's i.e., judicial personnel, public prosecutors, attorneys, parties to suit and non-judicial staff members, purposive sampling method was adopted in this study. This helped the researcher, to ensure the reliability of data.

5.4. Data Collection Tools and Sampling Techniques

Key informant interview questions were employed as a means to collect data. This technique helped to exploit the experience, opinions and practices regarding the aspects of judicial independences in SNNPR.

Simple random sampling was utilized to collect primary data from six categories of respondents' namely judicial personnel, public prosecutors, attorneys, researchers on the field, non-judicial court staff members and finally, parties to the lawsuit and author's personal observation and experience.

The interview questions were open-ended, structured, and semi-structured. Checklists and interview were utilized for review of official reports and as a means to make sure the availability of the required information for this study respectively.

6. Significance of the Study

The study helps to understand the impact of lack of independent judicial system in the regional

Government and attempts to indicate how lack of judicial independence and lack of budget administration autonomy have direct and indirect impact on the overall justice system in the regional courts.

The findings and recommendations of this study may also provide feedback for policymakers, justice planners and other concerned bodies to get reliable information on the judicial administration system in the region. It may further serve as a stepping-stone for further and in-depth studies for researchers, experts, particularly; those who need to study the new approach of changing the regional Courts performance.

7. Scope of the Study

Among nineteen high courts and its subordinate first instance courts, consisting of civil and criminal benches, three high courts and three woreda courts including the regional Supreme Court were covered by the study. Because of some contemporary problems, all of the sample areas including quasi-judicial organs, such as, the civil service tribunal, the tax appeal commission and kebele social courts were excluded from the ambit of this study. Moreover, the focus of this Thesis is assessing the regular regional courts only. For this reason, the study deals only with the first instance, high and supreme courts of the region.

8. Organization of the Study

This Thesis contains four chapters. The first is introduction, which introduces the overall theme of the Thesis. It addressed the background of the study and the motivating reason to conduct the study including the scope and methodology of the research. The significance, objective and research questions are also addressed.

The second chapter briefly discusses the definition of the subject area that provides the central concept of judicial independence. Theoretical foundations on the need of making justice sector independent is explored in a manner of producing the framework so as to evaluate the practice of SNNPR. The experience of some selected countries is also explored in a way of accessing the form and nature of external interference against the judiciary including its effect. The chapter makes summary to the relevant previous works, which serves as a benchmark to evaluate the practice of judicial system in SNNPR.

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Chapter three focuses on critically evaluating the executive interference on the judicial sector of the region. It addressed the means, manner, motive and effect of executive interference on the usual business of the judiciary. Those aspects of executive intervention in the regional courts in relation to relevant theories as well as international and national legal frameworks are evaluated. It further addressed principles of separation of powers in line with the aspects of judicial independence based on primary and secondary data sources.

Chapter four provides findings, conclusions, and recommendations, based on the theoretical, legal and policy frameworks.

CHAPTER TWO

2. Conceptual Framework of Judicial Independence And Experiences of Other Jurisdictions

2.1 Introduction

Assuring judicial independence is a fundamental value in the process of court reform. It safeguards judges and, judiciary as a whole, from improper intervention or influence of any outsider. The independence serves, not the private interest of judges rather it is designed for citizens and the society at large. It can also better serves peace, prosperity and democracy in a particular nation, which indeed is the most important element to insure overall wellbeing of the country. While, the mere legislative safeguard, cannot necessary assure judicial independence on the ground. It can simply and at least informally exposed to the executive intervention.

The establishment of a well-organized and independent judiciary has a meaningful importance. This is because an independent and effective judiciary can assure high standard of adjudication, integrity and impartiality of courts. It is also very essential for ascertaining rule of law. This prevalence of rule of law enhances states to fight corruption effectively because it empowers the stability of democratic institutions.¹⁴ Since there are always linkages between judiciary and the other state powers, this linkage should be arranged in a manner, which respects the judicial independence. The manner of appointment and removal of judges, organizational structure and

¹⁴ International Monetary Fund, *Reforming the Judiciary: Learning from the Experience of Central, Eastern and Southeastern* (IMF 2017)

budget allocations are very essential means for intervention of executive organ on judicial activity.¹⁵

Moreover, the manner of section and appointment of members and chairpersons of judicial council is vulnerable for intervention of executive organ. It forms a good means for intervention of other state power in a soundly separated judicial organ of the state. Thus, the better approach for those methods control of appointment and selection for membership has to arguably be a sole business of transparently acting judicial organ itself. This can relatively contribute and better guards' independence of judiciary.¹⁶

A great ambition of executive to intervene on the judiciary can also makes the government, autocratic and most likely anti democratic in nature. This type of government not necessary manifests itself in this nature. Rather, it seems democratic and uses different aspects, which helps it to systematically intervene on judicial activity. And this kind of government is more common in the nations with an infant democracy. The nature and forms or means of intervention by itself are designed in a manner dis-imposing on the side of intervening organ. The impact can range from ordinary denial of individual justice to the great political, democratic and economic disorder and when the limit is exceeded it may even lead to state failure.

Furthermore, the core aspects i.e. nature, form and impact of executive intervention has to be approached and identified. Second, those main aspects of intervention should be critically checked up with the overall legal framework of the nation.

Thus, the chapter by reviewing and addressing the above issues, aimed to meet the objectives of:
- one, holding proper understanding on some important aspects of executive interference on the inherent nature of judicial activity. The other aim is intended in putting a litmus paper to identify and analyze the current realities on the nature form and impact of improper interference and undue influence of executive on the usual duty of judicial branch of the government in SNNPR.

Additionally, in order to avoid rewetting of the work, the researcher tries to navigate all

¹⁵Frans van Dijk and Geoffrey Vos, 'A Method for Assessment of the Independence and Accountability of the Judiciary' (JCA, 2018) 6.

¹⁶ ibid

appropriate previous works on the subject area. Those documentation were selected in a manner of getting some important theories and selecting appropriate national and international legislations on judicial independence on the one hand, providing a framework for analyzing form, nature and effect of executive interference, on the other.

Therefore, the chapter is organized in a manner of discussing, definitional elements, and theoretical and legal framework, including experiences of some other jurisdictions on the aspects of judicial independence. While, theories explore the need for realizing independent judiciary in a given country, the legal and constitutional framework provides a legal guarantee for independence. Others experience will be taken as a supportive role player in an ongoing chapter.

2.2 Definitional Elements

Judicial reform is a mechanism, which comes into picture when certain judicial system faces the problem of effectiveness in achieving the main objective of judicial branch of the government. Judicial independence can fundamentally be taken as an element of judicial reform and is the base to maintain rule of law, democratization and good governance. Courts are the main agents of justice. It is the principle of separation of power, which isolates the judiciary from other branches of government. Courts in any case should be free from improper influence of legislature, executive power, or from partisan or private interests.¹⁷

“It is suggested that freedom from outside influence is a defining feature of judicial independence. Such outside influence refers to political pressure, to pressure from other judges and the media and also to the indirect pressure that can arise from the social composition of the judiciary...”¹⁸

The term “independence of judiciary” involves issues of personal, institutional and ideological aspects. It also requires that “the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law. It further guarantees judiciary to be free from any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason”¹⁹. It mainly holds two forms, an independence of

¹⁷ Council Recommendation 2010/12/EC of 11 September 2010 on Independence, Efficiency and Responsibilities of Judiciary [2010] OJL157/16 <<https://www.wcd.coe.int/wcd/viewdoc>> accessed 23 August 2019

¹⁸Sophie Turenne,*Judicial Independence in England and Wales* (Springer Heidelberg 2012) 147.

¹⁹ Rios Figueroa, ‘Judicial Independence: Definition, Measurement, and Its Effects on Corruption Analysis of Latin

individual judge mainly through security of tenure in one way and the institutional freedom of tribunal or courts over which the judge presides, as reflected in its institutional or administrative relationships to the executive and have the final word on the interpretation and application of the law in another.

2.3 Theoretical Framework

Courts in any legal system are expected to interpret or apply laws as directed by the legislator and its delegates. This shows that the separation of power among the three branches of government is an essential distinction. This is a fundamental element among the values recognized by rule of law.

“To believe in a high correlation between the philosophical or methodological theory a judge applies and the specific outcome of cases is to overlook the indeterminacy embedded in the judicial decision making process”²⁰

There is no necessity for the claimants or defendants in the court of law to feel outsider and compelled in any circumstances to prove herself against or on the side of rulers. The judiciary “may merely evince the disposition to exercise independent judgment in a profession where competent practice requires it”.²¹ Legal theories rarely impel the judge to resistance. They merely provide it with alternative rhetorical forms that the judge can apply in support or in opposition to a regime.²² There were many parts of the profession that actively contributed to the entrenchment and defense of apartheid through the courts.²³

Perhaps, in order to achieve their political goals many undemocratic or authoritarian regimes eradicate the independence of judiciary by pressuring or coercing courts towards their needs. The court’s work is dependent upon the regime for the enforcement of their decisions, and the regime

America’ (2006) <<https://www.researchgate.net/publication/>> accessed 29 August 20

²⁰ Curran Voga, ‘The Legalization of Racism in a Constitutional State: Democracy’s Suicide in Vichy France’ [1998–1999] HLJ 238.

²¹ Osiel Major, ‘Dialogue with Dictators: Judicial Resistance in Argentina and Brazil’ [1995] LSI 482.

²² *ibid* 484

²³ Truth and Reconciliation Commission of South Africa, *Eliminating of Apartheid Regime, 1996 Commission Report* (1994) 101 <<https://en.m.wikipedia.org/wiki/>> accessed 5 September 2019

has in its power to remove judges and appoint new ones, and even to abolish courts all together. Judges are often exposed to regime in order to undertake their duties because most of the duties are directly or indirectly linked with the regime and this has the tendency of affecting judge's independency.²⁴

As it is perceived in liberal societies, they use their power to wage war against law. The pressure often comes to stop the action of judges which is not confined with the interest of the regime and directs the court how to decide the individual dispute. They also impose sanctions against the judge who decide cases contrary to their interest. During the application of sanctions, they often use repository actions or removal of judges from the post. Reprisals and criminal sanctions are rarely applied. The executive of these undemocratic regimes try to employ their influence on the courts through different means: by appointment of judges loyal to the regime, by dismissal of judges who do not perform in accordance with the preferences of the regime, and by interference in judicial proceedings.²⁵ It is unusual for this kind of regimes with a sensitive political agenda to appoint loyal judges to the bench and to obtain support by appointing politically unsound judges.

Those oppressive rulers have variety of mechanisms other than suppressing individual judges to secure the support of the judiciary. The regime often seeks to appoint cooperative judges to ensure a more compliant administration of the politically sensitive criminal law and to ensure judicial support for their policies. It is unusual for this kind of regimes with a sensitive political agenda to appoint loyal judges to the bench and to obtain support by appointing politically unsound judges.

Judges need independent benefits and judicial immunity to undertake their duties freely without external interference. But judicial immunity is only granted to judges acting in a judicial capacity. Denial of the benefits and judicial immunity for judges has serious consequence in the judicial system.

This consequence may come over judges in the form of pressure and coercion. "Nazi judges were not entitled to the benefits of Anglo American doctrine of judicial immunities which is

²⁴ Hand Lawrence, *The Spirit of Liberty* (Vintage Books New York 1959) 283.

²⁵ *ibid* 286

based on the concept of an independent judiciary administering impartial justice”²⁶

After the Second World War, when the extent of the involvement of the courts in the Nazi oppression was revealed, many German judges sought the lesser evil argument as a defense. And judges who find themselves in an independent situation have three options: to protest, to lie about the law, or to resign.²⁷

There are different forms obstacles for realizing the independence of judiciary. Creating risk on decisional independence of judiciary makes one form of executive interference on judicial activity. This can be realized when judges carelessly or coercively looks for the decision made on the behalf of or in line with interest of executive organ. The other form can be created when; the executive branch interferes inappropriately in the assignments, retentions and selection of judiciary.²⁸

Nowadays, there are worldwide risk tendencies for a judicial organ of the government. This general tendency is more disturbing approach than the mentioned institutional and decisional independence of judiciary. Some worries about these developments, as a potential retreat for rule of law and democracy. And significant number of world nations standing against liberal democracy brings an extra threat to the independence of third level of government as a coequal partner in executive body of government.²⁹

Apart from the risks above, still Judges can play pivotal role within the society by moderating the excess of regime and by doing justice in individual cases. They also restrict oppressive trend by preventing society from government oppression. Thus judges are an administrators and executors of legal policy regime and they contribute to society by avoiding harms within the society. And there is a maxim that appreciates an individual stakeholder’s morality, to do things just and states as,

²⁶AdriaanBedner, *Court Reform* (Leiden University Press 2008) 1024–1025.

²⁷ Independence, Efficiency and Responsibilities of Judiciary (n 17).

²⁸ Ingo Keilitz, ‘Viewing Judicial Independence and Accountability through the Lens of Performance Measurement and Management’ (2018) 9 IJCA 23, 35

²⁹ See also, Research by Professors Hayo and Voigt in 2005, cited by van Dijk and Vos, in their lead article, Measures of independence are dependent on the extent of democratization.

