Addis Ababa University

College of Law and Governance Studies

Center for Human Rights

Electronic Litigation (e-litigation) in the Federal Supreme Court of Ethiopia and Access to Justice

By Eyuel Seife

A thesis submitted to the Center for Human Rights, College of Law and Governance Studies of Addis Ababa University in partial fulfillment of the requirements for the Degree of Masters of Arts in Human Rights

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Advisor Kokebe W.Jemaneh

College of Law and Governance Studies, Center for Human Rights, Addis Ababa University

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DECLARATION

I, Eyuel Seife, hereby declare that this thesis is my own original work. To the extent of my knowledge, this paper has never been presented in any other academic institution for the award of any academic Degree, Diploma or Certificate. Where other people's works have been used and/or referred to, acknowledgments have been duly made.

Name of the student_____

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Name of the Advisor_____

Signature_____

Name of external examiner_____

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Name of internal examiner_____

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This paper would not have been possible without the people who had enough faith to see the research through.

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Acronyms and Abbreviations

A.A Addis Ababa

CJSRP Comprehensive Justice Sector Reform Program

EC Ethiopian Calendar

ECHR European Convention on Human Rights

FDRE Federal Democratic Republic of Ethiopia

FSC Federal Supreme Court

GTP I Growth and Transformation Plan I

GTP II Growth and Transformation Plan II

HoPR House of People's Representatives

HRBA Human Rights Based Approach

HRC Human Rights Committee

ICCPR International Covenant on Civil and Political rights

ICT Information and Communication Technology

INSA Information Network Security Agency

MCIT Ministry of Communication and Information Technology

R/S Regional State

SNNP Southern Nations, Nationalities and People

OHCHR Office of the United Nations High Commissioner for Human Rights

UDHR Universal Declaration of Human Rights

UN United Nations

UNDP United Nation Development Program

Abstract

This paper discusses on the e-litigation system in the Federal Supreme Court of Ethiopia and access to justice. As a basic right and as a means to secure other human rights, the concept of justice has been one of the most discussed issues in the human rights discourse. There are many barriers to access to justice. To deal with such hurdles, especially the physical and financial barriers, technologies are introduced in the Ethiopian justice system. In particular, the Federal Supreme Court has taken the initiative to support its judicial services with technologies. The main purpose of the research is to find out how the e-litigation system is affecting effective access to justice. Whether the system is based on human rights-based approach or not, is also discussed in the research.

The paper is structured in five chapters. The notion 'access to justice' and human rights based approach are discussed. Effective access to justice includes equally accessible justice system with just results and in conformity with human rights standards. Normative framework, legal awareness, access to legal services and effective enforcement of decisions are manifestations of effective access to justice. The adjudication system must conform to human rights standards and due process of law. The e-litigation system, especially videoconferencing litigations and e-filing services of FSC, which are under the scope of the research, are also raised in detail. The findings revealed the benefits and the challenges of the system. Creating physical proximity to judicial services and minimizing cost and time of litigants and government are the main benefits of the system. But Technical challenges have made court litigations difficult and litigants' right to have a fair trial is compromised. The principles of due process of law are also breached due to lack of audio and video quality, repetitive interruptions of proceedings and adjournments. It has been also found out that the program is not formulated in a human-rights based approach. Justice delay, the imbalance between opposition parties, the limitation on free and well conducted proceedings, compromising open trial and the absence of laws and regulations are the challenges of the system.

In conclusion, technology is not the final solution for the problems in the justice sector. The gaps of the e-litigation system must be filled by actors of the justice sector. In addition the already existing problems in the justice sector have aggravated the challenges of the system. So, the researcher recommended that the program must be reformulated in a human rights-based approach and the network capacity of the Court must be upgraded. Laws and regulations must be drafted to guide the system. The system has enduring benefits; but its challenges on effective access to justice must be tackled if it needs to serve its purpose of bringing effective and efficient justice.

Chapter One

Introduction

1.1 Background of the Study

Technology and human life are getting closer and closer. Technology fills the gaps that humans cannot. It enhances human's performance and influences almost all aspects of life. It makes life easier. It simplifies delivery of public services. In the sphere of judicial service, it has been a while since courts have been using technologies. Electronic and digital technologies have revolutionized court proceedings and services. Courtrooms are now equipped with IT gadgets so that people are no more obliged to travel long distances just to handle a piece of paper. E-filing, video conferencing, web-based court services, court case management system, touch screen application, free call center and other technology related terms are getting familiar in courts. Now courts are more accessible than before through these means. The quality, accuracy, accessibility and timeliness of justice provided by courts have been improving along with the improvements in technologies being used in courts. As Chris Crawford, has once said, 'technology is a powerful enabler that can empower courts to meet core purposes and responsibilities, even while sever economic pressures reduce court staffs, reduce hours of operation, and even close court locations.' (National Center for State Courts (NCSC)).

The backlogs of cases are now being dealt in lesser time than before. The costs of transportation and accommodation are minimized due to e-filing and video conferencing. The ordinary litigation systems, where parties physically appear in courts and present their cases, have many limitations and inconveniences. The amount of time and money spent on ordinary litigations is so high that it is very difficult for some segment of the society to take part in litigation and vindicate their rights. Efficiency and effectiveness are promoted by these new technologies. 'The procedure before the courts used to be dominated by paper files, written exchange of documents, hearing persons in court,

but these matters are changing fast. IT applications are increasingly applied when bringing cases before the court, preparing court sessions, hearing cases in court and when drawing up and publishing court decisions.' (Evert-Jan Van der Vlis, 2011) All the paper works and hand writings by judges were tedious and time taking. Most of the technical parts in court proceedings were manual which resulted in delay of justice. Now the technologies have avoided most of the tedious works. The former vice president of the Federal Supreme Court of Ethiopia Mr. Medhin Kiros made this remark in November 2014, ''the information technologies that the court has been using since previous years have contributed a lot in making the court's services modern, accessible and expeditious.'' (The Federal Supreme Court of Ethiopia, 2015)

Nowadays many countries are using technologies in their courts. The pioneer countries like India, South Korea and Singapore are now very advanced. The technologies can definitely promote access to courts for those who can access technology. Courts deliver justice by judicial determination. Here it must be apparent that justice is not limited to judicial determinations. This is the narrower view of 'access to justice'. According to this view, the meaning of justice is limited to judicial remedy. 'The first, perhaps more traditional, view of justice is that it flows from adjudication under the formal legal system. Under this conception, the achievement of justice depends on due legal process and public evaluation of a dispute against the external standard of the law.' (Legal Services Institute, December 2012). Under this view, it can be called 'access to justice' if individuals can take their claims, which are justiciable rights recognized by laws, to ordinary courts for judicial determination. This conception limits 'access to justice' to access to courts and availability of legal services. Article 37(1) of the FDRE constitution clearly states right of access to justice is a right of any individual, association or a group to bring a justiciable matter to courts or any other competent body with judicial power and obtain judgment or decision. (FDRE Constitution, 1995) 'According to this provision access to justice is couched in its narrower and formal sense, as a right to bring a justiciable matter to judicial or quasi-judicial bodies and obtain remedies. . . . .however a closer look

at the letters and spirit of the Constitution reveals that the Constitution supports a broader and more substantive approach to access to justice' (Kokebe, May 2014). Substantive justice where the laws and its institutions function in such a way as to address needs of citizens is the broader view of justice. (UNDP, 2004) Even justice obtained from judicial determination must be evaluated with the broader sense of justice. If the law does not provide, people cannot claim or take their claims to courts.

Access to justice is not just a single right. It encompasses a bundle of rights within it. It is also the result of attainment of many other rights. It is also a means to defend other rights. As one of the fundamental human rights, the current management of 'effective access to justice' in these technologically advanced courts is worth attention. The mere fact that technology is now assisting courts, doesn't mean that there are not newly emerging problems related to 'access to justice'. Inevitably the needs of citizens to 'access to justice' will take different form in the e-court system. Technology will bring a new perspective in delivery of justice. In addition to those factors that constitutes elements of right of access to justice, other issues like access to information communication and internet will emerge as important issues. The challenges of technology, the fate of citizen's rights of effective access to justice and the future of courts must be analyzed. Any use of technology in courts must serve the whole component of effective access to justice. The role of technologies in enhancing access to justice and the challenges they pose require intense studies beyond the rhetorical allegations.

The fact that technology is improving access to courts may not mean that the right of access to justice is fully enhanced. As Marco Velicogna has said, 'access to justice is a much broader concept which involves more than just court access. It relates to the problem of allowing the claim-holders to be able to claim their rights in court and receive a judicial decision which is fair and of good quality, with a reasonable time and at a reasonable cost.' (Velicogna, 2011). The technologies need to be in harmony with such principles of justice. Within courts of sophisticated ICT installations; how is the

interest of litigants is served? Are the principles of 'effective access to justice' well observed in the system? Are they formulated in a human rights-based approach? These are some of the questions we should ask. The access which is being enjoyed by some groups and the aspect which may violate the principles of effective access to justice must be questioned.

In Ethiopia public grievances on the judicial sector are so high due to delay of justice, corruption and high cost. Problems were identified in the Comprehensive Justice Reform Program of 2005 were, (a) gaps in accessibility and responsiveness to the needs of the poor, (b) the need for serious steps to tackle corruption, abuse of power and political interference in the administration of justice, and (c) inadequate funding of the justice institutions which aggravates most deficiencies of the administration of justice. (Ministry of Capacity Building, February 2005) There have been many reform measures taken to improve court's services to redress these grievances. One of the reform measures was introducing ICT in courts. In one public visit event which was hosted by the Federal Supreme Court in 2014 it was mentioned that, the court has been using ICT products since the mid 90s EC to make the judicial process accessible, expeditious, timely and affordable. Some of the technologies are internet based video conferencing, Court Case Management System, Closed Circuit Television System (CCTV), automated file handling, recording and transcribing technologies and toll free call center (992) for inquiring any information. (The Federal Supreme Court of Ethiopia, 2015, p. 8). The Court is also looking forward to expand its services to other parts of the country. So it is difficult to imagine the future of Ethiopian judicial services without ICT. As one of the most problematic sectors in Ethiopia, it is inspiring to see the judicial sector introducing such system to improve its efficiency. These progresses should not make the system off limit from the analysis with respect to effective access to justice and human rights-based approach.

The reports of the Court mentions thrilling numbers of cases handled after ICT services have been introduced. As Mr Medhin Kiros, said in 2015, '15 years ago a single case could take more than three years for final disposal. Since the late 1990s EC most of the cases take less than a year. . . .even

if the changes are the outcomes of many reform measures, ICT's role is significant.' (The Federal Supreme Court of Ethiopia, 2015, p. 9). The alleged achievements may tell us about the accelerated cases clearance rate; but not about the whole picture of access to justice, especially not about effective access to justice. The final goal of any judicial service must be delivering accessible quality justice. And this can be possible when the system gives due consideration to human rights principles. A discussion on access to justice has to investigate if the means provided by the justice institutions can bring effective access to justice and if they are planned in a human rights-based approach. As a human rights research, it is also so proper to examine if the technologies and their application comply with human rights standards.