“Liberty lies in the hearts of men and women; when it dies there, no constitution no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no court to save it.”³⁰

2.4 Legal Framework

The basic problem that faces the judiciary in transitions from liberal rule of law settings to authoritarian rule is the one of constitutional loyalty.³¹ Most of the time, the new constitutional order can be influenced by the constitutional order of previous regime. A regime that seeks to establish its powers from a different legal source, be it a new “revolutionary” legal basis or the “dictates of necessity”, has its legal basis partly outside of the previous constitutional arrangement. In such scenario courts are forced to choose between upholding the former constitution and depriving the new regime or its measures of legality and assessing the measures of the new regime under the legal basis that the regime itself claim to be its constitutional foundation. By continuing to function as courts, judges, by necessity, accept the fundamental legal basis of the present regime but courts and the holders of power should necessarily accept legal framework, which assure protection of rights and the rule of law.³²

Currently, there are international regimes for national judges for the protection of human rights as positive legal source to employ against oppressive measures of national law national judges have the international regimes for protection of human rights as positive legal sources to employ against oppressive. As per the Nuremberg tribunals after World War II, which was followed by the German Supreme Court after the breakdown of the GDR and the reuniting of Germany approach, the laws and practices of national authorities are monitored and evaluated by independent international authorities and courts.³³

In international human rights regimes there are two ways of preventing states from serious violation of human rights through their domestic laws.³⁴ First, they constitute an authoritative

³⁰ Hand L. (n 24) 144.

³¹ Peter Gaver, ‘*Judges Against Justice*’ (University of Oslo 2015) 276.

³² *ibid* 232

³³ *ibid* 290

³⁴ *ibid*

body of law that has legally binding force. Second, this body of law forms a basis for which international pressure can be applied on a violating state by other states.³⁵ These two ways have very crucial contribution to prevent states from serious violations of individual rights through their municipal law. Now a day's Judge can base his opposition in specific norms of positive law, norms, and traditional legal sources and can go against the regime.³⁶ Thus, currently judges have the instruments to oppose authoritarian rulers and these instruments are available even in positive minded judge.

Judicial independence and impartiality have become transnational legal norms, instantiated in many national constitutions and in the core human rights covenants to which the great majority of the nations of the world subscribe.³⁷ In order to be true to his judicial oath and to administer justice to all persons alike "without fear, favor or prejudice" a judge must enjoy independence from the legislature, from the executive, from any other body or authority, which could be tempted to influence his decisions. Only under those circumstances can justice be done in the courts.³⁸

The UN and European institutions related texts, on the independence of the judiciary³⁹ provide a useful starting point. It establishes the principle that judicial independence must be legally enshrined and universally respected, that judges must be able to do their duty without pressure or improper influence. It further protects the decision of judiciary from revision outside appeal and that judges should have immunity from civil liability. Selection, promotion, removal from office and disciplining of judges needs extensive safeguards to be put in place to shield the judiciary from undue influence from other branches of government. The budget allocation to the courts also need adequate and legally recognized guarantee.⁴⁰

³⁵ *ibid*

³⁶ *ibid*

³⁷ International Covenant on Civil and Political Rights, art 14

³⁸ Corbett Maomi, Presentation to the South African Truth and Reconciliation Commission (Truth and Reconciliation Commission Regular meeting, Port Elizabeth, 27 November 1996) [1998] SALJ 115,20

³⁹ UN General Assembly Resolution 40/146, (1985)

⁴⁰ Judges' Charter in Europe [1997] EAJ 1

The FDRE Constitution on the other hand guarantees, the independence of judiciary. The independence of judiciary addressed mainly in three-forms in this constitution; one is regarding institutional independence and enshrined as follows:

“An independent judiciary is established by this constitution and courts of any level shall be free from any interference or influence of any governmental body, government official or from any other source”⁴¹

The other is about personal independence, which clearly guarantees the security of tenure and their terms and conditions of services. It clearly provides the security of individual judges as “Judges shall exercise their functions in full independence and shall be directed solely by the law and it further guided that the judge shall be removed from his duties before his retirement age is strictly prohibited for the reasons not provided in this constitution”⁴².

The financial independence of the judiciary is also recognized in the FDRE Constitution.⁴³ The concept of independence is non-sense unless it comprises financial independence. The main paradigm towards this theme is that when the judiciary is said to independent, among others, it has to perform its usual activity by independently administering its own finance. Unless freedom constitutes it, the one who controls finance, can indirectly controls the activity of judiciary. This can be considered as the rationale behind the constitutional guarantee of financial, operational, personal and institutional independence of judiciary. This may also be extended to include administrative and political independence of the judiciary.

The Universal Declaration of Human Rights provides:

“Everybody is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”⁴⁴.

It recognizes the independence of the judiciary including an institutional one.

⁴¹ Art 78(1) and 79(2) of FDRE Constitution

⁴² Art 79(4) of FDRE Constitution

⁴³ Art 79(6) of FDRE Constitution

⁴⁴ UDHR, Art. 10

2.5 Experiences of Some Other Jurisdictions

Many countries in their respective constitutions, give a paper value service, to the principles of democracy, which are ignored practically. Countries like, Russia, Egypt and turkey were standing against the concept of liberalizing judiciary from other branches of government. Instead they used to appoint a dominant executive body ruled by strong man, as Nicolas Madura of Venezuela and Daniel Ortega of Nicaragua.⁴⁵ They never show even the tendency to share government power with others letting their own judiciary.

Those nations, which democratizing today is in their earlier oligarchic style of ruling obviously faced chaos, political instability and societal disorder. This thought also prevalent in United States itself, which long thought to be the engine room of democracy.⁴⁶

Here are countries i.e. USA and China relevant for analyzing some important aspects of executive intervention on the works of judiciary in current SNNPR. The researcher prefers both countries among others because, first, in both nations there are well-established government systems. Even though, there was no common consensus on the nature of development, both are recorded the first two ranks of economic development, which makes them giant bodies in the universe.

This development cannot arguably achieved without involving the judicial system of the respective countries. Second, as a reform of judiciary towards insuring the independence of courts, is not end by itself, rather it is a means to achieve an overall wellbeing of society and greatness of one's nation, as USA and China were achieved for. Third, the development path of China is somehow similar with the current Ethiopian path. And almost all world nations including Ethiopia, at least in the long run are hoping to achieve the USA model of development.

⁴⁵ Ingo Keilitz (n 28)

⁴⁶ RuglassSunstein (ed.) (2018), Can It Happen Here? Authoritarianism in America (New York: Harper Collins 2018) 62

Therefore, these reasons pushed the researcher to explore experiences of both nations to look upon the nature and form of executive interference on the works of judiciary and its impact.

2.5.1 Experience of China

In some countries, courts are able to check the enhancement of legislator in the form of judicial review. A closer examination of the Party's role in China suggests the importance of keeping an open mind and understanding the development of the Chinese judiciary in its own historical and social context. Constitutional judicialization presupposes that all socio-political disputes should be viewed as a legal dispute that can only be solved through judicial process; it also sees rational debates as the primary way to ensure law's authority and strengthen rationalist consensus in the society. Its claimed superiority lies in two respects: first, it has greater consensus building capacity; second, it is more rational and reliable than political alternatives in resolving disputes over basic rights.⁴⁷

In china during 1980's and 1990's judicial system was influenced by promulgation of some litigation related legislations and reforms raised by skilled legal professionals. At the beginning, judicial issue was insignificant in China, because the government targeted the reform on socio political aspects and considered judiciary as a secondary concern. But later on it was considered as an important aspect and the country conducted holistic reforms, which included judicial reform. Hindering factors i.e. limitedness; collectivism and localness were the major ones.

Even though, the constitution and the laws of court establishment, enshrined judicial independence; but it was not extended to judge's independence, which is contrary to many western countries culture. The independence confines itself in the institution, which reflects itself in the group aspect. The Chinese courts were traditionally considered as part of government organ and judicial activity is considered as usual functions of government.

Most of the time judicial decisions were vulnerable for instructions and suggestions of executive. This intervention is most of the time realized on the behalf of leaders of courts. Thus, judges had no guaranteed independence and their decisions were under the influence of external organ.

⁴⁷Randall Pion, *Judicial Independence in China: Lessons for Global Rule of Law Promotion* (2010) 54.

Moreover, the organizational and financial autonomy of the courts were dependent on the will of the local government that in turn leads for miscarriage of justice. Even if laws in china including the constitution itself recognized the judicial independence, Chinese communist party practically intervenes in the usual activity of judiciary.”⁴⁸

The party intervenes in the activities of judiciary by giving instructions via an organ named ‘advisory of the court’. Those instructors were defacto leaders of the courts. As a result functions of judges were not free from intervention. The judicial system was considered as a subsidiary to the executive.

The concept of constitutional judicialization played a great role on institution reform.⁴⁹ This concept played major role in institutional reform, which enables to bring the change in the system.

To sum up, the Chinese judicial reform towards judicial independence, a fundamental rule of law framework has been substantiated during the first thirty reform years but remained problematic, the movement and progress to realizing the independence of judiciary remain stagnant.⁵⁰ Practically the ruling party use state power excessively by monopolizing legislative and legal interpretation by using ruling party as ultimate source of power. Such a situation spelled uncertainty for China’s modernization.⁵¹

2.5.2 Experience of USA

USA is known by its original governing ideology of ‘separation of power’, which considered as pillar for judicial independence.⁵² The judicial system in nation is one of the most modernized one. This is because, the nation always update itself with the changing circumstances of the

⁴⁸Wang Taisheng, ‘Party Rule Experience in China: Impetus and Impediment of Democratic Constitutionalism’ (Academia Sinica Jurisprudent Journal 2009) 5, 92-93

⁴⁹Chin Shou, *The Rule of Law and Democracy as a Moment Strategy: Explaining Judicial Independence Reform in Taiwan* (NCKUP 2000) 330

⁵⁰QuanxiGao, Wei Zhang and FeilongTian, *The Road to the Rule of Law in Modern China* (Social Sciences Academic Press and Springer-Verlag Berlin Heidelberg 2015) 50

⁵¹ ibid

⁵² New York Bar, ‘The Emergence of Judiciary as an Institution (Journal of judicial Administration Carl 1994) 234

world. It undertakes legal reforms including the constitution, several times. And because of different reasons, Americans have a great trust on the judiciary. One of the a significant reason that Americans obey court decisions is that, if it is obeyed, the trust on judiciary increase as an institution and continues faithfully to carry out its constitutional duty to do justice.⁵³ To the extent that the American public understands the judiciary to proceed thoughtfully, impartially, fairly, it is willing to obey even those judgments that most rankle.

The framers of the U.S. Constitution in turn, believed deeply in the principles of separation of powers and checks and balances.⁵⁴ Both separation of power and check and balances were designed to work together. The framers of constitution believed that dividing power among three separate branches enables one branch to check the excess use of power of the other branch and the Constitution contains examples of overlapping powers among them.⁵⁵ By using first power judges decide on the meaning of laws. Courts are allowed to strike down laws and executive actions as unconstitutional.⁵⁶ Such rulings may only be reversed by future court decisions or through the complicated process of constitutional amendment.

The political system by itself also encourages judicial independence, which is practically realized as a sole mechanism especially for the protection of human rights. But there is no perfect independence of judiciary in the nation. There is a trait for judicial independence. One form of traits comes from appointment and selection of the Supreme Court presidents.⁵⁷ Here, the judiciary in USA unexpectedly is not fully independent because of the executive interference in appointing and selecting the leaders of the courts. Hence, those who appointed may have a tendency of protecting the interests of the appointees.⁵⁸

There are different forms of exerting pressure on judges in order to revise or divert their

⁵³George Ackerman, *Law and Courts Current Perspectives from InfoTrac* (Florida International University Press 2011) 252.

⁵⁴Abel Karpik, *Contesting Legality in the United States After September 11* (OUP 2007) 392–398.

⁵⁵See Madison's explanation on Federalist no. 51

⁵⁶ Ibid 103

⁵⁷ American Judicature Society, Merit Judicial Selection: Current Status (2009) 11<http://www.ajs.org/selection/docs/judicial_merit_charts_5-09.pdf>accessed 16 September 2019

⁵⁸Abel Karpik (n 54)

decisions. This pressure may be applied, directly or indirectly by the executive, Parliament, the media, public opinion, and even by criminal organizations.⁵⁹ The level of transparency afforded in the selection process, the length of the appointments, and the influence exerted by political forces matters most for judicial independence.⁶⁰

The appointment of chief justices by the executive may be used as a shortcut to gaining control of the judiciary.⁶¹ It is no coincidence that the procedure regarding the appointment of Justices at the US Supreme Court is heavily politicized and includes numerous checks and balances.⁶² There is striking evidence of relationship between the political party of the appointing president and judicial voting patterns.⁶³

Allowing outsiders to be appointed to higher positions in the court system creates a situation where the judiciary is easily manipulated and corrupted. The Convergence of powerful developments is employing meaningful burden on the USA government,

“attacks by politicians and others on the constitutional role of our courts to be free from political interference, the massive influx of special interest money into judicial selection and retention procedures, and the loosening of ethical constraints on what judicial candidates may and may not say about cases likely to come before them”.⁶⁴

Moreover, popular accountability of judges for their judicial decisions may enhance impartiality and an independence of judiciary. Judges, once exposed to the large segment of population, cannot accept any illegitimate demands from executive organ. One example of disciplined

⁵⁹ ENCJ Project (2013-2014), Independence and Accountability of the Judiciary [Rome 13 June 2014] 11

⁶⁰ Felipe Saez, ‘The Nature of Judicial Reform in Latin America and Some Strategic Considerations’ [American University International Law Review 1998] 13, 1291

⁶¹ Adriaan Bedner (n 26) 23

⁶² *ibid*

⁶³ Cass Sustain, David Schkade, Lisa Eliman and Andres Sawicki, *Are Judges Political? An Empirical Analysis of the Federal Judiciary* (Brooking Institution Press 2006) 147

⁶⁴ George Ackerman (n 53) 250.

judicial proceeding is transparency.”⁶⁵

The disagreement between American judges regarding the necessity and legality of limiting liberty of individuals gave an opportunity for executive organ to act without judicial control for many years.⁶⁶ Judges stand the line between law and politics especially confirmation battles of federal judges have become particularly bitter in recent years since judges are invariably lawyers with devotion to legal principles and knowledge of precedents and as citizens they are aware of the opinions around them from politics.⁶⁷

2.5.3 Relevance of the Experiences to Ethiopia

In reforming their judicial and justice system, the experience of USA shows that the implementation of a very intense mechanism of judicial independence is very important to make the reform process sustainable where as, Ethiopia focuses in reforming the over all justice system which does not sustain long in the practice. As a result of the justice system reform practice failure, currently the justice system in the SNNPR as well as in the whole nation is swimming in the crises of justice.