> ''While lying stress on the urgent need of elimination of delay and reduction of backlogs, we cannot afford to act in undue haste so as to substitute one evil for another one. Stress on speed at the cost of substantial justice may impair the faith and confidence of the people in the system and cause greater harm than the one caused by delay in disposal of cases.'' (M.K. Sahu, 2015)

This statement was given concerning the video-conferencing services of Indian courts. It reminds us, not to forget elements of substantial justice for the sake of some positive contributions of the e-litigation system. And the elements of access to justice, which have not been taken into consideration by the justice sector when they plan ICT supported justice system, must be identified.

> 'Reducing delay, improving economy, efficiency and effectiveness and the more general objective of promoting confidence in the justice system through the use of new technologies are 'laudable aims and are unlikely to generate much dissention.'

After Velicogna quoted this statement from B.Loveday who addressed EGPA Conference in 2000, he added the next statement.

‘‘However, given the nature and importance of the judiciary. . . .due process, impartiality and independence should also be carefully taken into account. This is especially so when structural and procedural changes, such as one driven by the introduction of new technologies, take place.’’ (Velicogna)

In institutions of justice, the benefits of technologies in the judiciary should not be taken at face value. Rather human rights standards evaluate its appropriateness. This new infrastructure that supports the system for delivering justice is changing the relationship between courts and individuals. In this digital age ‘access to justice’ means access to ICT services, internets, computers and means and knowledge to use them also. It is important to adapt the meaning of access to justice in the technologically supported courts.

1.2 Statement of the Problem

In this study the e-litigation system in the Federal Supreme Court of Ethiopia is examined in light of ‘access to justice’. The main concern of the research is to study the effects of e-litigation system on the right of effective access to justice of litigants. To explain the effects of the system, various issues will be discussed under the statement of problem. The issue of right to equality is one of them. The subject of ‘equality’ is always there in the concept of ‘access to justice’. One party should not have less access to technology which gives him/her less access to justice than the other party. It means that ‘litigants must have the opportunity to present their cases in conditions without substantial disadvantage compared to the other party.’ (Human Rights Law Research Center, p. 20) The inequality of access to technology between persons may cause procedural unfairness between litigants and citizens in general. Some people will incur more pain than others. As we have discussed in the conceptual framework of ‘access to justice’, access to justice encompasses a number of core human rights. Right to equality is one of them. So the issue of equality is one of the factors considered when we discuss about courts and technology. It focuses especially on the distribution of e-filing and video conferencing centers. Access to justice includes equal access to all judicial

mechanisms. The e-litigation system must allow everyone into the system. This includes studying how the system is designed to accommodate vulnerable segments of the society; women, children, the disabled, aged people, illiterates, minorities etc. The principle of equality requires that the system should not disregard such people.

The e-litigation/ virtual justice or as some call it paperless trial requires organized and reliable infrastructures. The country's internet coverage and telecom services are vital to render the service equally everywhere. As a pilot project the Federal Supreme Court has introduced the system to limited parts of the country. The effect of such infrastructural and technical deficiencies on the right of effective access to justice is studied. The administration of justice and due process of law under e-litigation are studied.

The justice system must have public trust and confidence. Do electronic courts have such quality? The e-filing system, the video conferencing and the retrieval of courts' information at any time can increase confidence in the justice system. Corruption is rare in a system where evidence is strong. Such environment can be made possible by the e-court. The security of the system is also very important. Computer viruses, hacking, data theft, invasion of privacy and many more issues are a threat to any digitally functioning system. The integrity and confidentiality of files of clients must be protected. What safeguards are in place to counter such threats will be raised along with the major issues.

The other issue which takes large part of the paper that can show the effects of the system is the barriers the e-litigation system face in court proceedings and in the administration of justice. Any court proceeding is supposed to follow certain procedures. Especially in the criminal proceedings, there are many rights of the suspected, accused or convicted persons. The videoconferencing proceedings will be observed to check the system's compatibility with human rights principles. The practical problems which hinder the system from meeting such standards will be identified. The

perceptions and challenges being faced by the professionals in the justice sectors and litigants will be discussed at length. Nowadays, in Ethiopia, there are about 40 video conferencing centers; seven among them are set in prisons. The convicted persons can appeal from the penitentiary to the Federal Supreme Court. Additional video conferencing centers are being added to some parts of the country. In 2008 EC 13 video conferencing centers were opened. (The Federal Supreme Court, 2016) In Oromia, Amhara, Tigray, SNNP, Benishangul, Somalia are the regional states where the video conferencing services are being provided. This means much litigation is being conducted by the system. So the effectiveness of the video conferencing procedures and its sensitivity to human rights will be an issue in the paper.

Generally, when any new system is introduced, human rights values still continue to be humans' values. As long as humanity continues, changes and reforms should not reduce our commitment to human rights. Ethiopia is looking forward to be lower middle income country within few years. Development has become the major driving force behind every government's decision. And development is also the driving force behind the introduction of e-court system. Since technology increases efficiency and effectiveness, the government has put e-court system as a means to improve courts' performance. One the other hand, human rights-based approach values every development based on human right principles. This must be true for court development efforts. The efficiency and effectiveness of the courts must be measured by human rights standards. To conclude, the research will discuss the effect of e-litigation/virtual justice in the Federal Supreme Court of Ethiopia on the right of effective access to justice of citizens.

1.3 Scope of the Research

The research is limited to judicial access to justice. In particular, the e-litigation system of the Federal Supreme Court is under the scope of the research. There are fourteen ICT services in the court. Among them the e-filing and videoconferencing services are the focus of the research.

1.3.1 Operational Definitions

- **E-litigation** -the term is used to denote the e-filing services and the videoconferencing proceedings in FSC. Expressions like Court technologies, e-court or 'the system' are also used interchangeably to represent 'e-litigation'.
- **Litigant**- it is to signify anyone who appeals to the Federal Supreme Court for appellate or cassation bench.

1.4 Research Questions

The main question of the research is;

What are the effects of the e-litigation system in the Federal Supreme Court of Ethiopia on effective access to justice?

Other specific questions will include:

a) Is the program 'e-litigation' operating based on human rights-based approach and according to the principles of effective access to justice?

b) Is the system enhancing effective access to justice?

c) What rights are threatened in the current e-litigation practices of the Federal Supreme Court?

d) What are the challenges of the system and their effects on the rights of litigants?

1.5 Objective of the Study

Courts are now going through changes in their physical setup. Along with such changes new opportunities and challenges have emerged. The opportunities must be promoted well. The court's efficiency, citizen's access to information, speedy justice and virtual proximity of courts can be mentioned as achievements in Ethiopian courts. Effectiveness is being measured by delivery of services within short time. But ensuring right of access to justice has far reaching meanings than this:

it must accommodate all elements of access to justice. The objective of the research is based on this premise.

General Objective: It is to show the effects of the e-litigation system in the Federal Supreme Court on the right of effective access to justice of litigants.

Specific Objectives are:

-to examine if the e-litigation system is formulated based on human rights-based approach

-to evaluate the proceedings of the e-litigation system in light of basic rights of litigants

-to identify which rights are being compromised in the e-litigation system

-to find the causes of the problems in the system and to recommend some solutions

1.6 Significance of the Study

This study gives insight on the e-court system and access to justice. The contribution of the system enhancing access to justice is evaluated in light of human rights standards. The research can identify elements of effective access to justice which may have been compromised by the e-court system. As there is no any research conducted in Ethiopia on the e-court system in relation to human rights, this paper can contribute a piece to the subject under discussion. Let alone with regard to human rights standards, we cannot find more than two or three works on the e-court system. This work may inspire others to do further researches on the area.

This study points out some deficiencies of the e-litigation system and can help the Ethiopian courts to take some measures on the impediments. The study can shift the focus of the justice institutions from just building the infrastructure to considering human rights standards. This in turn will give an opportunity for better respect of citizens' right within such system. The research indicates some solutions to harmonize the technologies with human rights principles.

1.7 Methodology

1.7.1 Research Design

The researcher used a qualitative research approach. It is the most appropriate one for the social research. Qualitative research has the ability to provide complex textual descriptions of how people experience a given research issue; i.e the 'human' side of the issue. (Natasha Mack, 2005) A case-study method was applied to conduct the research. Case-study can be used for 'in-depth investigation of one or more examples of a current social phenomenon, like an individual, a program, an event or activity, utilizing a variety of sources of data'. (Cresswell, 2007, pp. 36-99) It is also one of the most common used methods in human rights research. (Yitayehu Alemayehu and WondemagegnTadesse, 2013). So the e-litigation system in the Federal Supreme Court was taken as a 'case' or as a 'program' to be studied and observed. The program is to be evaluated in light of human rights standards. The design, the very purpose of the program, its ways of operation and its conformity with human rights standards are the subjects of the research. The mere success of the program as planned and claimed by the government is not the parameter of the evaluation. And the research followed some evaluative approaches.

1.7.2 Sampling, Data Collection Techniques and Tools

1.7.2.1 Sampling Technique

The study employed non-probability sampling which is familiar in social studies. Among the non-probability sampling techniques purposive sampling technique was used. 'In purposive (judgmental) sampling researchers use their special knowledge or expertise about some group to select subjects who represent the population.' (Neuman, 2007) The respondents are selected purposely based on the knowledge that the researcher has about them. The respondents' experience, position in government offices and exposure to the case under study are so vital for the study. There are about 23 respondents (key informants) who have been through e-filing and videoconferencing litigations.

They are selected purposely considering their familiarity with the e-litigation for long time. The list of respondents is demonstrated below. Judge who has been working in FSC, ICT professionals, Prosecutors, defense lawyers (two of them served as judge and one among the two is the president of Tigray Bar Association), government officials who are directly related to the program are interviewed. The sampling has considered area variety; it is from A.A, Mekele, Bahirdar and Shewarobit Prison.

1.7.2.2 Data Collection Tools

In qualitative research observation, interview and document review are the commonest data collection tools. (Cresswell, 2007) They are usually categorized as primary and secondary source data. For this research, as a primary data sources in-depth interviews and observation were employed and document review as a secondary data source.

Primary Data Sources

In-depth Interview

Interviews were the major tool of collecting data for this study. It is the most appropriate and convenient way for this research. In-depth interviews were conducted with officials of Information Technology Directorate of the Federal Supreme Court, judge and ICT professionals of the court. Officials in Ministry of Communication and Information Technology (MCIT), Information Network Security Agency (INSA), prosecutors of the Federal Attorney General, the Federal Prisons Administration, Convicts and defense lawyers are interviewed. This helped the researcher to analyze how the video-conferencing and e-filing services are felt by various actors of the justice sector and citizens. The interviews followed semi-structured approach. List of questions were prepared in advance for each of the respondents. But additional and random questions were also raised during the sessions. All of my informants are key informants. As our case is a 'program' that has been being implemented, the respondents are selected considering their assumed contribution and relation to the program. Most of the interviews are recorded using Sony IC recorder and smart phone.