Regarding the Chinese experience, the important lesson to be noted is that how systematic and complicated interference in the judicial business is made by the Chinese communist party. Here, judicial reform is more complicated when the reform is initiated from the legal professionals that are at the bottom of judicial hierarchy. Similarly, the Ethiopian ruling party role in complicating the justice system is pivotal. This gives a lesson from decay. One cannot only learn from good experience rather bad experience has a role of teaching towards escaping from the evil practice.

When we compare the experience of USA and Chinese judicial Reform movements, unlike China and other democratic country's judicial independence theories, the reform of USA mainly focused on judicial independence, which can also be a good lesson for Ethiopia. Whereas the Chinese reform movement emphasizes the importance of politicians. The corresponding theories and experiences unique to China have politicians play important role in the process of Chinese

⁶⁵ Cass Gray (Advisory Committees), 'Let Judges Look Before they Leap' [42 Judges' Journal 2003] 29 <<http://www.uscourts.gov/ttb>> accessed 19 July 2019

⁶⁶ Essential Supreme Court Decisions: Summaries of Leading Cases in U.S. Constitutional Law (n 51)

⁶⁷ *ibid*

judicial reform, which also have a negative lesson for Ethiopia

The above discussion suggests that in order to reform the justice system, taking serious steps is needed. Even though some shallow steps were taken to reform the judicial system in Ethiopia less attention is given to SNNPR courts' problems. The experience USA, in reforming its judicial system, is to be taken as an important lesson to Ethiopia, which built its judiciary in a strong base in a sustainable way, which Ethiopia has not.

2.6 Conclusion

Judicial independence plays fundamental role in ensuring good governance and democratization through rule of law and "it ultimately requires a non authoritarian context". Antagonistically, it is important to consider how political power becomes an obstacle in a road of securing judicial independence in its own interest.

Nowadays, the pressure to make judges political is prevalent almost in all jurisdictions, whether it is appointed, reappointed or re elected to the bench.

And the judges who sat in the bench are going to be confirmed by executive branch. This reaffirmation or reconfirmation that judges are facing is mostly likely conducted in considering their prior record. Almost all decisions of judiciary are becoming the record for conducting the judge being loyal to ruling party or not like the record of legislators. When judges decide issues on their bench, against the interest of executive, they considered being 'crime softer', 'unaccountable' or 'antifamily'. This motive is highly relevant for the actual obstacle towards ensuring judicial independence.

Lastly, as general consensus is drawn from the literature in the field, formulating a parting-line between executive and judiciary and realizing independent judiciary, at least in the normal adjudication process, is the most important rational and prerequisite in making true judicial reform. This can also lead to the conclusion "effective and durable judicial reform can only be realized with ensuring the independence of judicial bra

CHAPTER THREE

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Practice on the Ground and Analysis

3.1 Introductory Remarks

Courts play a pivotal role in terms of ensuring peace, democracy, development, good governance, rule of law and justice.⁶⁸ There are different scenarios that can be taken into account during the campaign to reform judiciary. Hence, as discussed in the previous chapter, independence is the most important value of the judicial branch. It can be taken as the safe guarder of the judiciary from any kind of improper influence and is an essential tool to cultivate democracy and enhance rule of law in the region and the entire nation as required by ethical citizens. Keeping the sector from undue influence especially from the executive, can at the same time ensure the equality of citizens before the law and ensures the entitlements of citizens to a fair and public hearing by an impartial and independent tribunal.⁶⁹

The chapter mainly focuses on presenting the information obtained from conducting interviews, referring reports and circular letters, suggesting some relevant files and consuming the researcher's observations and making analysis based on the theoretical and legal framework. It further evaluates the practice on the ground based on relevant legislations, universal principles, other jurisdictions' practice and appropriate literature on the subject matter. It in depth scrutinizes important aspects i.e. nature, form, motive and effect of executive interference on the judicial affairs of the region.

In order to comply with constitutional obligations, independence of judiciary is one of the important pillars. Making the judiciary free from any external intervention mainly manifests this pillar.⁷⁰ Based on these considerations, key informants for the research hardly explained the practice of the region. According to them, judges in one way or another were influenced by political organs during the disposal of law suits appeared before them.

Thus, the information gathered from key informants, is categorized based on their exposure for

⁶⁸ AdisHodzic, Court Performance Management Support to Justice Sector Reforms in Ukraine, 2017 pp. 4

⁶⁹ Art 78 of FDRE Constitution

⁷⁰ *ibid*

the issue at hand. The first group of informants is judges in all level of administration. Most of them agreed that judiciary is not free from executive intervention. The sector in conducting its daily business suffers from direct or indirect external influence. This domination will be explained latter. The Second group of informants is the staff of attorney general in all tier of court that the scope of the study area covers, in one or another way confirmed the idea of the first group. Even though, informants from this group are among the executive branch, they manifested their observation in line with the first group. Information gathered from attorneys, researchers and parties to the lawsuit constitutes third group of key informants. This division of informants aggressively presented the fact that regional executive in different level intervenes in a daily business of the judiciary. According to them executive interference in the regional courts, farther extended to disable justice and affect the community as well. The other category is persons from top government and court officials in each level of administration. According to their reflection to the interview questions, partially admit the interference and tries to justify the intervention itself (will be presented later). The researchers' own observation and some documents including circular letters and reports are navigated and used in analyzing the practice.

3.2 Constitutional Bases of Judicial Independence

As already discussed in the previous chapter, the independence of judiciary is best recognized in international, national and regional level. Apart from other legal instruments, the FDRE constitution and the constitution of SNNPR, emphasizes an independence of judiciary.⁷¹

Apart from those instruments to secure independence of the judiciary, here is some specific provisions identified the regional constitution itself: the first issue is related with the appointment of the president and vice president of the regional Supreme Court. In this juncture, the constitution as being a general document, it doesnot deal with the specific threat of interference from external actors. This practically creates a wide room for the involvement of chief executive of the region to propose top officials of Supreme Court.⁷²

The proposing mandate, which in turn ends always with approval by the sole party members of the council, becomes a reflection for interference in practice. And it serves as one of the best mechanism

⁷¹See art. 78, 79, 80 and 81 of FDRE Constitution and art 76, 77 and 78 of the Revised Constitution of SNNPR

⁷² Art. 76(1) of Revised Constitution of SNNPR

because the role of the appointed higher officials of the court is not limited only on administrative matter, rather goes further to chair on active files and assign specific cases for the judges on their preference.⁷³

Since the process and procedure for appointment of judicial personnel is of critical matter for securing the independence of judiciary, it is already regulated both in federal and regional constitution. The judiciary as an institution and as the member judges is protected from improper influence from any outsider including the executive itself. The international instruments as highlighted in previous chapter, provides strong guarantee for judiciary to independently administer the sector and left no room for political intervention.

Moreover, matters concerning the disciplinary issues of judges are clearly provided in the SNNPR constitution.⁷⁴ It further indicates grounds for taking disciplinary actions i.e. suspension and dismissal against judges for the same reason of protecting the interference of organs like executive branch of government.⁷⁵ This shows that, legal documents are the most formal assurances to make judges bounded only by law and their moral. But standing against those guarantees, the specific legislations of the region are not in a best position to follow the constitutional direction and are manipulated in a bending direction.⁷⁶

Here irrespective of the constitutional mandate of screening and proposing candidate judges⁷⁷, JAC is obviously chaired by the president of the Supreme Court and the significant members of the institution are among persons the executive and legislative organs⁷⁸. For this reason, it hardly becomes an independent body. Additionally, the candidate for judgeship is always screened from subordinate units of the government by which the chief of zonal executive is in a position to approve the candidate, officially brought by the president of the high court. Furthermore, the financial autonomy of courts must be insured in order to fully capacitate courts; it has to be done with interpreting different legislations in line with constitutional provisions.⁷⁹

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⁷³ Paul M. Bator, The State Courts and Federal Constitutional Litigation, Virginia Law Review No. 7 Article, November 2008 pp.27

⁷⁴ Art. 74 (2) of Constitutional Endorsement Proclamation No. 35/2002 SNNPR

⁷⁵ Art. 76(4) of Revised Constitution of SNNPR

⁷⁶ The worst scenario comes when the constitutionality of all legislations are out of the reach of the judiciary, by which the regional constitution itself given the entertainment mandate for the political organ named 'council of nationalities'.

⁷⁷ Art. 76(2) and (3) of Revised Constitution of SNNPR

⁷⁸ Art. 77(2) of Revised Constitution of SNNPR

⁷⁹ Art. 79(7) of FDRE Constitution and art 75(6) Revised Constitution of SNNPR

3.3 Nature of Interference

3.3.1. Interference in the Organizational Autonomy of Judiciary

The administrative role of the regional courts is mainly laid on the JAC. Its power, autonomy and composition have a constitutional guarantee. The council is responsible for promotion, demotion, selection, disciplinary issue and other affairs related with judges of the region.⁸⁰ The JAC of the region is the most responsible organ in the administration of regional judiciary, which is one of the suitable mechanisms for securing the independence of judiciary. Rather the treat comes when someone wonders about the practical realization of its responsibility. In this juncture, this organ holds the responsibility of de-jure status, which by its practical nature invites the executive take part in the administration.⁸¹ The channel for interference is emanated from the nature of the organization of JAC itself. Here, the executive through its appointed chairpersons of the council usually interferes in the overall management of the court personnel. It further explained as:

“This shows that the organ responsible for administration of judiciary is one of the suitable bodies for executive intervention in the regional judiciary. And it is considered as kind of indirect intervention, which mainly accomplished by third party acting on the behalf of executive.”⁸²

Despite the fact that JAC is established to administer judges of the region, for obvious reasons an executive takes upper hand in its decision making power, it is not appropriately serving the justice rather it is busy in keeping the interest of executive. This is mainly the reflection of disabling the independence of judiciary in almost all level of administration. Although, there is a sufficient constitutional protection, still judiciary is vulnerable for interference especially from the executive branch of government.⁸³

3.3.2 Interference in the Financial Autonomy of Judiciary

The other aspect of interference in the natural business of judiciary is made through disabling the

⁸⁰ ibid

⁸¹ Interview with Tariku Tanga, President, W/Abaya Woreda court, Gamo Zone (Hawassa, Ethiopia, 11 April 2020)

⁸² Interview with Aklilu Kebede, head, judicial administration division, SNNPR Supreme Court (Hawassa, Ethiopia, 1 April 2020)

⁸³ Interview with Admasu A., Instructor, Hawassa University Law School (Hawassa, Sidama, Ethiopia, May 1 2020)

financial autonomy of the sector. This is mainly conducted by the system, structurally arranged in an easy way to host the dirty hands of executive branch. Those hands according to the key informants to the research, are not necessarily invisible rather act as a defender of the regime and tags the title of anti-democratic, anti-reformations, anti-federalist and anti-peace on personnel, who stand for defending the move and motive towards inactivating judicial autonomy. This nature of interference is facilitated within the court management, which mainly dominated by the view and interest of the president and vice president of the respective courts.⁸⁴

Moreover, there are procedures in proposing the annual budget to be allocated for judicial sector. This procedure by itself opens a room for interference by outsiders. The nature of interference here is clear and simple for executive organ as making the proposal for one of the sub branch of the law-enforcing organ itself. This is also done in lower level in the same fashion as the regional government's trend.⁸⁵

The court budget proposal simulated as initiated by the court itself is actually initiated and presented to the regional council by the regional administration council. This shows that the mandate of justice sector to propose its own budget is almost insignificant. This further argued as the ruling party, whose members have monopolized the regional council and have a mandate to approve the said proposal, in order to maintain its own political interest, manipulates the organ.⁸⁶

Furthermore, the other nature of executive interference on the judicial budget further extended to the adoption of allocated inside the court skeleton, which is done during the allocation of paper money among the sub departments of the sector.

Additionally, there is a general consensus reached by the researchers of the sector about the expression of views of the judiciary regarding sufficiency of the budget allocated to the sector by regional, zonal and woreda council for their respective and parallel courts. But the trend shows as the proposal is hardly questioned before the council, no single claim is reflected from the sector, which on one side is a reflection of consensus made by the top leaders of the executive

⁸⁴ Interview with TizitaFekadu, Former Head, Justice Bureau of SNNPR (Addis Ababa, Ethiopia, 1 April 2020)

⁸⁵ Adis H. (n 68) 7.

⁸⁶ Interview with BereketKedir, Former Member, Judicial Administration Council of SNNPR (Addis Ababa, Ethiopia, 16 January 2020)

and judicial sector top officials behind the shadow and on the other the sector is impliedly obliged by ruling party, which is again the another nature of interference manifestation.⁸⁷

Another nature of interference not departed from the issue of judicial budget is a concern of its management. One of the generally agreed principle concerning the independence of judiciary is making the sector free, for administering its budget, from any outside pressure, save check and balance.⁸⁸ But here is a practical fact; even some government officials are enable to hide, the sector is not fully independent. It still waits for some guidelines for budget administration.

“This trend is even goes worst when one approaches towards lower tier of government. Here, most of the high courts in the region are not solely entitled to purchase office machines and vehicles, rather they are expected to submit proposal for logistics demand including vehicles to zonal administration council.”⁸⁹

Therefore, the fair consideration in this juncture is that the judicial sector should not be budgeted on the interests of the subjective criteria of top officials of the executive branch rather it has to be done by considering transparent and objective criteria in stable and clear manner.

3.3.3 Interference in the Court Management

An organ, which has given a legal mandate in the region to administer a court system, is the council and the court itself. It integrally sets court management responsibility on those organs fully. This self-governance of judiciary in the entire region in practice appears in de-jure status. An executive hand is long enough to disturb self-administration and implies some nature of interference in court management. As better independence of judicial administration able to bring better justice, the poorer independence attacks fairness and equity of citizens.⁹⁰

Regarding the internal independence, the court leaders in their answer for interview questions

⁸⁷Adis H. (n 68) 7.

⁸⁸Interview with WoldeyesusAbebe, Attorney General,KambataTambaro Zone (Durame, Kambata, Ethiopia, 13 March 2020)

⁸⁹ ibid

⁹⁰ Laura Antonucci, CorradoCrocetta, Francesc, Evaluation of Italian Judicial System, Innovation and Society 2013 Conference, IES 2013 p 123-130 available at www.sciencedirect.com, accessed on Jun 2019

resist the existed intervention in the region. The manner of intervention varies among level of government structure. They positively witnessed the intervention especially in woreda and high court level.⁹¹ In these tiers of administration the internal intervention especially from court presidents is significant in the daily business of judiciary.

As I have witnessed at different level of administration, this intervention widely and in depth manifested in the low tier of administration and mainly magnified in the cases by which the executive has a great interest. One of the cases that the interest of executive implicated is the one that the executive itself is a party. The order of government in a manner 'do' and 'don't do' is a means of interference. By doing so the executive used to decide cases in a manner fulfilling their best interest. So this collaboration as per their respective significance is needed, because the procedural and substantive matters of justice administration is the matter of public interest and as a system in the planet earth this mainly designed to serve society, single organ cannot achieve the intended objective, even the purpose of delivering fair justice itself within the sector, rather responsible cooperation is crucial.

Without prejudice to the issue of cooperation, in order to chase back unnecessary and evil-intended executive interference, which stand as a concrete wall to rescue and impose threat on required independence of judiciary, the teamwork has to be consummated without mitigating judicial autonomy. It has to be prescribed with the reason of cooperation and intended result that has going to be achieved as a result of collaboration.⁹² This is a practical case, which will be discussed further below in the next section, in the region, the law-enforcing organ of each level of its administrative structure, systematically controls management of courts. It unquestionably became a trend that a kind of committee or task force created overnight and given specific direction for courts to follow the instructions will be set by the chairperson of the committee.⁹³

⁹¹ Interview with Mulugeta Ago, President, SNNPR Supreme Court (Hawassa, Ethiopia, 13 April 2020)

⁹² Selen Siringil Perken, Judicial Performance Evaluation in Ethiopia: Local Reforms Meet Global Challenges, Indicators in Development safety and Justice, Harvard Kennedy School Program in criminal Justice Policy and Management p. 73

⁹³ Interview with Amare Manjo, Judge, SNNPR Supreme Court and Former Justice Department Head of Wolaita Zone (Soddo, Wolaytta, Ethiopia, 7 March 2020)

Some of those mechanisms taken by concerned organs make each level of executive in the region nervous. Because it becomes one of the potential means to mitigate the extreme intervention of external body on natural business of judiciary.⁹⁴

However, all the concerned and responsible organs for the judicial system structure and management are expected to facilitate conducive environment to make sure that courts are performing their duty free of unnecessary external intervention and judges are safe with their immunity. But the practice is going in an opposite direction. These practical difficulties might be visualized when checking documentation and observing realities of the center responsible conducting research and taking reform measures within the regional judiciary.⁹⁵ This is happening mainly because the center by itself is not autonomous and chief executive of the regional government appoints its director. It seeks and consults for the regional law-enforcing organ to initiate research and produce report, which in turn clearly shows that the great ambition of the government extended to institutionalize its nature of intervention, which, sometimes simulate it with a kind of government with autocratic nature.

All authorities responsible for selection promotion and disciplining of judges are indirectly controlled by organ other than judiciary, which is an executive of the region. In fact the council has a great mandate to do this but it is busy again waiting for the directions from political organ. One nature of intervention comes by putting long and frequent adjournments for disciplinary matters and searching performance records for promotion.⁹⁶

A free and autonomous council has a fundamental role especially on the selection, appointment and disciplining of the judiciary. But in one or another outsider i.e. executive organ practically snatches its freedom out. There is a narrow room for any interested body to check that the council applied relevant legislation in appointing, promoting, disciplining and wholly managing the judiciary.⁹⁷

Thus, the information above is provided by all of the key informants except top officials of the

⁹⁴ Laura Antonucci (n 90)

⁹⁵ Interview (n 82)

⁹⁶ Selen S. (n 92)

⁹⁷ *ibid*

courts and politicians. Even though, it cannot divert the conclusions, top court leaders and politicians addressed the questions in a different way that courts are used to dispose cases without interference of external organs.

3.3.4 Interference as threat in Security of Tenure

Tenure security of judges is one of the key pillars for judicial independence. Being so legally guaranteed retirement age must be respected. They shouldn't be removed before their mandatory retirement age lapsed. As indicated in both FFDRE and SNNPR Constitutions other than serious disciplinary conduct, legally defined criminal liability or incapacity to perform, they shouldn't be deprived from their permanent post. Without insuring tenure security, an independence of judiciary no longer is assured. Frequent and arbitrary removal of judge facilitates illogical intervention of outsiders. An involvement of independent organ with judicial exposure may ensure autonomy of courts, which enables them to guarantee a full right of defense.⁹⁸

“The other concern of protecting courts from improper influence; judges must be immune from civil suits, which is a suit arise from a conduct resulted in monetary damage.”⁹⁹

However, immunity has to be resulted only from judge's regular function, which is immunity, resulted from the course of judicial function or necessary act to protect them from external intervention that always is a treat from executive.

3.3.5 Interference on the Responding Mechanism for Threat to Judicial Independence

Judicial independence is one of the well-recognized principles in court governance, which makes the system to function free from any undue influence. But there comes a difficulty to make a distinction between what is an undue influence and what is not.

“It is the function of law to address such issues like interference of external body including law enforcer. It must provide sanctioned provisions to prevent the doers of such action. It has to be protected from any kind of distortion and pressure from executive.”¹⁰⁰

⁹⁸ Interview (n 83)

⁹⁹ ibid

¹⁰⁰ Interview (n 86)

In fact a governmentally sponsored pressure extended to use all means of on its disposal including media and a public. Media in the region is not playing a positive role making judiciary free; rather it is acting as a spokesperson of administrative council. Supporting court's neutrality from external influence no longer is a positive contribution of media.

On the other hand it is important to strike a balance between freedom of expression and keeping courts to make decisions free from any undue influence. Herein the region, there is a nil attempt to prevent the media from criticizing the organization or the functioning of the justice system.¹⁰¹

3.4 Form of Interference

3.4.1 Adopting Legislations and Circulars

Legislations are being passed in the region to facilitate the mechanism of executive intervention. These legislations are simply proclaimed because ruling party overwhelms the chairs of the regional council. The executive simply orders and passes laws that facilitate intervention on the business of regional judiciary. Once legislation is issued the regional executive uses the enforcement mechanism via its zonal and woreda administrative arrangements. As, those laws are designed to serve them in a special manner; it made to be effective in all tiers of government. This trend is the worst of all aspects of interference because it legalizes wrongful act of executive by which the legislation itself is passed against the grand law of the land.¹⁰²

The other intervention is made in the form of directives that is made by administrative council of the region. This form of intervention always updated and varied itself as the interest of executive required. And it is easy form of intervention to address local governments within short time through party line. Regional council or any other bureaus issue some rules arbitrarily.

Additionally, the means of interference made through addressing different circulars¹⁰³ holds different tactic. These forms of intervention simply addressed by written letters forwarded by

¹⁰¹ *ibid*

¹⁰² Interview With BeyeneBiltu, Ex-president of SNNPR Supreme Court, and Attorney and Legal Consultant, SNNPR (Hawassa, Sidama, Ethiopia 12 March 2020). Laws are arbitrarily designed and made effective throughout the region. This is mainly because cheking unconstitutionality of regional laws is not the mandate of regular courts rather it is the mandate of unaffordable and incompetent Nationalities Council of the region.

¹⁰³ See, Circular No. P/O/502/2/9, Date- 18/9/2011

superior organ towards subordinate one. As the key informants from top government officials, those letters are sometimes violates the constitutional provisions but the method is designed to address contemporary issues and to rectify mistakes made by subordinate institutions. It is not designed to interfere on judicial autonomy rather to facilitate policy matters and to accelerate the regional goal of development, peace and order.¹⁰⁴ On the other side, researchers, attorneys' and judges including some parties to lawsuit, addressed their opinion different from the above group. Circulars written to wards the subordinate courts most of the time is a manifestation for a clear intervention of judicial independence. The highest mark in the scorecard is set for activities other than file management. Those activities ranged from participating on the meetings arranged by court leaders to attendance. These activities as mentioned by court staff are very essential task to make the court stand right up. But other informants do not rightly share this idea. They blamed all the practice concerning the issue at hand.

Therefore, the evaluation and competition system of judges and courts cannot encourage effective justice delivery rather than issues of executive concern. As most of the informants addressed there is a form of intervention through circulars and scorecard.

3.4.2 Superior Subordinate Relationship¹⁰⁵

Judicial independence mainly constitutes an individual judge specially in performing her regular court business, to be free from any pressure or influence that has an ability to make the result biased. That means as judge is expected to function judicial business only based on law and morality. But influence or any kind of pressure from any authorities that stands against this purpose may disable the principle of judicial independence. Thus, judges are being free from any intervention in the process of case adjudication, no excuse is relevant to influence or direct the judge to decide cases in a way other than law and morality of the judge.¹⁰⁶

¹⁰⁴ Interview with Anteneh Fekadu, Vice President, and Head of Agriculture Bureau of SNNPR (Hawassa, Ethiopia, 3 May 2020)

¹⁰⁵ This is a kind of relationship that the Supreme Court holds the superior authority over the high and woreda courts of the region and the high court on its part holds the same over the woreda court but this kind of relationship confined itself on administrative matter.

¹⁰⁶ Interview with Lulit Adnew, Researcher, SNPPR Justice Reform and Research Center (Hawassa, Ethiopia, May 1 2020)

Any instruction from higher hierarchical organization or upper court presidents in a manner of creating undue influence on judicial decision of lower level can constitute a clear violation of principle of judicial independence. Individual decision of judge in her/his court activity cannot go in line with superior instruction towards the subordinate one.¹⁰⁷

The Supreme Courts' power of evaluating and supervising all subordinate courts activity may sometimes goes against their independence. This doesn't mean that Supreme Court's authority to modify or set aside the lower court's decision following the strict procedure of appeal or cassation is against constitutional principle of independence. But sometimes in the region, the particular cases assigned to specific judge are being snatched away by the managers of the court, when the case reflects the interest of the executive and party leaders.¹⁰⁸

3.4.3 Cooperative Work Sabotage¹⁰⁹

The pressure of executive in the regional judiciary holds many forms. In the name of cooperation is one among many. Different groups, which represent an executive in different level of governance, imposed a pressure on the judiciary of the region via different committees intentionally arranged to serve a purpose of executive interference, which also is aimed by the ruling party to protect its interest.

Some forms of committees as understood from the informants, which are formed by an executive of the region and have direct interference in the works of courts are discussed herein below. As they informed, one form of committee is command post. As interview conducted with public prosecutor,

“It has an arrangement throughout the region including zonal, special woreda, Hawassa city and all the woredas in the particular state. Attorney general, department of peace and security, police department, prison institution and courts are representatives of such arrangement. Those

¹⁰⁷ *ibid*

¹⁰⁸ Interview with Maharu Simion, Judge, SNNPR Supreme Court (Hossana, Hadiya, Ethiopia, 16 January 2020)

¹⁰⁹ It is a kind of simulation in the name of cooperation and support made towards the court in order to attain and control judiciary by the executive of each level of administration.

institutions ranging in similar fashion from the region to woreda are members of the arrangement named 'justice command post'¹¹⁰

Their heads represents all of the institutions, in addition to their department division directors. The chairperson of the command post always is the head of department of attorney general in all administrative level.¹¹¹ This clearly shows that interference on the works judiciary in the region is exercised through institution.