Type of Respondents	Status of Respondents	No. of Resps.
Judge	Judge in FSC	1
Public Prosecutors	Federal Attorney General	2
Attorneys	Federal/Amhara/Tigray	3
ICT professionals	In FSC and in Bahirdar	4
Litigants/Prisoners	In Bahirdar/in A.A/in Shewarobit Prison	9
Officials in Government Offices	-ICT Director of FSC -Director in the Federal Prisons Administration -e-government Director in MCIT	3

Table1 Key Informants Selected for the Interview

Non-participant Observation

The researcher personally observed the e-litigations in the Federal Supreme Court and visited the technologies. 'The distinctive feature of Observation as a research process is that it offers an investigator the opportunity to gather 'live' data from naturally occurring social situations.' (Louis Cohen, 2007, pp. 396-413) In observation the researcher can see directly what is going on. This is another primary source of data for the research. It helped the researcher to examine how the technologies can be felt by the people. The observation included five sessions of videoconferencing proceedings and two rounds of visitation of e-filing service of the court. Through these live e-litigations observations it was possible to see in what ways the technologies are promoting access to justice and in what way they are deterring it. This has helped the researcher to contemplate, if the e-court system is devised in a human rights-based approach and its actual picture in relation to effective access to justice. Through observation the researcher was able to see the gaps of the system and possible ways of filling the gaps.

Secondary Data Source

Document Review

As a secondary source of data, documents were consulted in selective manner. Documents revision is a significant part in qualitative research. Documents related to the e-court systems in Ethiopia, studies conducted in Ethiopia and by other independent organs on the e-court system and documents on international experiences were studied. Scholarly materials, books, journal articles, websites, conference proceedings, and other materials on access to justice and court technologies were also part of the review. Laws, including human rights instruments, magazines and other publications, policies and program documents are consulted. The document reviews helped the researcher to establish theoretical framework on access to justice and e-litigation and also served as a ground to analyze the practices of e-litigation system in the Federal Supreme Court.

1.7.3 Analysis

The researcher followed interpretative approach in analyzing the data. In such approach, the data obtained through interviews and the observations will be transcribed and interpreted based on the theoretical orientation taken by the researcher. (Bruce L.Berg, 2001, p. 238) After observing the e-litigation sessions and interviewing the informants, the data were transcribed and coded into different categories. The coding was done both manually (color coding) and by computer. The codes were reduced to three broad themes. The one which shows the benefits of e-litigation was put in one category. The challenges of the system were put in another category. The challenge category was also sub-categorized based on different themes.

The third category is a discussion on how the challenges of the system are affecting effective access to justice and human rights of citizen was deeply discussed based on the selected statements from the transcripts. The theoretical frameworks of effective access to justice and human rights-based approach were taken as bases to interpret the data. The existent image of the system in the Federal

Supreme Court was thoroughly discussed based on the experiences of the participants and the observation of the researcher. The aim of the analysis was to show how the principles of effective access to justice are being affected in the e-litigation system. In addition, the system was also evaluated for compliance with human rights-based approach.

1.8 Ethical Considerations

Research has its own ethical guides; especially interview. Explaining the purpose of the research for the participants, protection of confidentiality and obtaining informed consent are some of them. (Natasha Mack, 2005, pp. 29-49) While interviewing the respondents, the researcher considered all the necessary ethical issues. First he made sure that none of the interviewees will suffer harm being informant. The researcher considered the rights of all participants; including their right not to answer a question and their right not to be recorded. Six of the respondents have refused recording and their choice was respected. All of the respondents were asked for their prior consent and was acquired before the interview. The purpose of the interview was explained for them and they gave their informed consent. The issue of confidentiality and anonymity were also given due care. The researcher has respected the interest of respondents who did not want their name to be disclosed. Especially the identity of the prisoners is coded as 'Respondent' followed by numbers. The information acquired by the interviews has been used only for the intended purpose. The respondents have been assured of the confidentiality of whatever they say during the interviews.

1.9 Organization of the Study

The research is comprised of five chapters. The first chapter is the introductory part of the research. It discusses the background of the research, Statement of the problem, significance and objective of the research. The research methodology is also discussed in detail. The second chapter is the literature review part. Detailed discussion of legal and human rights aspects of access to justice was made and the theoretical framework is established. Effective access to justice and human rights-

based approach are the major issues under this discussion. The third chapter focuses on the use of court technologies in international arena and domestically. Specifically video-conferencing and e-filing are the central issue of the discussions. The benefits and the challenges of the e-litigation system are raised. The fourth chapter, which is the finding and analysis part, focuses on narrating the findings and giving interpretation for the data collected, with the parameters of human rights standards. In the fifth and final chapter of the paper, the researcher concluded the whole discussion and put forward recommendations.

1.10 Challenges of the Study

The researcher faced three challenges through the course of this research. One, there is no any research conducted in Ethiopia on the issue 'e-litigation and access to justice'. Most of the materials found focus either on the technologies only or on the concept of access to justice. Those sources which were found from other countries are also very limited. Two, it was so challenging to find some of the government officials and convicts who appeared through e-litigation. And most of them were not as such open to discuss the gaps of the system. Three, time and financial constraints have also limited the researcher, to some extent, from observing all centers of the e-litigation system.

The researcher used his maximum effort to find materials from other countries and adapt them to the context of Ethiopia. The researcher also relied mostly on primary sources to maximize the validity of the research. Many interviews with concerned participants and repetitive observations of live e-litigations have helped the researcher to have more accurate picture of the system. Government officials and litigants, especially prisoners, were found after consecutive efforts.

Chapter Two

Access to Justice: Theoretical Framework

2.1 Why Access to Justice

People seek 'justice' in spite of their diverse understanding of the word. Most of the struggles in human history were made for justice. Individuals and groups always come across with the issue of 'justice' in their relation to one another or in a relation to their governments. The issue of 'access to justice' arises when people look for a remedy for violation of their rights. 'Access to justice is a fundamental human right, as well as a key means to defend other rights.' (UNDP, 2005) As a fundamental human right, the issue of access to justice has been a subject of interest in various legal and human rights discussions. In addition, access to civil justice and effective criminal justice system are mentioned as the factors of rule of law. (Measuring the Rule of Law, 2010) Access to justice in its fullest form will give citizens the opportunity to share the fruits of rule of law. Ensuring effective access to justice is a way of ensuring legitimacy of states. 'Effective access to justice can thus be seen as the most basic requirement-the most basic 'human right'--of a modern, egalitarian legal system which purports to guarantee, and not merely proclaim, the legal rights of all.' (Garth, Mauro Cappelletti and Bryant, 1978) Effectiveness is being able to be used (accessed) by everyone. Shami Chakrabarti has strengthened this statement. ''Fundamental rights and freedoms and the rule of law are vital checks and balances in any civilized society- but meaningless without access to justice or the practical means of understanding and enforcing the law of the land.'' (theguardian, 2011)

The famous Italian Jurist Mauro Cappelleti once said, ''the right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance ….effective access to justice can be seen as the most basic requirement, the most basic human right, of a system which purports to guarantee legal right.'' Effective access to justice considers all other rights of citizens. The contemporary understanding of the notion 'access to justice' is broad and also the outcome of

attainment of many other human rights. 'Access to justice enables individuals to protect themselves against infringements of their rights, to remedy civil wrings, to hold executive power accountable and to defend themselves in criminal proceedings. It is an important element of the rule of law and cuts across civil, criminal and administrative laws.' (EU Agency for Fundamental Rights and Council of Europe, p. 16) So, when we talk about access to justice, implicitly we are talking about the whole package of human rights and state's administration.

2.2 The Development of the Conception of Access to Justice and the Current Understanding

Different scholars, international human rights documents and organizations have defined access to justice in different approaches. Understanding about access to justice has been growing and its meaning has been expanding through time. 'The concept of access to justice has been undergoing an important transformation, corresponding to a comparable change in civil procedural scholarship and teaching.' (Garth, Mauro Cappelletti and Bryant, 1978) In this reading, right of access to justice was considered as right of access to court and anyone who can afford can go and vindicate his/her right. States were not considered as responsible to endow all segments of their citizens with access to justice. 'Formal, not effective, access to justice – formal, not effective, equality- was all that was sought.' (Garth, Mauro Cappelletti and Bryant, 1978) The major focus was on formality rather than effectiveness. The poor and the disadvantaged were out of the system. Later the scholarly deliberations and the emergence of human rights standards have changed the notion, access to justice, to effective and human rights-based approach to access to justice. 'In its ordinary usage, the term 'access to justice' is a synonym of judicial protection…. From a point of view of the individual, the term would normally refer to the right to seek a remedy before a court of law or a tribunal…' (Francioni, 2007) Francioni refers to such usage of the term as narrower and more technical. A broader understanding of access to justice goes beyond this usual and narrow conception of the notion of access to justice.

Cappelleti and Garth have reiterated that, the justice system must be equally accessible to all; second, it must lead to results that are individually and socially just.' (Garth, Mauro Cappelletti and Bryant, 1978) According to this explanation the system where access to justice is ensured, is the one which is legal, equally accessible, fair, just and operates under the patronage of the state. We can see that the concept of access to justice refers to both process and result.

A good number of the definitions of 'access to justice' are founded on access to services delivered by justice institutions. For instance according to Francioni, 'in a general manner, the term 'access to justice', is employed to signify the possibility for the individual to bring a claim before a court and have a court adjudicate it. In a more qualified meaning access to justice is used to signify the right of an individual not only to enter a court of law, but to have his or her case heard and adjudicated in accordance with substantive standards of fairness and justice.' (Francioni, 2007) According to this author, in addition to access to the adjudication system, the case must be tried in accordance with appropriate laws and procedures. Mere appearance at a court of law will not make it access to justice if the process and the outcome is arbitrary. 'Access to justice is both a process and a goal, and is crucial for individuals seeking to benefit from other procedural and substantive rights.' (EU Agency for Fundamental Rights and Council of Europe, 2016)

The Ethiopian constitution also defined access to justice. Article 37 of the FDRE constitution defines right of access to justice as a right to bring a justiciable matter to a court or any competent body with judicial power and get decision or judgment. (FDRE Constitution, 1995) Even if this provision seems to interpret access to justice in its narrower sense, the Constitution incorporates almost all of the major human rights and specific provisions which call for a broader and more substantive approach to access to justice: right to have a fair trial, the establishment of independent judiciary, the right to representation and others. The Constitution has laid the foundation for effective access to justice. (Kokebe, May 2014)

We can also find a broader definition of access to justice by UNDP. 'The ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards' is access to justice.' (UNDP, 2005, p. 5) Now, the justice institutions are diverse and the delivery of justice is expected to conform to human rights standards. This is a different approach to access to justice and is known as a human rights-based approach to access to justice. From the definitions we can infer that effective access to justice requires legal systems/institutions, substantive and procedural laws, state's commitment and observation of human rights standards. In one text it is shown that conceptual framework for access to justice should include normative framework, legal awareness, access to appropriate forum, effective handling of grievances and satisfactory remedies. (Rooij, 2008) This framework displays comprehensive approach to access to justice. States must provide appropriate laws from which citizens can claim their rights. Then citizens must be acquainted with the rights they have. States are also expected to set up the institutions that provide justice and the handling of grievances must be fair and effective. In other writing equality is raised as basic component of access to justice; 'equal access to justice suggests that everyone, even those with severely limited financial resources, legal knowledge, and time, can navigate the legal system and obtain a just outcome.' (American Association of Law Libraries, 2014)

Justice is for all. Someone's financial, physical, educational, family, racial, sexual, religious or any other status should not be a ground to deny equal access to justice. As one of the vital human rights, the principle of equality must be observed in providing access to justice. Fair and equal access to justice gives meaning to rights. The Access to Justice Advisory Committee of Australia states that the concept 'access to justice' involves three key elements; equality of access to legal services, national equity and equality before the law. (Access to Justice Advisory Committee, 1994) According to this definition ensuring equality of access to high quality services of justice sector, regardless of any ground is so important. The legal services should also be dispensed in equity nationally.

When we put the above definitions together, we can find a broader conception of access to justice. 'The broader conception of access to justice is concerned with the substantive aspect of justice: the use of the legal system as a tool to achieve overall social justice.' (Kokebe, May 2014, p. 14) Access to justice is beyond access to courts and beyond claiming rights within the formal justice system. 'It goes beyond formal aspects of access to legal services and justice dispensing institutions and reflects better all aspects of that guarantees not merely formal justice (equality in accessing the justice system) but substantive justice.' (Kokebe, May 2014) Some years ago The Guardian, the famous newspaper in the UK, published a discussion on access to justice following cuts to legal aid by the government. Scholars and lawyers gave their views on access to justice. According to Professor Richard Moorhead, ''justice doesn't mean access to lawyers and courts. . . . It means everyone having some basic understanding about their rights. It means making law less complex and more intelligible.' (theguardian, 2011) As noted by another scholar 'access to justice encompasses recognition that everyone is entitled to the protection of the law and that rights are meaningless unless they can be enforced. It is about protecting ordinary and vulnerable people and solving their problem.'

Access to justice is about dealing with the real problems of the society and resolving disputes effectively. While doing so, basic rights of citizens must be at the center of the whole process. We have to see access to justice broadly in a manner that encompasses all aspects of human rights. 'This broader approach to access to justice is a result of a growing international movement to reconceptualize access to justice in a comprehensive manner based on human rights standards.' (Kokebe, May 2014) So nowadays, in a broader conception of access to justice, human rights are the standards. Effective access to justice can be summarized with five basic points; legal protection, legal awareness, access to legal service, access to adjudication system and effective enforcement of decisions. Throughout these steps equality and non-discrimination are indispensable. Any access to

legal means doesn't amount to ensuring access to 'justice', if it ignores some section of the society. The word 'justice' itself implies equality and fairness in the accessibility of the service.

Effective access to justice means, in other words, avoiding impediments to fair and equal access to justice. In the justice system of many countries 'poor accessibility' is the main challenge. 'Among the most common problems are practical barriers: such as lack of knowledge about rights, remedies and possibilities for action, physical distance from legal institutions, unaffordable court fees, bureaucratic procedures, strict criteria regarding standing, long backlogs and delays, and costly/scarce legal assistance.' (Elin Skaar, 2004, p. 4). People are incapable of taking their cases to courts due to these barriers. People cannot enforce their legal rights due to procedural complexities or due to lack of knowledge on where to take their cases. All these barriers make the judicial system of many countries the source of complaints and grievances.

The scope of this research is limited to judicial access to justice. Among the means to judicial services, technological access to courts is selected. In the e-litigation system the infrastructures of ICT system will be an issue to ensure access to judicial means. But the principles of access to justice will remain intact, in whatever mode the justice system functions. Here the concept 'effective access to justice' must be noted. Rhetorical claim of ensuring access to justice doesn't guarantee that there is actual access to justice. The mere presence of the right of access to justice on legal documents does not guarantee that people are able to practically enjoy meaningful access to courts. Even the mere setting up of ICT gadgets in court rooms does not prove accessibility to justice. Still barriers to effective access to justice such as high costs of litigation, delayed justice, physical inaccessibility of courts, legal illiteracy and others obstacles must be addressed. Court's technology must be evaluated by human rights standards and factors of effective access to justice. New challenges come with new developments. The gaps of the e-litigation system need to be examined and filled.

> ‘In fact several recent studies and researches have shown that the developments and introduction of ICT in the justice sector is proving more complex than expected, especially when moving outside the traditional borders of the court. The justice administrations and other public and private institutions dealing with access to justice through-or with the support of- electronic means, are discovering that technology is not a neutral device for the improvement of efficiency and the reduction of costs.’ (Velicogna, 2011)

This statement shows technology has not solved everything rather it came with its own complexities. The e-court system needs strong ICT infrastructures, technology awareness, and fair distribution to promote effective access to justice. All elements of effective access to justice must be implemented in the e-litigation system. The barriers to justice in the e-litigation system must be identified and avoided to achieve effective access to justice.

2.3 International Human Rights Instruments and Access to Justice

Most of the international human rights instruments do not directly mention the term ‘access to justice’. But as we can understand from the definitions of the term, the instruments discussed rudiments of access to justice in one way or another.

> ‘At the outset, it is worth noting that the term ‘access to justice’ is not used as such in the language of most international human rights instruments. UDHR and ECHR, for example, speak of ‘effective remedy’, while the American Convention uses the terms ‘prompt recourse’ and ‘effective recourse’. The Covenant on Civil and Political Rights uses different expressions in different provisions: ‘effective remedy’; the right ‘to take proceedings before a court’; and ‘to a fair and public hearing’. (Francioni, 2007, pp. 95-96)

So we can notice that even if we cannot find the term itself, we can see that aspects of it are recognized widely. Article 8 of the UDHR which reads, ‘Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by

the constitution or by law.' This is the narrower conception of access to justice which implies judicial remedy. While seeking an effective remedy everyone is entitled to be treated equally (Art 7). The criminal proceedings are supposed to be conducted with full equality, fairness, publicly and by an independent tribunal with the right of the suspect to be presumed innocent. (Art 10, Art 11) In any civil and criminal proceedings certain rights of people are expected to be respected according to this declaration. And all the rights are recognized for everyone without any distinction according to Art 2 of the UDHR.

International Covenant on Civil and Political Rights (ICCPR) has a wider view of access to justice. Art 2(3(a)) of the convention lays an obligation on states to 'ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity…' In addition to effective remedy by a competent organ, states are expected to develop the possibilities (options) of judicial remedy to their people (Art 2(3(b)). Effective execution of the remedies given is also provided as the obligation of the states. In addition, the Human Rights Committee (HRC) has opined that 'States are expected to adopt legislative, judicial administrative, educative and other appropriate measures to in order to fulfill their legal obligation.' (Human Rights Committee, 2004) This opinion of the HRC imports a broader view of access to justice. Rights awareness creation, legislative measures and other proper means for effective access to justice are expected from states.

ICCPR clearly sets how a criminal justice proceeding should be conducted. If a person faces a criminal charge, certain protections are endowed to him to make the justice system fair. A number of rights of a person who is facing a criminal charge are found in the ICCPR (Art 14 and Art 15). Individuals in contact with the criminal justice system are afforded various rights from the moment of detention to the final level of conviction or acquittal. The right to be presumed innocent, the right to fair and public hearing, the right to counsel, the right to expedient trial, the right to be treated equally at each stage of trial, are some of the rights to be observed in the administration of criminal

justice. This confirms ‘due process of law’ is significant component of effective access to justice. The HRC clearly states, ‘a situation in which an individual’s attempt to access the competent courts or tribunals de jure or de facto runs counter to the guarantee of Art 14.’ (Human Rights Committee, p. 3) This means any barrier (financial, social, cultural…) that erodes, in practice, individuals’ ability to claim justice must be tackled by states. ‘The removal of these barriers is the obligation of states and requires, for instance, information about rights and laws, assistance in perusing a legal matter, and overarching affordable legal system.’ (Kovacs, 2015) The general comments seem to take the broader conception of access to justice. The two basic manifestation of effective access to justice, providing the means to justice and avoiding barriers to justice, are well manifested in ICCPR.

The Convention on the Rights of Persons with Disabilities (CRPD) directly refers to the term ‘access to justice’ in Article 13. Art 15(2) of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art 5(a) International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Article 7 of African Charter on Human and Peoples Rights (ACHPR) and other international and regional human rights instruments put access to justice as a basic human right. The European Convention on Human Rights and the EU Charter on Human Rights highlight two components of access to justice; the rights to a fair trial and the rights to an effective remedy. The instruments focus on the whole process of justice and also the outcome. (EU Agency for Fundamental Rights and Council of Europe, 2016) Francioni agrees that ‘from the point of view of international law, states enjoy a wide latitude of freedom in the organization of their domestic system of legal remedies.’ (Francioni, 2007, p. 69) As long as necessary legislative, judicial and administrative measures are taken, the conventions do not put any strict procedure on the domestic organization of justice institutions. But the conventions put the obligations related to effective access to justice entirely on states. And states are obliged to follow basic human rights principles while administering justice.

2.4 Human Right-based Approach to Access to Justice

In one research report three areas of barriers to access to justice are identified: namely societal and cultural barriers, institutional barriers and intersectional barriers. Under societal and cultural barriers there are poverty, illiteracy and discrimination. The institutional barriers are mentioned to be insufficient governmental resources, inadequate organization of justice institutions, limited legal assistance and representation and the lack of enforcement of decisions. Lack of public trust in lawyers and judges and corruption, generally in the justice system, are intersectional barriers which can be found in connection with the former two barriers. (MCnamara, October 2014, pp. 14-32) These barriers affect the right of access to justice and other human rights which can be achieved through effective access to justice. These barriers affect the rights of suspected, accused and convicted persons. They also affect economic, civil and political rights of people. Many provisions of international and regional human rights instruments will be violated. Women, the disabled, the minorities and other disadvantaged groups will be harmed. So, those barriers are actually a human right issue.

If we closely examine the above impediments, most of them are linked to lack of adequate development. A well guided development process can take care of such problems: development which takes human rights as a series deal. The 2000 UNDP human development report states, ‘human rights and human development share a common vision and common purpose- to secure, for every human being, freedom, well-being and dignity. (UNDP, 2000) Development brings freedom from discrimination, fear, injustice and violation of the rule of law. The latest concept of development which can help to avoid barriers to effective access to justice is a human rights-based approach to development.

The concept of human right-based approach to development emerged as the UN’s new strategy in 2003. According to the human right-based approach (HRBA) portal, the UN agencies have concluded the common understanding with three basic points. One, all programs of development

cooperation, policies and technical assistance should further the realization of human rights. Two, human rights principles should guide all development activities. Three, development activities must develop the capacities of states to meet their human rights duty to the people. (UN HRBA Portal, 2016)

Development activities in any field must be intended to further the realization of human rights. Development activities which are performed for the sake of development only, may not consider human rights principles. Development programs may incidentally address some human rights issues. But the UN clearly states, incidental realization of human rights does not count as human right-based approach. Developments are for humans. Humans are the center of development and development without humans is meaningless. It would be ridiculous if it ignores human rights of people. The impact of development must be reflected on humans equally. 'It (human right-based approach) seeks to analyze inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distribution of power that impede development process.' (OHCHR, p. 15) Development is expected to be guided by the principle of equality. If development is carved according to human rights-based approach, the poor and the deprived will get attention. The noble prize winner economist Amartya Sen has said, 'progress is more plausibly judged by the reduction of deprivation than by the further enrichment of the opulent.' Development must be measured by its success in reaching the deprived ones. Human rights- based approach to development make every human the center of attention without discrimination and inequality. It should focus on empowering the disempowered. 'The value of using human rights as a framework for development is that human rights protect the basic well-being of all persons, including those disadvantaged and/or are excluded from participating in the development process.' (UN HRBA Portal, 2016) The human rights principles to be respected in development processes are; universality and inalienability; interdependence and inter-relatedness; non-discrimination and

equality; participation and inclusion; accountability and the rule of law. (UN HRBA Portal, 2016) So, any development should be bound by these principles.