As addressed by a key informant, the duration of the meeting for the post holds once in a month. In this meeting every issue of judicial administration is discussed irrespective of the knowledge needed to understand and hold opinion. The other worst scenario clashing with judicial freedom is being all member institutions are part and parcel of an executive branch of government. This form of arrangement is mainly designed to administer justice in the ruling party's good will.¹¹²

The other form of arrangement is said to be 'task force'.¹¹³ This task force most of the time is arranged by chief executive of each level of administration. And the main aim is sue some issues of seasonal importance and to push courts towards activating and prioritizing the case appeared before it, which also requires positive reaction towards government suit from courts court.¹¹⁴ 'The audit findings recovery task force' is taken as a sample arrangement. Members are people's representatives in all level, Inland Revenue authority, auditor general, which are represented by their heads in addition to the members for justice command post mentioned above. The chairperson is the spokesperson of the regional council in the upper administrative level and the same holds for lower one's. In this arrangement the court is expected adjudicated

¹¹⁰ Interview With DajeneMathewos, Public Prosecutor, KambataTambaro Zone High Court (Durame, Ethiopia, 5 February 2020)

¹¹¹ibid

¹¹²Personal Observation, Attorney General Activities of SNNPR (Hawassa, Ethiopia, 27 December 2016 - 3 March 2018)

¹¹³It is a kind of cooperative committee, which is intentionally designed to facilitate the executive interest in terms of directing courts towards specific task.

¹¹⁴ Interview with TewodrosManchamo, former Commissioner, SNNPR Police Commission (Hawassa, Ethiopia, 3 May 2020). This arrangement is mainly formed to address contemporary hot issues of either government or public interest.

audit cases with accelerated procedure and stand on the side of the government, which is a claimant and party to the lawsuit.¹¹⁵ This in turn makes courts dependent on executive organ.

Moreover, different committees, which are arranged to make a court a member, hold additional form of intervention. In this category there are different committees. Among them ‘three some committee’ is one and constitutes court, attorney general and police represented by their respective heads including two experts from each. This committee as headed by an attorney general, guides the court in line with the interest of the executive. It focuses mainly on criminal matters and lobbies courts to make a suspect guilty and pass penalty as demanded by executive. As the key informants from the public prosecutor’s group addressed to the interview question, sometimes in this arrangement the innocent persons becomes guilty in court of law.¹¹⁶ Some detainees in the prison center alleged as a political prisoners and they are perceived themselves as being a victim of this arrangement¹¹⁷ This obviously shows a similar intervention on judicial business.¹¹⁸

Furthermore, they identified that; the court is represented in several committees, which are naturally the function of the executive organ. Any form of committee arrangement made mainly to serve the executive interest must be banned in order to make the judiciary independent.

3.4.4 Party Conference and Meeting

The party leaders are always there to influence the institutional independence of the courts in a selected case. Most of the time the ruling party in the region arranges meetings in order to give pass instructions especially to the courts. This is a means to arrange common discussion within the party line and makes the court to follow that consensus made by and within the party.¹¹⁹

¹¹⁵Interview (n 88)

¹¹⁶ Interview with BagashawEshetu, Public prosecutor, Attorney General of SNNPR (Hawassa, Sidama, Ethiopia, 9 March 2020)

¹¹⁷ZarihunHussien, interview with Elias Basore, prisoner and former chief executive of AngachaWoreda, SNNPR (Angacha, Kambata Ethiopia, 11May 2020)

¹¹⁸Personal Observation (n 112)

¹¹⁹ Interview with DagimKonta, Member, Judicial Administration Council of SNNPR (Hawassa, Sidama, Ethiopia, 16 March 2020)

In the meetings and conferences organized by an executive, president and vice president are always there to represent courts.¹²⁰ As being a participant for the agenda set by administrative council or one of its departments, top officials of the courts are always lobbied and required to give their consent so as to achieve the goal of the agenda set by an organizer. Additionally, most of the time any department of the executive by its own initiative calls for meetings the leaders of the court and give a direction to decide the cases appeared before them in line with the interest of the department.¹²¹

3.4.5 Telephone Justice

This is a kind of order by an executive organ towards the court through telephone line. A Court president has a tie relation with a chief executive of each tier of the government administration. This is mainly because, top leaders of the court are appointed by the chief executive of government in regional, zonal and woreda level. And the instruction most of the time is arbitrary and not scheduled.¹²²

This form of interference is usually made by any administrative sector. But a call made especially from the chief executive of all level of administration has a great credit on the side court leaders. Top officials of the court at any level upon receiving a call from executive head apply an order as quick as possible. If somebody irrespective of its legality issue given with a direction of specific task by those actors' refuses to perform, he/she will wait for a grave disciplinary measure.¹²³ Thus, it is a clear implication of intervention.

3.4.6 Public Evaluation¹²⁴

As all of the key informants except politicians and court leaders agreed that there is an illegal intervention on the works judiciary by law enforcing organ of the government. This is a form of

¹²⁰Interview with MakuriyaFeleha, V/president, Gamo Zone High Court, SNNPR (Arba-Minch, Ethiopia, 1 February 2020)

¹²¹ ibid

¹²² Interview With TafessieTakle, Judge, Hawassa City First Instance Court, SNNPR (Hawassa, Sidama, Ethiopia 11 March 2020)

¹²³ Interview With Mahlet W/yes, Public Prosecutor, Hawassa City Attorney General (Hawassa, Sidama, Ethiopia 11 March 2020)

¹²⁴It is a form of evaluation made by small or large group of community to record the performance of judges that holds different forms.

indirect, safeand systematic interference because as the ruling parties habitual action, it wrongly exposes a judge to the public, who is not loyal to the party.¹²⁵

Some of the court proceedings that are addressed in the party meeting are active cases. In the party evaluation conference everybody in the hall can raise whatever issue she/he like including ongoing judicial decisions. Here almost all the members of the conference have no clue about legal proceeding and no professional justification is needed from the stage.¹²⁶ This is a systematic intervention to discourage a judge to do what the party needs to act. That is why the conference concludes about the direction that judges may follow. On the other side, intervention by using government media comes to give wrong information to the public and made a community not to trust judiciary and shame it.¹²⁷

Thus, by one way or another administrative council or one of its departments at all level of administrations becomes an obstacle for the practical application constitutional principle of judicial independence.¹²⁸ This is a form of intervention that makes an intervening regional state undemocratic.

The pressure from broadcast and social media can also be a form of interference by law enforcer that has a potential to disable constitutionally presumed right of citizens until proven guilty. Additionally the broadcast by media degrades the trust of the society on the judiciary.¹²⁹ According to the key informants, this broadcast intentionally made by the government so as to gain public support towards the executive. On the other hand the type of cases, which has meant to be public interest litigation, are justified by the executive as intervention

¹²⁵ Interview with GetuTefara, V/President, KambataTambaro Zone High Court (Durame, Kambata, Ethiopia, 5 February 2020)

¹²⁶ ibid

¹²⁷ Interview with Shimelis S. (PHD), Instructor, Hawassa University Law School (Hawassa, Sidama, Ethiopia, May 1 2020)

¹²⁸SNNPR Supreme Court, Performance Based Evaluation Plan, July 2016

¹²⁹ SNNPR Courts, Performance Report of 2017/2018, Hawassa

required.¹³⁰ Information gathered from the interview shows that the judiciary of the region is under the pressure from internal and external actors. Those actors are mainly agents of the executive branch of the government. This pressure becomes even worse when one goes from Supreme Court to woreda courts. The pressure on the woreda court is worst and direct.¹³¹

3.4.7 Refusing to Enforce Judicial Order

The main power of government applied on the courts is that after a judge made a decision of any kind, the executive refuses to enforce a decree. This is prevalent especially in criminal cases. Being so sometimes after an accused is released in bail the police department refuses to release that suspect conditionally. And that police officer has got no penalty by the court.¹³²

Enforcing judicial order is a natural duty of executive. But sometimes those institutions are intentionally refused to perform its responsibility. But attorney general doesn't accept this intervention. They justify conditions of bail as the suspect after the issuance of order for bail; he/she cannot provide the amount of money or other guarantee. In this situations he/she may stay in the prison until provide appropriate guarantee.¹³³

3.4.8 Appointment and Removal of Judges

Regarding the appointment and selection of judge's legislations clearly states that the judicial council of the region has a mandate to nominate judge for appointment.¹³⁴ The same proclamation enshrines the overview of the regional judicial administration councils nominates of judges by the federal judicial administration council and the sub art 3 the mandate of consulting the nominees of high court and woreda court judges by the respective administrative councils, which totally are an executive branch of government and it has to be brought before the peoples council within 3 months.¹³⁵

¹³⁰ Interview (n 122)

¹³¹ Interview (n 110)

¹³² *ibid*

¹³³ Interview With AbezuTadessie, Head, Hawassa City Attorney General, SNNPR (Hawassa, Sidama, Ethiopia, 2 March 2020)

¹³⁴ Art 11(3) of Courts Establishment Proclamation No. 42/2002 of SNNPR

¹³⁵ *ibid*

On the other side the regional committee has a mandate on the selection and determination of required work experience of the judges and other personals governed by the regional judicial administration council and is provided by law as selection and appointment criteria.¹³⁶ In order to select and appoint judges, criteria's concerning behavioral, capacity, language, gender and score card evaluation issues have to be consulted and approved by the executive organ of corresponding level of administration. Accordingly, chief executives, spokespersons of the legislative, women's and children affairs department, youth and sport department, police and attorney general department has practicing this function of interference through different means.¹³⁷

Even though, the directive opens the wide whole standing against constitution, as the interview questions addressed, the practice on the ground found even worse in disabling the judicial autonomy. As the practice supported by circulars shows that an executive has a quota of at least ten percent say on judicial appointment. This measure always granted freely for the nominated judges who has a great affiliation of ruling party. And as a result of corruption expressed in different means i.e. ethnic bondage, it opens a whole to bring unqualified candidates to the post and to ignore the qualified ones.¹³⁸

Furthermore, the top officials of the court give their suggestion for candidates not based on the personal qualification rather to keep the best interest of the executive. In selection of candidates, collecting suggestions from the executive council is not questionable. After the result of the candidates is announced the same directive requires a remark of administrative council together with sub-council of judicial administration of the zone.¹³⁹ It further illustrates executive departments who have a mandate of recommending the candidates for judgeship.

The other point of discussion here, after the selection of candidates by the sub-council of zonal

¹³⁶ Art 9 of the Revised Directive No. 8/2010 to Establish the Regional Committee on the Selection and Determination of Required Work Experience of the Judges and Other Personals Governed by the Regional Judicial Administration Council

¹³⁷ Personal Observation (n 112)

¹³⁸ Interview with PetrosBenie, Coordinator, Supreme Court Compliant Management Division, SNNPR (Hawassa, Sidama, Ethiopia, 23 February 2020)

¹³⁹ Art 37 Judicial Administration Council Establishment Proclamation No. 43/2004 of SNNPR

judicial administration, the list is provided to administrative council of the zone. But this council practically rejects some candidates from the list without noticing and justifying the case of ignorance for concerned bodies. This practice, according to the key informants is the clear manifestation of executive interference.¹⁴⁰

The failure of notification itself in turn resulted in two main problems. First, as a result of not knowing the reason for striking out, a disappointed candidate may lose her constitutional right to bring claim for higher institution in its hierarchy and get justice. Second, even though the procedure mentioned in the legislations to resolve disappointment in the selection and appointment of candidates is clear,¹⁴¹ she/he has a right to bring the claim for sub council of zonal judicial administration within fifteen days. Similarly, in case of appeal on the sub council's decision, it has to be brought within another fifteen days for the main council. This time limitation is designed only for the duration of screening process. But the administrative council of the zone after the completion of screening process always intervenes to divert the result, which obviously comes against the law. And the law itself is not clear how and for whom the claim has to be brought for after the screening result of the sub council is announced.¹⁴²

Thus, as there is no clear mechanism to claim against the administrative council's decision, it obviously neglects the principle of judicial independence in the region. It further creates doubt on the public trust and degrades justice. So those disgusting legislations have to be criticized as it goes against the constitutional principles.

“The problematic of practice selection and appointment of judiciary make court to perform fraudulently and resulted in public anger and mob justice.”¹⁴³

Even though, the quality of justice is questionable with the massive involvement of executive in judicial affairs, it is not the only reason for public anger and stress. This mob in the region sometimes happened by hopeless citizens as rule of law and justice becomes thin and thin again.