Justice sector is one of the areas of states' development targets. 'A human rights-based approach to access to justice is part of the human rights-based approach to development. In this case, human rights standards serve as a qualitative parameter for both the type of justice outcomes and the process undertaken to reach such outcomes.' (Kokebe, May 2014) Human development and access to justice are directly linked. Development can promote access to justice and quality of justice if planned by human rights-based approach. And effective access to justice can promote development if fairly distributed. The definitions of effective access to justice demand consideration of basic human rights principles. Effective access to justice is about equality, fairness and non-discrimination. Access to justice, as a human right and as a means to claim other rights, must be the concern of development programs. As the UNDP states, right-based approach to access to justice differ from conventional methods, since it puts it in the context of a human rights/legal framework. It also gives priority to the most vulnerable groups. The accountability of duty bearer and the empowerment of right bearer is also important part. Non-discrimination and participation of the society at every step of justice programming is set as an important point. (UN HRBA Portal, 2016) This promotes effective access to justice. Any development program which promotes access to justice, the formal and informal justice sector, must be based on human rights principles. Without this, development can be a source of inequality and unfairness. The foundation and the ultimate goal of development activities to enhance access to justice are human rights.

It is obvious that development programs in the justice system cannot benefit everyone at a time. In such cases a human rights-based approach has set out a priority. If development programs cannot reach everybody at once, priority must be given to the most marginalized. (OHCHR, p. 23) The justice system should assist the weak ones first. In human rights-based approach to justice,

development programs must aspire to level up the capacity of the poor, the disadvantaged and the marginalized. This helps them to go with the privileged in equal, at least near equal, footing. This is one way of ensuring equality of access to the justice system. Some programs in justice sector could be discriminatory; unintentionally. Unintentional or indirect discrimination in the justice system is seriously disapproved in the human rights-based approach. (OHCHR, 2006, p. 24) The justice is system should be fair in a human rights-based approach. Human rights standards serve as parameters, in relation to justice, of fairness in three dimensions of justice: normative, procedural and structural. (Kokebe, May 2014) Public participation is also an important issue. The public must take part in each development processes of the justice system. The public must feel sense of ownership in the state's development activities. It should not be alien to any development programs in the justice sector. In the human rights-based approach the selection our indicators to developments are guided by human rights standards. (OHCHR, 2006) When we monitor development programs in the justice sector, human rights standards will be employed. The mere claim of success by states and other indicators may not ensure if the justice system is working well.

Human rights-based approach enable states to avoid any legal, institutional, social and other factors which are barriers to effective access to justice. States' lack of commitment, lack of legal knowledge, complexity of laws and legal procedures, lack of legal representation, high costs of litigation, undue delay of proceedings, absence of laws for the disenfranchised, disregard of informal dispute resolution institutions are some of the barriers to effective access to justice. (Kokebe, May 2014) These barriers hinder people from claiming their rights and from getting fair results from the justice sector. The substantial and institutional measures of states will be right-sensitive if conducted by such approach. And states are supposed to base their plans on human rights principles. States may introduce new systems in a result approach. But this can go hand in hand with human rights based

approach. Since human rights-based approach requires participation, it will support result based approach. Results will not be sustainable without public's participation. (OHCHR, 2006, p. 30)

Human rights-based approach to justice is complying with human rights standards throughout the whole process of justice. The standards must be applied when the Federal Supreme Court of Ethiopia introduced the e-litigation system. It must consider if the system can serve the society equally, brings fair procedure and outcome to all litigants equally, serve the poor and the disadvantaged, if awareness is created about the system and others. The e-litigation system must be checked against these standards if it needs to base on a human rights-based approach. The whole processes and outcomes of the e-litigation system must conform to human rights standards and elements of effective access to justice. The human rights-based approach to access to justice adapts all elements of effective access to justice. Creating legal protection and legal awareness, access to legal services, access to justice institutions and effective enforcement of decisions are the major elements of effective access to justice. (Kokebe, May 2014) All of these must be delivered to the society equally and without discrimination.

Chapter Three

Electronic Litigation and Access to Justice

3.1 Background

The introduction of court technologies in Ethiopia is part of the FDRE's ICT initiative to form e-government and to create woreda-net and school-net projects in 1990s EC. The ICT initiative which aspired to connect higher and lower levels of government offices gave birth to e-court or virtual justice system. (Solomon Amare, 2017) In addition to the arrangements by the then Ministry of Capacity Building, the justice sector has planned by itself, the need for the promotion of ICT in the sector as a means to achieve effective and efficient justice. Under woreda-net project 630 woredas were connected. 'The objective was to provide ICT services like video-conferencing, messaging, directory, VoIP and internet at the federal, regional and lowest levels of government throughout the country.' (Ministry of Communicationa and Information Technology, p. 9) . The system was also planned in schools to integrate ICT in the educational system of Ethiopia. All ministries and agencies were also part of the woreda-net project. This was mainly planned to promote accountability and transparency of the government and to increase public participation. (Hare, p. 9) The launch of the government portal is outcome of this initiative. Video conferencing was being applied for conferences and meetings, court services, training and distance education.

The then Minister of Capacity Building Mr. Tefera Waluwa was quoted as saying 'our vision is to make comprehensive use of information and communications technology to accelerate the democratization and development of the country.' (Cisco Systems.Inc Internet Business Solutions Group, 2006) The late Prime Minister Meles Zenawi has said the following strengthening the above statement.

> 'Not long ago, many of us felt that we were too poor to seriously invest in information and communication technology. Now we believe that we are too poor not to invest as much we can

in ICT. We realize that while ICT may be luxury for the rich, for us- for poor countries- it is a crucial weapon to fight poverty and thus ensure our survival.'

So integration of Government offices and schools, eradication of poverty, good governance and public participation are the main reason behind these projects. The Ministry of Communication and Information Technology has put the guiding principles of e-government. Mainly it focuses creating SMART (simple, moral, accountable, responsive and transparent) government. It is also taken as a transformation tool and citizen-centric. It is expected to assist in the development process. (Ministry of Communicationa and Information Technology (MCIT), 2016) So, the e-court system is guided by these principles.

3.2 e-litigation in the Federal Supreme Court of Ethiopia and Access to Justice

'When the program of ICT in the Ethiopian court was launched, it was with the intention that justice must be accessible for all. Citizens should not be denied of justice due to lack of money or geographical barriers. They should be able to open files from wherever they are without incurring accommodation costs.' (Solomon Amare, 2017). The idea came from when the late Prime Minister Meles Zenawi visited different countries in mid 1990s EC. Then the woreda-net and school-net projects were introduced in the country by the then Ministry of Capacity Building as part of the public sector capacity building program which included courts and other justice sectors. ''When the woreda-net program was launched, the services that can be delivered using it were thought on. Especially for sectors which deliver services and where distance is a barrier, it was so helpful. So, the digitization of courts is done with the great initiative of the Federal Supreme Court.'' (Abiyot Bayu, 2017)

The Ethiopian judicial system is marked by a lot of deficiencies and lack of access to courts and documents thereof. In the Baseline Study Report of 2005 on the justice system, major shortcomings of the judicial system were identified. To mention some of them; limited access to legal information,

inaccessibility of the judicial system itself, non-responsiveness to the needs of the poor, non-independence of the judiciary, corruption, limited access to court judgments and court information, inadequacy of judges and others. (Ministry of Capacity Building, February 2005, pp. 159-177). Many reforms were introduced through different government initiatives. Even after many years, since the reform measures have been taken the problems are still there. In a conference held by the Federal Supreme Court in association with Fana Broadcasting Corporate (FBC) in February 2016, similar problems were mentioned by officials and participants. The former vice president of the Court Mr. Medin Kiros said in the conference; ‘‘……in spite of the good outcomes achieved throughout the past years, some problems are still lingering. Still the satisfaction of the public is not attained. Lack of fair judgment and lack of trust on the system are still challenges of the justice system.’’ (Ethiopian Federal Courts, 2016) When citizens seek services from courts they get inadequate services. The current President of FSC, Mr. Dagne Melaku affirmed the above statement at the event of the 7th National Justice Week celebrated in May 2017. He said that the judicial sector has not yet satisfied justice demand of citizens and has not yet gained public trust. (Federal Justice Sectors, 2017) According to the opinions of the Court and other stakeholders, the backlogs of cases are so high. Corruption, financial constraints and unfit judges challenge the judicial system. Simply we can say there are many problems identified in the system which hindered ‘access to justice’.

Then Justice Sector Reform Program and Courts Reform Program embraced the issue of ICT largely. The Baseline Study for the Comprehensive Justice Sector Reform Program (CJSRP) put computerization or ICT as one of the recommendations to improve the justice sector. (Ministry of Capacity Building, February 2005, p. 223). Recommendation 12 points out to expanding computerization of courts starting from pilot courts to all courts throughout the country. The development of software and hardware to automate the case management system were suggested in the recommendation.

In the first Growth and Transformation Plan (GTP I), the target of the Ethiopian justice sector was put as 'to strengthen the constitutional system and ensure the rule of law, make the justice system effective, efficient and accessible as well as more independent, transparent and accountable.' (GTP I, November 2010) The mission statement of the justice sector for the GTP I period was to ensure peace and security of citizens and residents, respect and protect the human rights and democratic rights of citizens and residents, ensure rule of law, and provide speedy, equitable, cost-effective and accessible justice for all. (GTP I, 2010, p. 101) One of the objectives of the plan was to enhance the use of ICT in the reform process. ICT supported court systems and computerized file and document handling was promised. The establishment of National Integrated Justice Information System (NIJIS) and maximum utilization of ICT in all training centers were also planned. (Ministry of Finance and Economic Development, pp. 102-103). In the Second Growth and Transformation Plan (GTP II) the judicial sector set out the goal of making the justice sector efficient and effective. Enhancing ICT support to judicial services, expansion of circuit benches, delivering court services throughout the year are some of the targets in GTP II. (GTP II, April 2015). The Strategic Plan of Federal Courts for 2015/16-2019/20 mentions the need to utilize ICT tools to enhance judicial service. (Strategic Plan of Federal Courts for 2015/16 – 2019/20, June 2015) Based on such strategic and policy considerations, the federal courts, especially the Federal Supreme Court, and some regional state courts have introduced ICT based services to the public. ICT alone cannot resolve all problems of the judicial sector. But it can contribute a lot in many ways. The strategic plan in GTP II is to make the number of additional e-filing centers 11and the number of videoconferencing centers to 100. (National Planning Commisssion, 2016, p. 68)

Totally there are 14 types of technologies which are being used in the Federal Supreme Court. One of the technologies introduced in Ethiopian courts is child friendly technologically assisted benches (the children bench). It follows informal procedures. The benches are set to be comfortable for children by considering their physical and psychological status. The language use is also simple

which can be easily understandable by children. The victim children will be put in a room with Closed Circuit Television System (CCTV) so that they won't be face to face with offenders or not stressed by the number of the people while witnessing. The judges will communicate with the child via the CCTV with the assistance of a social worker by the side of the child. (The Federal Supreme Court, 2016) The Child Justice Project of the court has worked a lot to ensure constitutional rights of children. CCTV technology is one of the measures. (2013, p. 37)

E-Filing is another ICT based service in courts which is cost-effective. Clients can file their cases using internet from wherever they are. 'E-filing involves using the Internet and appropriate software to send documents (pleadings, motions, transcripts, trial court records, and briefs) to an appellate court. Clients from regional states need not go to Addis Ababa to institute their case, pay court fee, to collect summon papers or other documents necessary for litigation. They will be spared from transport and accommodation costs. Court orders and judgments can easily be wired through internet.

Video Conferencing Technology is now getting familiar in Ethiopian courts. It was first started in four cities; Addis Ababa, Mekele, Bahir Dar and Hawassa. Initially it was used for the Red Terror trials in 1997/98 EC. (Solomon Amare, 2017) Then it was expanded to other trials and to various centers since 2003 EC. Now there are 40 video-conferencing centers in the country. (Solomon Amare, 2017) Litigants who live near these centers can attend their case without the need to physically present at the Federal Supreme Court premise in Addis Ababa. The technology is available even from prisons facilities where prisoners can stand their trial. The Federal Supreme Court is not as such obliged to operate in circuit benches like before, since they can preside through video conferencing from Addis Ababa. And the federal judges will not leave their benches to render circuit service. It is alleged to be cost effective for clients and the government. People are getting service without the need to leave their locality and without incurring high cost of transport and accommodation. In each year, since 2003 EC, 1700 to 2000 cases are handled through video

conferencing. (Chilot Magazine Vol. 1 No. 3, 2015, p. 21) There are about thirty to forty videoconferencing proceedings per day in the Federal Supreme Court. (Solomon Amare, 2017)

There are also other technologies like sound recording, transcribing and scanning which simplify workloads of court staff and judges. The 992 toll Free Call service is also available since June 2014 for clients who want to get information about their pending cases. The toll free call service provides information for media, for free legal service (especially concerning children) and further information about the court. The other technological tool deployed by the court is the touch screen application. It is a big computerized screen set at the reception where clients with IT knowledge can track the status of their respective cases. They just can enter their case number without the need to seek help from anyone.

There is also LED screen which helps clients to check whether their case is in the list of cases for the day. The website of the federal courts, www.fsc.gov.et, is also giving service since 2007 GC. The website is linked with the court's database; it gives information about clients' case, cases status and adjournment. Various laws, cassation decisions and activities of the court are available on the website. (Chilot Magazine Vol. 1 No. 3, 2015, p. 25) Court Case Management System (CCMS) is a modern case management system which enters all information into a computer system. This application has enabled courts to give information to their clients and to know how many cases are tried or adjourned. Delivering information to citizens is the backbone of any justice system.

> 'Legal information management is the backbone of an efficient judiciary. Courts of law depend on the quality of information relating to the case to be able to do justice to all the parties. In the cases where information and records are not properly managed, the court of law is unable to make an impartial and all inclusive quality decision, thus, depriving the aim of judicial institutions to bestow legal rights to individuals and society.' (Wan Satirah Wan Mohd Saman, 2013)

The federal courts have been using the application since 2000 GC. These all information technologies in the court are significant to support the delivery of quality justice. Quality justice in turn is important for the promotion of human rights of citizens. The National Human Rights Action Plan puts the automation of courts as one of the measures to promote access to justice. This shows that use of technology to promote access to justice is taken as a human rights promotion measure. It is one of the issues in the first Human Rights Action Plan of the country.

> 'With the utilization of modern video conference technology the accessibility of courts has been enhanced and prisoners are able to submit their appeals and petitions to federal courts without being subjected to the rigors of transportation and physical presence…… substantial costs and time has been saved and the access to justice improved in some regions by the use of 'plasma television' which allow litigation to be conducted without physical attendance by the parties.' (National Human Rights Action Plan 2013-2015, 2013, p. 50)

The Ministry of Communication and Information Technology has invested more than 1.8 billion birr to improve the ICT services of the court in the last four years. Formerly the internet service was satellite based which was very expensive. Now this is changed to terrestrial service which is based on domestic capacity instead of satellite rent from foreign sources. (Abiyot Bayu, 2017) So, we can see that government has invested much money on the project. The justice system has witnessed some achievements since such information systems and accesses to information are introduced. Allegedly, the cost of justice in terms of time, money, proximity and comfort has been reduced to a considerable amount.

3.3 The Enhancement of Access to justice in the e-litigation System: International Experiences

The Hon. Marilyn Warren conjectures

> 'Imagine a court hearing that is entirely virtual: a judge presiding via Skype from the comfort of his or her chambers….. Imagine a court system where nobody needs to attend court at

all……ten or twenty years ago it would have perhaps seemed ridiculous. The reality is much of the technology that is necessary to achieve it already exists….the question for the judiciary is: how can we best embrace it?' (Hon. Marilyn Warren AC, 2015)

The Chief Justice reminds us that the technologies that we have not anticipated that would be in courts are already in use nowadays. The justice sector as a service delivery institution should use technologies that can enhance its performance. In the day to day activities of courts, large numbers of people are being served. The delivery of justice, rule of law and promotion of citizen's rights are goals of the courts. The people who seek justice need to be served expeditiously and they need to be satisfied. If a court is efficient and effective, it can fulfill its goals and at the same time satisfy its clients. Technology is one of the tools to meet these objectives. As the ICT revolution came to dominate the world, the justice sector took its own initiative to be part of the ICT propelled changes. The experiences of India and South Korea in this regard will be discussed. The experiences of USA too, will be touched to add a bit to the literature.

3.3.1 South Korea

The history of ICT introduction in the Korean judicial processes dates back to the late 1970's. The Supreme Court of Korea has been making great effort at computerizing its trial procedure utilizing technologies to support the court's work. (Radaphat Chongthammakun, 2014, p. 32) The Korea's e-court system is referred as one of the most advanced in the world. The system was first used just to share information about cases between the judges. Then it advanced to the current e-court system. They started the first client/server based case management system and judge support system in the late 90's and 2000. Ever since updated, updated versions of web-based case management system and associated computer and network systems have been established and became part of the Korean judicial system. (Radaphat Chongthammakun, 2014) Korea has worked hard to familiarize the system into courts. Convincing lawyers and users to adapt to the system took some time. The non-familiarity of judges to the system and the non-familiarity of the ICT professional to the legal

procedures was one of the problems. Ensuring user-friendliness of the e-court to any user was also another issue. Korea took measure to convince users and lawyers to shift to e-court. Lawyers will get 10% cut from the court fee if they use the e-court system. Attitudinal and financial challenges were the main factors. (Bosio, 2014) The Korea's courts have five features and support systems; case management system, judge support system, information exchange, e-court systems and public information service. When we look at the e-court system, which is in the scope of this research, we can find standard electronic case filing (ECS), e-court room, audio video recording and video conferencing. The courts have over 25 features to serve the judges, the lawyers and the public at large. There are also other additional features. 'The Korean judiciary cleverly utilizes mobile phone technology service….The Supreme Court deploys an integrated use of e-mail technology and short message services (SMS) to increase the speed, reduce the communication costs and enhance transparency in its procedure.' (Radaphat Chongthammakun, 2014, p. 59) According to the case study, the benefits of the e-court system are exhibited in the Korea's judicial system. They make claim processing faster, more reliable and convenient, minimize courthouse visits and cost and space saving. In the e-court process we don't need loads of papers. Security, transparency and access to justice are mentioned as the benefits of e-court. The calculations made by the Korean Supreme Court shows the implementation of Korea's e-court system resulted in savings of $221 per e-filing. (Bosio, 2014)

3.3.2 India

There were many problems in handling cases in the courts of India. (Setlur B.N. Prakash, 2014) Towards the end of 1989 National Informatics Center (NIC) of India installed the first computer in the Supreme Court of India. The computerization of courts continued to 18 High Courts of India and then to 430 district level courts. On news published in 2014 claimed that 14,000 Indian courts are computerized. (Sen, 2014) The Law Minister has stressed on their success by saying,

> ‘‘We are very keen to ensure a digital India, also empower the people to access to justice…..today even a villager thinks ‘I can go to high court or supreme court.’ I see that is a great statement of empowerment. In the destiny of India, in a constitutional set-up, I think we have established a rule of law.’’ (Sen, 2014)

The main reason behind all these computerization of Indian courts is the load of cases and the number of the population. There are many services being delivered by e-courts of India. To see some of the peculiar services, there are kiosks, ICT based services found abundantly, and people friendly information centers which are established in various places of the country. They are aimed to promote access to justice and transparency. Citizens can get information about pending cases. Considering the diversity of the country, there are translation software which prepares judgments, evidences and other documents in the respective languages. (Setlur B.N. Prakash, 2014) Video-conferencing and e-filing are also commonly in use in Indian courts. The technologies have enabled access to legal information for clients and lawyers, expanded access to clients to court and lawyer services, improved access for legal training and many other benefits are mentioned. When they express the benefits of video-conferencing they said, ‘video networking brings the courtroom to the inmate, instead of the other way around, by providing video-conferencing equipments to prisoners and their attorneys.’ This saves time, cost and relieves security threats. (M.K. Sahu, 2015) But the ‘digital divide’ is still an issue in Indian e-court system. The poor and the wealthy, the literate and the illiterate will not be benefited from the technologies equally. Lack of clear laws on some procedures of video-conferencing is also one of the challenges.

3.4 Video Conferencing in Courts

The advance of digital technology and internet has enabled people to communicate virtually from different locations. Video conferencing is a visual communication. ‘It is an interactive technology that sends video, voice and data signals over a transmission circuit so that two or more individuals or groups can communicate with each other simultaneously using video monitors.’ (the Kansas

Supreme Court Research Clinic at the University of Kansas School of Law) In other source it is defined as, 'a televised telephone call whereby two or more parties can speak in real time and also see each other in real time. It necessarily involves a camera, one or more monitors, and microphones for each participant, audio speakers and other necessary equipment.' (M.K. Sahu, 2015)

The technology has been in use for educational purposes and for medical (telemedicine). It is being used to conduct various international business and political meetings across the globe. It solves problems of geographical barriers and financial constraints like cost of transportation and accommodation. 'Less cost' and 'accessibility' are the two terms which are attached to video conferencing. It has been in use in judicial proceedings too, for the same reason it is being used in other fields. It is now so familiar especially in criminal proceedings. Criminal trials can be conducted through video conferencing without the need for the suspect or the convict to appear in the courtroom. It is also very important to receive evidences, witnesses and expert testimony. For example, if the witness lives abroad, when the witness is unable to appear in the court due to health condition or to protect the witness for some security purposes, video-conferencing can be used. (M.K. Sahu, 2015) It is taken as safer and cheaper way of managing criminal trials. Most readings put the use of video conferencing from the perspective of security and cost incurred by the government. Without the need to transport prisoners from their facility and without worrying about security issues, trials will be safe. The government is spared from transportation and security costs. So, it is not mainly observed from the perspective of rights of suspected or convicted persons. But we cannot totally deny the fact that it has got human rights elements.