¹⁴⁰ Interview (n 110)

¹⁴¹ Art 13 of Courts Establishment Proclamation no. 42/2002 of SNNPR

¹⁴² Interview (n 108)

¹⁴³ Interview with Alamayehu Altaye, judge, Arba-minch City First Instance Court, Gamo Zone, SNNPR (Arba-Minch, Ethiopia, 3 February 2020)

Some of the higher government officials of the region including their zonal and woreda counterparts addressed an interview questions in a different manner. They justifies the necessity of executive involvement in a manner that letting judicial matter for judicial personnel only affects the constitutional right of the nations nationalities and peoples of the region.¹⁴⁴It is not aimed to affect freedom of courts rather it is important to address the accumulated questions of citizens. This mainly and timely performed when there is cooperation with different stakeholders including the executive. But when one goes to lower tier of administration, the practice sometimes seems of the track. Being so questions frequently arises as the independence of judiciary is infringed. They further implied their effort towards shaping local level governance specially to stop the tendency of giving low score for candidates who have better behavior and profession and providing higher score for candidates with relatively bad behavior and poor professional quality.¹⁴⁵

Additionally, the court leaders rather than defending external intervention, opens and facilitates a room for dependency. In this regard cases are decided in a manner they are going to be averted in the appellate court. As the informants explained, some court leaders, who are tried to balance the intervention, are denied with institutional support and interest required from the government.¹⁴⁶

Moreover, some judges preferred to bring their grievances to the executive organ rather than the court itself. Those are a kind of judges who have strong personal ties with this organ and based on their relationship and at the cost of judicial independence they managed to gain personal benefit. This interest sometimes accomplished by direct telephone order to wards the president and vice president of the respective court.¹⁴⁷ Some litigants also used to bring their disappointment on the courts, not to the court administration, rather to the executive of each level of administration. And they sometimes make the executive to call and order the court presidents so as to divert decisions of pending cases.¹⁴⁸

¹⁴⁴Interview (n 108)

¹⁴⁵Interview with DamissieDulecha, V/ President, SNNPR Supreme Court (Hawassa, Sidama, Ethiopia, 01 April 2020)

¹⁴⁶ ibid

¹⁴⁷ Interview (n 110)

¹⁴⁸ ibid

3.4.9 Promotion and Disciplinary Measure

3.4.9.1 Promotion

Scholars who researched on the independence of judiciary tips some considerations that has to be taken in to account during the process on promotion of judges. The promotion process should be documented properly. It should also be undertaken based on published criteria and be open to public scrutiny. Additionally, it must be based solely on merit. Moreover, promotion shouldn't be made on discriminatory manner by which the process ignores the diversity of personnel within the judiciary. Furthermore, the process of promotion must provide with independent complain mechanism that is undertaken by independent organ.

As the key informants for the research reflected the promotion of judges in the region serves as a form of executive intervention. Court leaders most of the time make decision on the promotion of judge. Government officials use this form as means of intervention.¹⁴⁹ Some forms of promotion i.e. educational upgrade, reward in kind or in cash, nominating for higher post and salary increment including frequent top ups serves as a means of attracting judges attention.¹⁵⁰

Hence, judicial personnel in the entire region are struggling with poverty. Thus, in order to struggle such difficulties and gain some benefits, they are in a good position to hostthe executive interference on the daily business of judiciary.¹⁵¹

3.4.9.2 Disciplinary Measure

Adoption and application of ethical standards is the first and the most expected standards to initiate disciplinary measure against judges. There should also be a transparency on the proposal and its provider, decision itself and means and manner of handling complaints on the procedure as well as decision itself.¹⁵²

As a key informants explained, disciplinary measure of judges throughout the regional courts becomes one form of executive intervention. Measures of demotion, suspension or removal of judges from their post becomes a means of getting obeys and making frustration by the executive branch of all level of the region.¹⁵³

¹⁴⁹ Interview With TamiratTaye, Public Prosecutor, Attorney General of Hawassa City, SNNPR (Hawassa, Ethiopia, 13 march 2020)

¹⁵⁰ Interview (n 116)

¹⁵¹ ibid

¹⁵² SNNPR Judges' Code of Conduct and Disciplining Directive no. 6/2003

¹⁵³ Interview (n 125)

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3.4.10 Budget Allocation

Freedom of judicial budget is one of the manifestations of the judicial independence. The regional council has a responsibility to determine the budget of the judiciary.¹⁵⁴ House of the Peoples` of the Representatives in turn has a responsibility to compensate the regional Supreme Court and high court, which dually performs the federal first instance and high court jurisdictions. Additionally, the regional council has a mandate to issue the budget that enables the administration of the judiciary and after approval of the budget courts have full right to manage it without interference.¹⁵⁵

As indicated in federal and regional constitutions, judicial budget must be administered without any direct or indirect interference. The budget itself has to be presented to the regional council by the regional Supreme Court and after approval the mandate of management of the budget is the only responsibility of the court. The responsibilities of preparing annual plan and budget in addition of submitting it to the regional council by the president of the Supreme Court are another duty granted by law. The president has an additional responsibility to insure the performance of the approved budget and plan.¹⁵⁶

Similarly, the same legislation puts the responsibility on the corresponding high court presidents to prepare and plan annual budget of the high court and corresponding woreda courts. Additionally they are granted with a duty to present the plan and draft budget for the legislative body of zonal, special woreda or Hawassa city. The duty to insure its performance after approval its additional and sole burden but shared with subordinate courts. This shows that the proclamation no 43/94 regarding the mandate of Supreme Court to propose and administer the entire regional judicial budget and its work plan clearly contradicts the federal and regional constitutional provisions.

Firstly, against the clear constitutional provisions that gives the mandate of planning and proposing the budget of the whole regional judiciary to the Supreme CourtPresident, the practice goes in an opposite direction that puts the same obligation on the respective high court and

¹⁵⁴ Art 79 (7) of FDRE Constitution

¹⁵⁵ Art 75(6) of Revised Constitution of SNNPR

¹⁵⁶ Article 8(2) of Court Establishment Revised Proclamation no. 42/2002

woreda court presidents. It also supported by proclamation and different circulars from both the executive secretary and the Supreme Court President.

Secondly, it requires the Supreme Court to directly present the proposed budget for the regional council on the one hand and the high court and woreda court directly to the corresponding representatives of the people.¹⁵⁷ But the practice of wide intervention on the financial autonomy of courts clearly violates that legislation. An executive branch of each level of regional administration frequently intervenes in the initiation, approval and administration of judicial budget. Regarding the constitutional stipulations on the allocation of court budget, the experience of Oromiya regional state shows that the supreme court of the region has a mandate to propose court budget directly.¹⁵⁸ It has a responsibility to directly propose the whole budget of courts in the region and after approved by chaffee it has a mandate to administer an allocated fund. This legal stipulation realized on the ground in Oromiya regional state especially since 2012 E.C. It directly presents the proposal to the Chaffee without consulting the president of the regional state and financial department. Similarly, the experience of the federal Supreme Court shows that, starting from 2010 the Supreme Court directly presents the proposed budget of federal courts to the HPR without consulting the MOFED.

The regional Supreme Court V/president as being one of the key informants to the research questions further explained the courts are not doing the right constitutional approach of making judiciary free from any outsider influence including financial independence. These practical deficiencies in insuring the independence of courts in relation to constitutionally stipulated provisions of budget allocation, becomes an obstacle to make the bench and bar independent.¹⁵⁹

Some way of snatching out of finance freedom of judiciary explained as follows. The Allocation, approval and administration of budget in woreda level is full of difficulties. The problem ranges from preparation of draft up to its final approval and administration. The financial sector of government always used to take control of court budget. This further explained by the persons that an interview questions approved before them, as the interference extended even up to not

¹⁵⁷ Judicial establishment proclamation no. 43/96

¹⁵⁸ Art 69 (3) of proclamation no. 216/2011 Oromiya

¹⁵⁹ Interview (n 145)

allocating sufficient budget and limiting the usage of budget in addition to give a utilization plan on quarter and half year.¹⁶⁰

Denying approved budget by giving the reason of shortage of cash is another way of wrong justification. By cutting off same amount of budget approved by an appropriate organ and allocated to the corresponding courts by finance department of the government. This practice widely visualized in almost all level of courts. The allocation of court budget itself is not performed in a manner of clear criteria set by legislations rather it is done arbitrarily. It never considers the load of work and appropriate budget required for it.¹⁶¹

In addition to this, the problem goes worse towards the lower level of administration. The regional Supreme Court is relatively better in realizing financial freedom than that of high court and high court is better than that of the woreda one. In 2007 high court and woreda courts are meant to follow pool system of finance, which makes courts totally dependent on executive to get their budget. This system totally abolishes the independence of courts and stand against the clear constitutional promise of financial freedom of judiciary. But later on after a long struggle by different stakeholders, the system for the time being comes in to short of application.¹⁶² Being so, these discrepancies of applying the second version of law by which interference on the financial autonomy of the court is not appropriate because the first and the most important constitutional guarantees are ignored.

The other concern in the issue of finance especially on the behalf of woreda and high court level is also complicated in practice. This complication is mainly prevalent in the lower tiers of government. This is because it intentionally or unintentionally misconceives the federal arrangement, which mainly based on ethnic federalism. Following this structure the zonal and woreda structure are used to directly bring their finance towards the respective representatives of peoples. This practice makes those levels of courts not to relay on the Supreme Court for their financial affairs rather they directly via the court presidents allocate their budget. But the practice in this level shows that the intervention of chief executive and finance department has a great roll

¹⁶⁰ *ibid*

¹⁶¹ SNNPR Courts Performance Report of 2017/2018, Hawassa

¹⁶² Interview With ErmiasOlkamo, Expert, SNNPR Budget and Plan (Hawassa, Ethiopia, 10 May, 2020)

and funding courts of each level of government.¹⁶³ This clearly contradicts constitution conserving the same issue.

All of the key informants hold similar opinion regarding the allocation and indirect control of the judicial budget by the executive. This is clear to make the city courts financially dependent on the executive organ. The ruling party purposely takes this approach as a means of control. As the data shows, courts are institutionally dependent on those actors. One manifestation is common use of offices and logistics.¹⁶⁴

3.4.11 Non Judicial Personnel Administration

Non-judicial staffs of the courts are important human resource in facilitating courts to achieve their objective. Similarly, court security members have also a great role. As the files within the court are a precious instruments that basically holds a specific rights and duties of parties to the suit. And the security of judges, who are passing decisive decisions, in turn is a fundamental concern in keeping peaceful performance of courts. Non-judicial personnel of the court are not guided by the court rather than the ruling party program and discipline, which is also manifested by exercising the SEPDM/PP business during regular workdays and hours, and within the court compound.¹⁶⁵

Despite the fact that, the necessity of courts to take responsibility of non-judicial personnel administration, it is vested on the regional civil service bureau. This mandate is snatched out from the reach of courts. This is because it is a legalized responsibility of executive organ but not judicial. Similarly, court security management again is not the mandate of courts. Rather it is the legal responsibility of SNNPR's police commission.¹⁶⁶

This shows as most of the key informants to the interview addressed that this form of intervention in judicial business is dangerous not only the regional community rather the government itself. This approaches extended from regional center up to woreda level.

¹⁶³ibid

¹⁶⁴Personal Observation (n 112)

¹⁶⁵ Interview with, WudneshAdamo, Director, SNNPR Supreme Court Human Resource Management, (Hawassa, Ethiopia, 10 May, 2020)

¹⁶⁶ ibid

3.4.12 Interference in the Form of Case Disposition

As addressed by some judges of different courts, among the regional courts, Cases of executive interest are not being appeared in open camera, rather the substantive and procedural matters of the file is disposed inside office of judges, in a closed session. Thus, this form of executive interference becomes out of the reach of the public. So, judges assigned on the bench can do nothing rather than reading the earlier decision to the public.

Exceptionally some judges used to magnify the sabotage in the form of not signing in the decision form, becomes victim of an executive. This can be appeared in the form of demotion or disciplinary measure. So, freedom of judges and deciding cases assigned before them in one or another way locked-in by executive order. The order get effective in the form of not comply with the judicial code of conduct, which is intentionally designed to create fear on judges.¹⁶⁷

3.5 Motive of Interference

Thus, keeping the above factors in mind the independence can be affected for many reasons. There are some cases that put a motivation on the intervening party. Some of the cases are mentioned by informants as, corruption cases, cases in which the city administration or its component unit are party, investment issues, cases related with group rights i.e. the issue of women and children. These cases served as a bridge to drive a motive of government.¹⁶⁸

This also leads to gather information regarding the reason of intervention, which is followed by the question, why this intervention comes from? In this point all of the key informants come up with the consensus that among other factors, corruption is the water holding reason for intervention. According to informants it can be said to be an umbrella for all other reasons.¹⁶⁹ This is because the scope and definition of corruption is wide enough to include all other reasons.

¹⁶⁷Interview (n 122)

¹⁶⁸ Interview (n 110)

¹⁶⁹ Interview (n 116)

The other reason is keeping ruling party's interest towards guarding and monopolizing all government business including judicial affairs. As analyzed before, apart from partial party motive of SEPDM branch and executive organs, the driving force behind other interveners is corruption both in judicial and interveners sides.¹⁷⁰

Many of the key informants agreed on the prevalence of intervention in all types of cases and it can be identified in case-by-case basis. There are bunch of case list of informants in addressing this issue. However, the author merged similar cases, to constitute three categories namely cases which may affect the interest of the government and the party, cases related with business transaction and grave criminal case. The final perspective in relation to personal independence, basically motivated either by corruption or the interest of the executive to take away constitutionally recognized confidence of judges.

3.6 Effect of Interference

There are a lot of problems created as a result of executive interference in the works of judiciary. One and a great impact is that it makes citizens not to trust judicial sector. A fear and stress of society increases as increase of external intervention. Interference may create problem in the judicial system of the region. This is because unless judiciary stand-alone for disposal of cases brought it, the interest of illegal group can override the constitutionally recognized rights of citizens. This is because one cannot claim legal interest over the government. This can be a concern because there is a strong attachment between individual and government.¹⁷¹

The linking points are mainly based on peace and order keeping responsibility of government in addition to regulatory mandate. Every activity of people within the authority is always attached with government. Members of the community may be affected not only by government but also the other individuals as well. Without the positive response of the government all constitutionally recognized rights of citizens cannot be realized.¹⁷²

¹⁷⁰Interview with MesafintTamene, Attorney and Legal consultant at SNNPR (Durame, Kambata, Ethiopia, 6 February 2020)

¹⁷¹Interview with ZarihunHussien, Rural Community Mobilization and Political Affairs Advisor for Chief Administrator, Angachaworeda,,KambataTambaro Zone, SNNPR (Hawassa, Ethiopia, 15 January 2020)

¹⁷²ibid

So courts are there to shape not only the acts of citizens and groups but also to regulate government behavior. But courts need their independency in order to well perform this task. When the government actors influence courts, courts cannot be in a position to keep constitutionally and naturally granted rights of citizens and groups. This brings us to analyze impacts of interference, which are mentioned by key informants. It eradicates the personal and public trust and confidence in the courts as well as in the government. In turn law and order may distort and it can also discourage investment and economic development.¹⁷³

3.6.1 Effect on the Community

As an interview conducted with parties to the law suit in SNNPR Supreme Court, four High courts and nine-woreda court, which represent around twenty percent of sample courts, interference diminishes the trust of society on the judiciary. This tendency forces citizen not to bring criminal or civil disputes to courts rather they tries to settle dispute ADR mechanism. This mechanism as it's short of enforcement, cannot fully address grievances. So citizens and groups seek another alternative, which is protecting their interest by themselves that again leads to conflict and disturbance of peace and security. When aggravated it leads to chaos, disorder and mob justice.¹⁷⁴

The effect in this regard is the degradation of moral values of citizens. A massive homicides and robbery here and there throughout the nation is happened not because of lack of cultural values that discourage such doings rather it is happening because of degradation of it.¹⁷⁵The effect also is magnified in the cultural values of the community. As cultural values are important instrument to harmonize a community, it cannot serve fully alone without peace and security of citizens are protected. So cultural values are going down as generation goes against it. This degradation with precious cultural values is resulted from the root cause of executive intervention on judicial business of the region.

¹⁷³ Interview with PetrosBenie, officer, SNNPR Supreme Court Compliant Management Division Coordinator (Hawassa, Sidama, Ethiopia, 23 February 2020)

¹⁷⁴ Interview (n 125)

¹⁷⁵ Interview With TasfamariamWoldesenbet, Researcher on Sociopolitical Affairs (Addis Ababa, Ethiopia, 19 December 2029)

Another effect of interference is an impact on the economic development of the regional community. This is mainly because the development of economy depends mainly on macro economic advancement and better regulation. But macro economic advancement cannot be achieved without investment that can only be achieved upon realization of peace and security. Here not only new investments but also the existed ones are demolished and this is a contemporary practice in the region as well as whole nation. So there cannot be investment attraction to raise economy. Even though a government is trying to reform judiciary, still no practical reform to take off evil hands of executive is visualized. Without a trust on judiciary is regained it is hard to encourage investment and boost macro economy.¹⁷⁶ As development is a sum total of individuals and entities investment, government's investment alone cannot achieve the intended development timely. So without the judicial environment made clear, the regional economy cannot stand right on its two legs.

On the other side laws are designed to oblige the government towards keeping its promise during investment contract and lately, laws which govern investment may not be convenient enough to keep the legitimate or illegitimate interest of the government. In this juncture the government may raise its force against legitimate interest of the investor. This action may discourage the existing and potential future investors to invest in the country at hand. This action is dangerous and leads the economic development up to bottom. It also related with peace, security, and political instability, which resulted from economic under development and food insecurity.

In this juncture, the judicial branch plays important role in saving the country from investment decay. This branch is authorized in putting the plain law in to practice. And this organ has the power to make every actor to be under the law. Investment by its nature in addition to clear and standardize investment legislations, needs the strong and independent judiciary.¹⁷⁷

The concept of independent judiciary always connected with the principle of "separation of power". But separation without responsibility cannot benefit a particular society and cannot

¹⁷⁶Interview With Million Taddesie, Manager, Commercial Bank of Ethiopia, Bole Airport Branch (Addis Ababa, Ethiopia, 23 December 2019)

¹⁷⁷ Personal Observation (n 112)

promote investment as well. This issue can also be maintained by check and balance and Separation of power always is guarantee for judicial independence in most of the legal systems. Even though, economic development is possible by the means other than judicial independence i.e. policy orientations towards investment, still it is the researchers position, that the judicial independence is reliable and sustainable one.¹⁷⁸

As the key informants explanation, the need by itself among others is raised due to corrupted judiciary. And the reason for creation of such kind of judiciary is that the judiciary turns itself as servant of an executive and ruling party. It seeks and performs the need of executive rather than standing to defend constitution.¹⁷⁹

The other point in relation to the effect of interference justified above is created as a result of the nature of both FDRE and SNNPR constitution. In addressing those rights the constitution doesnot provide detail matters realize such right. In this situation, the mandate of solving constitutional disputes is given for HOF.¹⁸⁰ Thus, courts cannot stand in a position to protect peoples from government mischief.As its depth varies, this corruption practice is prevalent in the entire region. This again resulted in ‘rich person served better’ and ‘poor served poorer’.

3.6.2 Effect on Individual Level

As courts in the region are performing under capacity and overwhelmed by law enforcing organs, they sometimes cannot assure the enforcement of their order. This is mainly because the police officers refuses to enforce judicial orders and in-turn no measure taken either by the executive or the court itself.¹⁸¹ As a result of weakness of judiciary, murderers are not penalized and victims of the crime are not redressing. Even the criminals in the prison institutions are being released without any condition.

¹⁷⁸ Interview (n 84)

¹⁷⁹ Interview (n 84)

¹⁸⁰ Art 63 and 86 of FDRE Constitution

¹⁸¹ Interview with MakuriyaFeleha, Judge, Gamo Zone High Court, SNNPR (Arba-Minch, Ethiopia, 1 February 2020)

Government is using excessive burden and amnesty power in a way that it conflicts with the very propose of criminal code of the nation. The government itself confirms that most the released prisoners are political prisoners, which in turn assures the interference of executive on the works of judiciary. This trend makes individual or group of victims to the crime take revenge action on those released prisoners. On the other hand, individuals are obliged to seek alternative measure that most of the time is forceful action.¹⁸²

As a result of judiciary's dependence on political entity, the rights of holding one's own opinion and the right of information as well as participating for political position is precious to exercise. Because of this citizens cannot exercise those democratic rights and feels that their liberty cannot be respected. This in turn resulted in seeking asylum and makes citizens emotionally weak and degradation of sense of belongingness of nation.¹⁸³ Thus, the country becomes the battle for political actors and not become conducive for its own offspring.

3.7 Conclusion

There are different aspects of interference, i.e., motive, nature, form and effect. And some of the identified motives are, corruption, excessive and illegitimate power and interest of executive. Forms of intervention are intervention on cases brought to the court attention, in the form of budget allocation, court personnel administration and adopting legislations. On the other hand, it uses different nature of interference and resulted in affecting the community at large and individual level.

The interference is manifested in different forms. First, Judges are personally influenced in case-by-case manner. Second, the case allocation is not clear. Some cases are purposely assigned to some judge and even after the assignment of the cases that specific case is snatched and given to the president or vice president of that specific court. And those personnel are politically assigned not to manage in terms of law rather than to guard the interest of the executive.

On the other side, the court's legitimate function is burdened with executive business, which is

¹⁸²Interview with AlamayehuAltaye, Judge, Arba-minch City First Instance Court, Gamo Zone, SNNPR (Arba-Minch, Ethiopia, 3 February 2020)

¹⁸³ibid

against law and the generally accepted principle of functional independence. This comes into picture mainly in the forms of cooperative and/or collaborative committee works. Those common committees are identified as at least four in number, namely, the three cooperative committees chaired by attorney general of each level of administration and with members from the police commander and the president of high court.

Financially, it is not court itself or that of JAC, rather the mayor and the finance sector are in a position to allocate budget for the courts. And the request for additional budget is also sent the mayor supported with official letter. This also makes courts financially dependent, which is against the constitutional principle.

CHAPTER FOUR

Findings, Conclusions and Recommendations

4.1 Findings

This research aimed to critically analyze aspects of executive interference on the regional courts from theoretical and legal framework perspective. It analyses the nature, form, motive and effect of interference.

Judicial independence means that the judiciary should be free from any kind interference upon conducting its natural business. This is well addressed in the principle of separation of power. It focuses on dividing power and limiting the intervention of one organ of government on other.

The constitutions of FDRE and SNNPR are similarly and clearly assure the independence of judiciary. As any democratic state the constitutions protects the independence of judiciary through different methods. Based on these frameworks the research findings are highlighted herein under.

The regional JAC has a direct mandate to select and propose nominees of judges for Supreme Court while it has a responsibility not to select but to propose the nominees of judges for subordinate courts, who are selected by the sub JAC and subordinate administrative council.

The nomination and appointment process expected from the constitutional perspective to be transparent. And no organ other than JAC is needed to be involved in the process. But the practice goes in an opposite direction. The selected nominees directly provided to administrative council and the council has a power to reject or accept selected candidates without any reason.

The selection process is not transparent as most of the time it is conducted with telephone calls and letters between top court leaders and chive executive of local government. There is no need for checking personal qualification of candidate rather a great mark is given for political attitude specially loyalty for ruling party. Best example is that judges are being selected for political position. This shows that the executive interference is becoming worse by actively involving in the appointment of judiciary, which should have been the sole duty of JAC and legislative organ. Party evaluation serves as an input to bring disciplinary action against judges.

The other ways of involvement of executive is made through direct telephone order, presidential assignment, through organized committee, task force, and command post, via training, meetings and party evaluation conference. This clearly contradicts the constitutional provisions of protecting judiciary from any kind of interference in its function.

The Supreme Court President is made to be chairman of JAC, which is directly proposed by the chief executive of the region. And other three members are selected from the same organ. This shows again that the administrative council's involvement reaches every aspect of judicial affairs in the region.

Against the constitutional principles, the judiciary is not free to propose and administer its budget. Dependency on court fund becomes worst in the lower level of administration. The administrative council's involvement dominates all the steps of financial management of courts in all level. These technical aspects of intervention make the judiciary not confident to serve justice.

The other aspect of intervention is made through non-judicial personnel of court. Courts have no mandate of administration rather it is the civil service bureau that takes a mandate. The executive can act via those personnel to accomplish its mission. The responsibility of court security is also not a mandate of courts of region; rather it is the responsibility of the Police Commission. This way of intervention is another aspect of interference, which is easy and technical. Humanity cannot be served well via justice by disabling judicial sector.

4.2 Conclusions

The court system in SNNPR is established by the regional constitution. They are arranged as woreda court at the bottom, high court in the middle and Supreme Court at the top level and are arranged constitutionally. The judiciary of region is becoming dependent through time. It is the a weaker branch in administering itself when compared to other three branches of the government and for several reasons; it is under the influence of the executive branch and the ruling party starting from woreda up to region.

And the identified reasons for the interference are corruption, excessive and illegitimate interest of executive and party officials. Judges personally are influenced in case-by-case manner. In one way, the case allocation is not clear. Some cases are purposely assigned to some judges and even after the assignment of the cases that specific case if needed again is snatched away and given to judge or the president or vice president of the same court.

There are common committee organizations identified as three-cooperative committee chaired by Attorney General and is functional around all administrative levels of the region. Some circular letters supports this arrangement. Those committees seriously affect the judicial independence in one way or another.

Courts are not independent financially. From the beginning to end, the process of judicial budget hosts executive intervention. Courts are not in a good position to administer their budget even after approved by legislative organ. This also makes courts financially dependent and is against the constitutional principle.

Therefore, from this, one can conclude and the researcher also agreed on existence of the dominant type of intervention against the regional judicial independence. The independence of judiciary in the region is being eroded through time. The intervention holds different aspects. This becomes a clear contradiction with general principle of separation of power and international, national and regional legal instruments. Thus to change these challenges radically, the following recommendations are suggested.

4.3 Recommendations

After critically analyzing the legal and practical issues concerning the independence of judiciary in SNNPR, the researcher suggests the following recommendations towards reforming the judiciary in the regional state.

The first and for most challenge comes from the mix of works of the judicial organ with other branches of government and mainly through informal and formal committees, which is designed

to protect the party`s interest. Hence, this harmful trend has to be eradicated by abolishing the documents including the BPR concerned provisions, which order the judiciary to act in the interest of the executive.

Second, in order to protect the interest of the intervening organs including non-state actors, the judges in the city are used to entertain cases in closed offices. If this is so, the cases have to be entertained in the public disposal and effective institution has to be organized by the city council with the task of checking and reporting the issue periodically to the council as well as to the public.