When we see the European system and why they started to use video-conferencing in their courtrooms, we find three reasons. To reduce risks of escape of suspects, to reduce delays due traffic jams, to protect minors and other vulnerable witnesses and to get witnesses who cannot appear in person are the main reasons. (Evert-Jan Van der Vlis, 2011) The protection of minors can be taken a human right sensitive cause. And the initiative to get witnesses through video-conferencing may

ensure the quality of justice. The litigants may not incur costs for witnesses if the witness can appear from where he/she is.

3.4.1 Videoconferencing in the Federal Supreme Court of Ethiopia

When we see the beginning of video conferencing in Ethiopian courts, it was first applied during the trial of red terror cases around 1997/98 EC. The convicts of red terror made to attend the trial from prisons in regional states. It was first started in four cities; namely Mekele, Bahirdar, Addis Ababa and Hawassa. After 2003 EC 18 videoconferencing centers were opened. Now, there are 40 videoconferencing centers established by the Federal Supreme Court. 33 of the videoconferencing centers are established in Supreme Courts and Zonal (High) courts of the regional states except Gambella. Eight of the centers are established in prisons; three federal prisons (Shewarobit, Ziway, Diredawa) and five in Oromia Regional State (Nekemit, Jimma, Harer, Shashemene, Adama). Only appellate and cassation cases are those which are being entertained through videoconferencing. Cases under the first instance jurisdiction of FSC are not yet started to be tried through videoconferencing since most cases which come to the Court are appellate and cassation cases. (Solomon Amare, 2017) Immense costs are spared due to the use of videoconferencing. If we take the costs that the society is spared from in February and March 2017 alone, it is 2,716,000 Birr. (Solomon Amare, 2017) The litigants who appeared through those 40 videoconferencing centers would have spent this much money if they were made to appear physically. The Government has also saved money. The major reasons for the installation of videoconferencing centers by the Federal Supreme Court are the same as the other countries; cost minimization, security and accessibility. Both civil and criminal cases are being tried through the system in Ethiopia.

Different countries that have adopted videoconferencing technology have developed protocols on how to use it in courts. The Kansas Supreme Court in the US begins by defining videoconferencing and explaining the benefits. Then the appropriate equipments or technologies for videoconferencing in courts are well identified. The list of cases which are allowed to be tried with videoconferencing,

the manners and procedures of using videoconferencing in civil and criminal proceedings are defined. (Recommendations for Videoconferencing in Kansas Courts) The High Court of Delhi in India also has its own videoconferencing guidelines. The minimum requisites of videoconferencing, the cost, the procedures and other guidelines are set. In Ethiopian case there is no such guideline for videoconferencing. Such guidelines can help to make the e-litigation system smooth and citizens can be served without much difficulty.

Videoconferencing is more dependent on technical capacity of the country. The quality of equipments and the strength of internet connection are very decisive. Ten years ago a survey of videoconferencing in the courts of appeals of USA was conducted. It was conducted by interviewing judges and clerks. Most of the judges agreed on the fact that the advantages of videoconferencing outweigh the disadvantages. They witnessed the system has enabled them to have a flexible trial schedule and saves time and money. Better access for litigants and a more timely hearing of cases are the other advantages mentioned by the judges. But technical difficulties, decreased level of personal interaction, less oral argument and less experience of judges on videoconferencing were mentioned as challenges of the system. (Norwick, 2006) One judge said, ‘‘it is so dependent on the technology; if the equipment is bad, the experience is bad.’’ Some mentioned it may affect the quality of judgment to be delivered. These challenges can affect effective access to justice in some ways. If the proceeding is not conducted with detail oral argument it can affect the quality of justice. The challenges and the whole practice of videoconferencing in Ethiopia will be discussed in chapter four.

No.	Videoconferencing Centers	No. of cases Adjudicated
1	Supreme Court of Tigray R/S	76
2	Supreme Court of SNNP	15
3	Shewarobit Prison	15
4	Ziway Prison	25
5	Supreme Court of Amhara R/S	31
6	High Court of North Gondar	2
7	Assosa	5
8	Diredawa Prison	15
9	High Court of Harari R/S	2
10	Dessie	10
11	Debremarkos	1
	Total	197

Table 2 The number of cases adjudicated by videoconferencing in Miazia/April 2017

Picture 1 Videoconfrencing proceeding in FSC from Diredawa Prison

3.4.2 e-Filing

E-filing is mostly known as a ‘paperless trial’. It is filing cases to courts electronically. ‘Filing cases electronically reduces the cost of filing, eliminates much of the paper handling and allows more

efficient court operations. Attorneys and other filers are able to submit court documents electronically 24 hours a day, seven days a week from any location with Internet access.' (R.Bock, 2016) People are no more required to bring a pile of papers to open a case or to submit their evidences. And people are no more obliged to go physically to courts to handle paper.

3.4.2.1 e-Filing in the Federal Supreme Court of Ethiopia

In the Ethiopian case people can open their case from where the service is being provided. Now there are only five e-filing centers in capital cities of four regional states and one federal city; Bahirdar, Mekele, Hawassa, Harar and Diredawa. 'Legal agent which acts as registrar will verify the completeness of the file, convert into digital format and send it by attaching using web interface.' (ICT Directotate of The Federal Supreme Court, 2017) The litigants can open their case and receive reply or court order or decision from the Federal Supreme Court. One litigant is expected to travel from remote area at least three times for such procedures. The e-filing service has resolved such challenge. According to the ICT Directorate of the court 1,800 files are being opened annually through e-filing. (ICT Directotate of The Federal Supreme Court, 2017)

Courts in different countries have various formats of e-filing on their websites. If we see, for instance, the Website of Florida Palm Beach County, we can see that the e-filing portal have formats and guides to e-filing. (R.Bock, 2016) On the website of the Federal Supreme Court of Ethiopia, there is a link to the formats of e-filing which is not functional nowadays. And there is no guideline on how to use the e-filing system. So the current practice is, the litigants will bring their written files, the files will be checked by the agents at the e-filing centers and will be scanned and e-mailed to the Federal Supreme Court. (Saba Mekonene and Ribka Addisu, 2017) The litigants will receive court orders or replies in the same manner.

Region/City	Type of Cases		Level of Cases		Total
	Criminal	Civil	Cassation	Appeal	
Bahirdar	10	59	66	-	66
Mekele	12	55	67	-	67
Hawassa	6	22	28	-	28
Harar	2	6	8	-	8
Total	30	142	169	-	169

Table 3 The number of e-filings of FSC in Miazia/April 2017

3.5 e-litigation as a Tool for Effective Access to Justice

Now it is time to make a link between the concept of effective access to justice and court technologies. Judicial justice is the commonest means of seeking remedy. Courts have a unique position in the justice system. So, much is expected from courts in relation to access to justice. As we have discussed in the previous sections, even if access to justice has far wider than access to judicial remedy, judicial access is still the formal and the most utilized means of justice. The technologies in courts are the means through which courts make themselves reachable by the public. And they are also the means to minimize the costs of states. Courts are expected to meet the requirements of effective access to justice and human rights-based approach. As we have seen from the experiences of some countries, including Ethiopia, the need to have effective and efficient services has pushed courts to adopt technologies. It is more of result-based approach. The achievements cannot be denied. But accessing judicial remedies through technologies must be guided by human rights considerations.

The Constitution of FDRE Article 9 demands that all organs of state, including the judiciary, must obey and ensure observance of the constitution. (FDRE Constitution, 1995) This means all the provisions of the Constitution and international agreements ratified by Ethiopia are supposed to be obeyed. And the judicial organ is obliged to respect and enforce the provisions under the section on fundamental rights and obligations (Art 13(1)). (FDRE Constitution, 1995) Since Art 13(2) of the

Constitution stipulates that human rights provisions in the Constitution 'be interpreted in a manner conforming to UDHR and international human rights instruments, courts must follow universal conceptions of human rights in delivering justice. This means any action of the judiciary should not contradict human rights principles. The judiciary, as part of the justice system, must apply the concept of access to justice in its fullest sense and in human rights-based approach. Some of the elements of effective access to justice may not be realized by lone efforts of the courts. But they must work in collaboration with other justice organs, government offices and citizens. So, according to the FDRE Constitution the judiciary is expected to work according to human rights principles.

Physical and distance barriers may not be issues of discussions in the near future. But accessibility will remain an issue. The technologies in courts make it a little different rather. It is so dependent on the country's ICT infrastructures and the people's literacy. Within such situation, when courts introduce a new means of being accessible to citizens, they should consider human rights principles. They must consider basic principles of equal, fair and free trial. Here we should think of two scenarios; one, when courts are accessed through technology and when courts administer justice through technology after a case is opened. To access the court, the technologies must be equally accessible to citizens. The technologies must be user-friendly in terms of technicality, language, culture etc. If it is impossible to provide it equitably, the marginalized and the poor should be given priority. This is one of the requirements of human rights-based approach. The public should have knowledge of the means (technology). The public must participate in the integration process of the technologies in the court infrastructure.

After a case is opened and the court has already begun the proceedings, the human rights principles of fair, free and public trial will be raised. Any civil and criminal proceeding must be guided by constitutional provisions. After an individual appears at the court of law, he/she must enjoy the guarantee of fair trial. The FDRE Constitution Article 20, for instance, sets out the rights of the accused in a criminal trial. Public trial, presumption of innocence, full access to evidences witnesses

presented against him/her, right to be represented and others are some of them. The same provisions are listed in ICCPR. So, courts must confirm if a trial which is being conducted by videoconferencing can fulfill these elements. With all technical and knowledge insufficiencies, it is court's duty to be active in ensuring observance of human rights of the persons involved in the trial.

It is the court's duty to make sure if the e-filing and videoconferencing centers are operating with the approach of effective access to justice. The distribution of e-filing centers is limited to five cities. There are only forty videoconferencing centers. Data from Internet World Statistics (IWS) shows that there were 4,288,023 (4.2%) internet users in Ethiopia in 2015. According to MCIT, currently, there are around 17 million internet users in Ethiopia including the cellular data users. The total amount of internet capacity which the ethio-telecom has bought from international sources is now progressing to 37GB. (Abiyot Bayu, 2017) Most internet users are cellular data based which they can easily accesses through their mobile phones and it is still so small for a country of large population. According to UN estimation the population of Ethiopia is 104,281,272 in 2017 EC. (Worldometers, 2017) The Central Statistical Agency (CSA) of Ethiopia takes the population to be 94 Million as of July, 2017. (Central Statistical Agency, 2016) These numbers indicate how advanced network system we need to meet the needs of citizens.