Third, courts are financially dependent on the executive branch of the government in almost all parts of the region. So laws should be amended in a manner of letting full financial freedom for the sector. Nobody other than the judiciary in proposing, presenting and administering the budget should involve. The institution and any kind of logistics have to be administered in a separate manner.

Forth, no predictable result is expected from corrupt judiciary and is inimical to the country`s economic development. Thus, independent and corruption resistant judiciary is a corner stone for the regional as well as national development. The implementation process requires the adoption of specific policies applicable at both regional and national level. Where specific threats have been manifested, action may be required at both levels.

Fifth, as JAC is organized to administer judicial affairs, its organization must exclude persons from executive branch of government. In doing so, the issue of promotion, demotion and disciplining of judges must be done in transparent and lawful manner. And in order to block some nature and form of intervention, the council must be free from unnecessary influence. As the composition and some of its function of sub JAC is slightly different from the main JAC, it has to be rearranged in a similar fashion with the main one.

Sixth, Proclamation No. 43/2004 must be amended in a manner of taking away the mandate of local government to make recommendation on candidate judges and court budget.

Seventh, as the administration of non-judicial personnel of courts serves as a means of executive intervention, it should be made legal mandate of courts. The part of Civil Service Proclamation that deals with making the administration of non-judicial court staff by executive must be amended in a way of granting courts with such responsibility.

Finally, as the reform measures are still stagnant in the Region even under Abiys' administration, the author invites interested researchers and concerned legal professionals for further in-depth study on the issues raised in this research in relation to the effect of deep-rooted executive interference on judicial business in terms making the branch free.

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Appendix I

Interviews

- Interview with Mulugeta Ago, President, SNNPR Supreme Court (Hawassa, Sidama, Ethiopia, 13 April 2020)
- Interview with DamissieDulecha, V/ President, SNNPR Supreme Court (Hawassa, Sidama, Ethiopia, 01 April 2020)
- Interview conducted with AkliluKebede, Head, Judicial Independence and accountability division, SNNPR Supreme Court (Hawassa, Sidama, Ethiopia, 1 April 2020)
- PetrosBenie, officer, SNNPR Supreme Court Compliant Management Division Coordinator (Hawassa, Sidama, Ethiopia, 23 February 2020)
- Interview with AmareManjo, Judge, SNNPR Supreme Court and Former Justice Department Head of Wolaita Zone (Soddo, Wolayta, Ethiopia, 7 March 2020)
- Interview Conducted via Telephone with MaharuSimion, Jugde, SNNPR Supreme Court (Hossana, Hadiya, Ethiopia, 16 January 2020)
- Interview with BagashawEshetu, Public prosecutor, Attorney General of SNNPR (Hawassa, Sidama, Ethiopia, 9 March 2020)
- Interview With BeyeneBiltu, Former President, and Supreme Court and Attorney and Legal Consultant, SNNPR (Hawassa, Sidama, Ethiopia 12 March 2020)
- Interview With MisganaTeshome, president, Hawassa City Firest Instance Court, SNNPR (Hawassa, Sidama, Ethiopia 7 March 2020)
- Interview With TafessieTakle, Judge, Hawassa City First Instance Court, SNNPR (Hawassa, Sidama, Ethiopia 11 March 2020)
- Interview With AbezuTadessie, Head, Hawassa City Attorney General, SNNPR (Hawassa, Sidama, Ethiopia 2 March 2020)
- Interview With Mesafint W/yes, Public Prosecutor, Hawassa City Attorney General (Hawassa, Sidama, Ethiopia 11 March 2020)
- Interview With MattoMagane, President, Hawassa City High Court, SNNPR (Hawassa, Sidama, Ethiopia 2 March 2020)
- Interview with GetuTefara, V/President, KambataTambaro Zone High Court (Durame,

Kambata, Ethiopia, 5 February 2020)

- Interview With Dajene Mathewos, Public Prosecutor, Kambata Tambaro Zone High Court (Durame, Ethiopia, 5 February 2020)
- Interview with Mesafint Tamene, Attorney and Legal consultant at SNNPR (Durame, Kambata, Ethiopia 6 February 2020)
- Interview with Woldeyesus Abebe, Attorney General, Kambata Tambaro Zone (Durame, Kambata, Ethiopia, 13 March 2020)
- Interview with Tariku Tanga, President, W/Abaya Woreda court, Gamo Zone (Hawassa, Sidama, Ethiopia, 11 April 2020)
- Makuriya Feleha, V/president, Gamo Zone High Court, SNNPR (Arba-Minch, Ethiopia, 1 February 2020)
- Alamayehu Altaye, President, Arba-minch City First Instance Court, Gamo Zone, SNNPR (Arba-Minch, Ethiopia, 3 February 2020)

- Interview with Abebe Soressa, Head, Judicial Administration Council of SNNPR (Hawassa, Sidama, Ethiopia, 16 March 2020)
- Interview with Dagim Konta, Member, Judicial Administration Council of SNNPR (Hawassa, Sidama, Ethiopia, 16 March 2020)
- Interview conducted with Lulit Adnew, Researcher, SNPPR Justice Reform and Research Center (Hawassa, Sidama, Ethiopia, May 1 2020)
- Interview with Admasu A., Instructor, Hawassa University Law School (Hawassa, Sidama, Ethiopia, May 1 2020)
- Interview with Shimelis S. (PHD), Instructor, Hawassa University Law School (Hawassa, Sidama, Ethiopia, May 1 2020)
- Interview with Anteneh Fekadu, Vice President, and Head of Agriculture Bureau of SNNPR (Hawassa, Ethiopia, 3 May 2020)
- Interview Conducted via Telephone with Tizita Fekadu, Former Head, Justice Bureau of SNNPR (Addis Ababa, Ethiopia, 1 April 2020)
- Interview with Tewodros Manchamo, Commissioner, SNNPR Police Commission (Hawassa, Ethiopia, 3 May 2020)
- Interview with Mamo Dalacha, V/ Head, SNNPR Peace and Security Bureau (Hawassa, Ethiopia, 13 February 2020)

- Interview With TamiratTaye, Public Prosecutor, Attorney General of Hawassa City, SNNPR (Hawassa, Ethiopi

Appendix II

Reports and Plans

- SNNPR Courts, Performance Report of 2017/2018, Hawassa
- SNNPR Courts, Performance Report of 2018/19, Hawassa
- SNNPR Courts, the Second GTP of 2016-2020, 2015
- SNNPR Supreme Court, Performance Based Evaluation Plan, July 2016
- SNNPR Courts, Work and Budget Plan of 2018, July 2017
- Circular No. P/O/502/2/9, Date- 18/9/2011

Appendix III

Interview guide

I. Key informant's background

- **Organizational and Personal information**

- Date-----
- Name of the organization-----
- Level of administration-----
- Occupation: Put it in mark
 - Judge -----
 - Attorney-----
 - Public prosecutor-----
 - Researcher-----
 - Academician-----
 - Government official-----
- No. of years of Experience ----
- Level of education-----
- Age-----

II. Interview questions

- **Introduction**

Good morning/afternoon? My name is **Dawit W/yesus** from AAU Law School Graduate Program; I am gathering practical information to understand aspects of judicial independence in order to complete my LLM research, titled “Executive Interference against the Judiciary in Ethiopia: **the Case of SNNPR**”.

I would like to assure you that all the information I collect will be kept in strictest confidence, and used for research purposes only.

Thank you in advance for your cooperation.

- **Questions on the aspects of executive interference on the judiciary of SNNPR**

A. Regarding the form of interference

1. Are courts in SNNPR independently functioning in their judicial duty?
2. If the answer for the above question is negative, who is interfering in the administration of judiciary in the region?
3. In which cases do this interference manifested?
4. How does this interference magnified in the regional courts?
5. Is the independence of the Judiciary or the judge formally guaranteed? How?
6. Does law determine the salary of judges? How?
7. Is the involvement of the Judiciary in legal and judicial reform formally guaranteed?
8. Does the regional executive interfere on the judicial sector of the region? How?
9. Who makes decisions, in the situations indicated below? How?

- ❖ Involvement in the preparation of the "budget allocated to courts"

- ❖ Formal proposal on the budget allocated to courts
- ❖ Adoption of the budget allocated to courts
- ❖ Management of the budget allocated to courts
- ❖ Audit of the budget allocated to courts

10. In which specific types of civil or criminal cases do the executive is interested to intervene?
Why?

11. Does the following list serves as the means of executive interference in the judiciary of the region? How?

- ❖ By facilitating interference in preparing and applying different legislations
- ❖ By arranging institutional setup, which is convenient for executive interference
- ❖ By passing circulars
- ❖ By applying judicial persons performance evaluation criteria through BPR and BSC
- ❖ By preparing and applying judicial code of conduct, which no relevance to the real justice
- ❖ By frustrating the judges through harsh legislations of disciplinary nature
- ❖ By lobbying officials of judiciary to participate in the meeting, organized by the executive body and passing an order.
- ❖ Through case by case order made by the executive towards top officials of the judicial sector
- ❖ By arranging different kinds of temporary/permanent committee by which, one of the executive department head is assigned as a chair person and top officials of the judicial sector considered as a member
- ❖ By facilitating public evaluation system to the sector/judges
- ❖ By letting one or more persons from executive branch to be member of the judicial administration council
- ❖ By assigning president or v-president of the court who is loyal to the executive
- ❖ By nominating the candidates for judgeship, who are friendly to the executive
- ❖ By imposing the ruling party ideology in the form of training
- ❖ By executive assignment of the security personnel of the judicial sector
- ❖ By administering the building of the sector by executive

- ❖ By proposing the budget of the sector by executive
- ❖ By letting the court staff not to afford the inflation impact of the country with their salaries and top-ups
- ❖ Any other means and justification...

12. Which authorities can take the following decisions? Why?

- ❖ Appointment of court staff (other than judges)
- ❖ Other human resource management decisions on court staff
- ❖ Decisions regarding the implementation and use of Information and Communication Technology in courts
- ❖ Decisions regarding court buildings
- ❖ Decisions regarding court security
- ❖ Decisions regarding outreach activities

B. Regarding the nature of interference

13. Why IS this interference prevalent in the sector?

14. What are the motivating factors behind the interference?

15. Considering lists below, illustratively, what are the driving factors behind interference on judicial activity? How?

- ❖ To keep the interest of the ruling party
- ❖ To keep the interest of the one or more department of executive
- ❖ To cover the fault of the government
- ❖ To create frustration on the future criminal offenders
- ❖ To discourage opposition political parties
- ❖ To make the court always loyal to the executive
- ❖ To discourage a suit against the government
- ❖ To revenge the one who shows disobedience to the ruling party
- ❖ To cheat public mind towards the ruling party, as the government is loyal to its citizens
- ❖ To seek financial benefit in the form of corruption

- ❖ To keep an interest of the relatives of persons in government position
- ❖ To keep an interest of persons/groups, who are loyal to the executive branch of the government
- ❖ To discourage the persons/groups, who are not loyal to the executive
- ❖ To take disciplinary measure on the court personnel, who shows unwillingness towards an executive interest
- ❖ To extend the duration of de-facto autocratic government
- ❖ Any other reason ...

16. Illustratively considering lists below, how the executive 'if any' interferes on Evaluation, promotion, disciplinary measures and training of judges?

- ❖ Decision on the evaluation of a judge
- ❖ Evaluation of the performance management of courts
- ❖ Decision on the promotion of a judge
- ❖ Adoption of ethical standards
- ❖ Application of ethical standards
- ❖ Proposal for the appointment of a member of the disciplinary body for judges
- ❖ Decision on the appointment of a member of the disciplinary body for judges
- ❖ Proposal for a disciplinary decision regarding a judge if any
- ❖ Disciplinary decision regarding a judge if any
- ❖ Decision on the follow-up to a complaint against the judiciary/a judge
- ❖ Decision on the program/content of training for judges

17. How the executive interferes 'if any' in the following conditions

- ❖ Proposal of candidates for the appointment as judges
- ❖ Decision on the appointment of a judge
- ❖ Proposal for the dismissal of a judge
- ❖ Decision on the dismissal of a judge
- ❖ Proposal of candidates for the appointment as court presidents
- ❖ Decision on the appointment of a court president
- ❖ Proposal for the dismissal of a court president

- ❖ Decision on the dismissal of a court president

C. Regarding the impact of interference

18. How does it disturb the justice system of the region?

19. Among those questions which are interesting?

20. Do you have any comments regarding the judicial reform of the region?

21. Does an interference of executive on the judicial sector created any impact on the concerned organ? How the following illustrative list 'if any' can be considered as an impact?

- ❖ Degradation of the public trust on the judicial sector
- ❖ Increases public fear and stress
- ❖ Violation of human rights
- ❖ Eradicates the security of citizens
- ❖ Diminishes liberty of persons
- ❖ Loss of property right
- ❖ Creates stability and settlement problem of individuals and groups
- ❖ Diminishes peace and security of citizens
- ❖ Increase crime rate of the nation
- ❖ Discourages investment
- ❖ Increase poverty rate of an individual and a country as a whole
- ❖ Resulted in Political instability
- ❖ Invites mob justice
- ❖ Lawlessness
- ❖ State crash
- ❖ Any other impact (specify)...