The court services cannot be accessed through cell phones. Considering these limitations, one may wonder if the e-court program of the Federal Supreme Court has an element of human rights-based approach. The equality of access to these ICT centers and the administration of justice should meet the requirements of any ordinary trial. The technologies should not make those human rights principles less relevant.

Chapter Four

Findings and Analysis of the Research

The findings and the analysis will be presented in three main sections. The first part will be on the practical benefits of e-litigation in the Federal Supreme Court of Ethiopia. The responses of key informants from the supplier and the demand side; that is, the Federal Supreme Court and MCIT, convicts, prisons administration, public prosecutors and defense attorneys, will be included. Then the non-participant observation of the researcher will also be employed to elaborate the actual practice within the system. In the second part, the challenges of the technologies in the Federal Supreme Court will be shown. The responses of informants from the demand and supply side and the observation of the researcher will be used to demonstrate the challenges. In the third part, the effects of the challenges on the promotion of effective access to justice will be analyzed. The whole program will be evaluated if it was crafted and is operating in a human rights-based approach. The principles of effective access to justice and human rights-based approach will be the points of reference to assess the whole practice.

4.1 The Practical Benefits of e-litigation in the Federal Supreme Court

Most of the benefits of the e-litigation system introduced by the FSC are not as such different from the experiences in other countries. In the interviews conducted with the Director of ICT Directorate of FSC, he mentioned the major purpose of the court is delivering judicial service. And the main aim of ICT service in courts is to make this service more accessible. (Solomon Amare, 2017) It was so difficult to dispense the judicial services of the Federal Supreme Court to the entire country evenly with circuit benches. Financial constraints and limited number of judges were some of the major factors for the limitation. The limited number of judges had made it difficult to dispense circuit bench services within short time. Even if the problems are still lingering, ICT services of the court have helped a lot. They make the court's judicial services transparent including judge's evaluation. Informing the activities of the court and promoting efficiency, expeditious and effective judicial

services are some of the purposes of ICT in the court. As the services of e-filing and video conferencing are increasing, less time is being spent on cases. And the backlogs of cases are getting lesser and lesser. The capacity of the court in resolving cases has increased.

The cost incurred by the justice institutions and individuals is reduced to a considerable amount. 'If we look at the performance report for the month of April 2017 (Miazia) only, for instance, 197 judicial proceedings were conducted through videoconferencing and 169 case files were sent through e-filing. 791,000 birr from videoconferencing and 1,752,240 from e-filing, totally 2,543,250 birr is the amount that the clients are spared from spending if they had to appear in person.' (ICT Directorate of FSC, 2017) Clients used to suffer by spending their time and money in travelling back and forth to the Federal Supreme Court for several times. Now they are being served from where they are. Before the introduction of the technologies, judges used to perform every activity during proceedings. They direct the proceeding and at the same time they write the whole statements of the parties in the proceedings. Now, the proceedings are being recorded and transcribed. Since the only responsibility of the judge is conducting the proceeding, he/she can easily focus on the quality of the judgment and he/she will not forget essential things which are decisive for rendering judgment. The e-government Directorate Director in MCIT, Dr Abiyot, explained the use of court technologies with the following words. ''Justice is a service. Every service has a deliverer and a receiver. Court technologies have helped to break the barriers between the supply and the demand side.'' (Abiyot Bayu, 2017)

A judge from the federal Supreme Court confirmed the same claim made by the ICT Director of the court. In terms of access to justice, video-conferencing can reduce costs and problems related with geographical barriers. It makes finding witnesses who cannot appear in courts physically easy. Expert witnesses can simply appear through videoconferencing. ''The concept of access to justice is making available the judicial services in simple ways (without complicated procedures), within short time and less cost. I think the videoconferencing and e-filing services in the Federal Supreme Court

have served these purposes to some extent.'' (Bewketu Belay, 2017) It can reach marginalized societies who could not reach to FSC due to physical distance. Such societies can reach the top level of courts from anywhere.

The public prosecutor interviewed believes that the video conferencing technology is very helpful especially for child protection and witness protection. Even if there are many times when the equipments malfunction, the child-friendly bench is very important. For those convicts who want to appeal, the system is very comfortable since they can appeal from their penitentiary. (Walelign Mitiku, 2017) According to him,

> ''After the means to justice institutions is created, the people must be able to use the means properly and they should be able to claim all their rights using it. They should claim all their demands according to law. Till now, as I observed, the convicts can present all their cases to the court through video conferencing.''

The Federal Prisons Administration acclaims the benefits of the videoconferencing system more than any of the justice sectors. There are four major benefits of the technology mentioned by the key informant from the Prisons Administration. First, it is always difficult to transport those large numbers of prisoners from the penitentiary to the Federal Supreme Court. The transportation consumes large number of man power especially for escort purpose. The second benefit is the prisons' administration is able to use the spared personnel for other important commitments. Third, the system resolves the transportation hassles of the administration office. ''Most of our vehicles are old and repeatedly stop at various spots due to technical failures. The cost of fuel was so high and sometimes there was even shortage of fuel. There were many disagreements with the court since we can't get the prisoners on time.'' (Chief Superintendent Reta Abebe, 2017) Fourth, the system contributes to speedy trial. Some years back it used to take long time for the Prisons Administration to take copy of the court's decision since the prisoner is sent with only the escorts. The escorts

cannot process the whole procedure to get copy of the court's decision. So the prisons' administration would spend additional time. There was a time when the appeal deadline had lapsed before the prisons' administration received copy of the decision. Now if the convict is attending from the prison, the administration can know the decision of the court and can start the process immediately. This helps the prisoner to start the appeal process right away.

Security concern was raised as a side issue. Even if the Prisons Administration has not yet encountered with serious security threats, it is strongly believed that the system can minimize potential security threats. Especially transporting organized crime convicts can be dangerous. In such cases, videoconferencing is the best option. In relation to security the chief mentioned one incident how the system can contribute for the security of judges. One convict, who appeared in person in FSC by the appeal of the public prosecutor, has received more severe sentence than before. He got emotional and tried to grab one of the judges by the neck and harm him. The incident was handled by the security forces present. (Chief Superintendent Reta Abebe, 2017)

The users from regional states noted same benefits of e-litigation. The clients I found in the videoconferencing center in Bahirdar claimed that the system saves them from too much cost and toil. One client who is representing his brother in prison said,

> ''I Came from Adiss Zemen which is 85Km from Bahirdar. If there was no such service in Bahirdar, I would have travelled around 600 Km to appear in the Federal Supreme Court. I am spared from too much cost. Even if I had money and was able to go to Addis Ababa, I have no any idea where to go. I don't even know where the courthouse is located in Addis.'' (Yizez Gebre, 2017)

Estibel Tesfa, practicing lawyer in the Amhara Regional State said, ''an individual, even the one who has a lot of money, may not be able to appear in the Supreme Court for various reasons. The e-filing and videoconferencing service has bridged this gap.'' (Estibel Tesfa, 2017) Both of my informants

have agreed on the fact that the system is so important in promoting access to justice. Lawyers who litigate through videoconferencing will not lay the same amount of payment on their clients when compared to if they have to travel to Addis Ababa. The clients must pay additional allowances in such case. The benefit is enormous in terms of cost. My informants who came from one of the countryside told me that they want to avoid the hassle even more than the cost they could have incurred. One informant who came from North Gondar to appeal to the Federal Supreme Court has told me; ‘‘one of the most challenging experience of mine was to find out which court is the Federal Supreme Court among all these courts in Addis Ababa. When you ask people, they direct you either to the Lideta High Court or other courts. People do not understand the distinction between the High Court and the Supreme Court.’’ (Informant 1, 2017)[1]

Ato Abiy Gebrewahid, attorney and President of Tigray Bar Association, said that in e-litigation people will not be denied of justice for the simple fact that, they don’t have money for transportation and accommodation. ‘‘Individuals, who by no means could gone to A.A to appeal to FSC, will be able to, at least, appear through videoconferencing. If not for it, they would have waived their rights.’’ (Abiy Gebrewahid, 2017) He also linked the benefit of the system to circuit benches. The court can preside on many cases in one day through videoconferencing. In circuit bench, this would take several days. So, most of my informants (convicts) have confirmed the technologies have many benefits in terms of reducing cost and creating physical proximity to judicial services. As I observed from e-litigation proceedings, the system has proved to be useful to improve access to justice. Litigants seem happy since they are spared from huge cost and weariness. In spite of the inconveniences, citizens are able to present their appeal before court from wherever they are. I could see people can at least bring their appeals to FSC. The Court is no more too far even to the remotest areas. The virtual proximity has influenced the psychology of litigants. They no more think the Federal Supreme Court is unreachable. They are able to litigate through videoconferencing and send

[1] To conceal the identity of the interviewees the term ‘informant’ is used

their files through e-filing. Whether the system has assured meaningful access to justice or not, the next discussions will reveal it.

4.2 Practical challenges of e-litigation

4.2.1 Technical Challenges

Most of the problems of the e-litigation system were raised by the judge, public prosecutors and litigants. The major problems are related to the quality of video and audio transmission and internet connection. Judges and litigants are facing difficulty to see and hear clearly, what the other party from the other line is doing or saying. Due to poor network connectivity, interruption of proceedings for several times is so common. As a result, cases are being adjourned repeatedly which results in delay of justice. ‘‘The judge cannot be sure what is happening in the other side of the line and what can interrupt the proceeding or who can interfere.’’ (Bewketu Belay, 2017) In addition to network failures, the interruptions and the adjournments are caused by power outage. When the power is gone, especially in regional states, the whole system will be off. Most of the videoconferencing centers do not have power generators. So, the case will be adjourned or hearing will resume when the power comes back. (Filipos Negash, 2017) In most cases the case will be adjourned. ‘‘Daily, there are about forty videoconferencing proceedings in the Federal supreme court. Among these more than ten of them will be interrupted due to connectivity or power outage problem and case will be adjourned.’’ (Solomon Amare, 2017) We can imagine how annoying this can be when it happens on daily basis.

The judges are always in doubt whether the proceeding will continue without disturbance or not. The other problem is that the judge cannot know if the situation of the defendant on the other side of the line. The judge cannot fully understand the physical and psychological condition of the accused/convict that is appearing from prison. The judge the researcher talked to clearly noted that in truth finding, it is more convenient if the defendant appears physically or if it is through videoconferencing, it must be in a position where things can be seen clearly. According Mr Bewketu,

the judge, most of the time, a video conferencing is being conducted from Ziway and Shewarobit prisons. Mekele, Bahirdar and Diredawa are the other centers from where the videoconference is conducted mostly for civil cases and for accused persons not in remand. ‘‘We barely communicate from other parts of the country, even if the system is set up’’. (Bewketu Belay, 2017) The interruptions and the miscommunications are too much. Some litigants, who are very bored of the coming and going and the repetitive adjournments, abandon their appeal cases. This means, they waive their right of appeal and proving their innocence, which violates their rights. Had they pursued their cases, they may have been acquitted or secured their claims, if a civil case.

The defense lawyer strongly believes videoconferencing and e-filing promotes access to justice. But the network problems and poor quality of the system are seriously affecting speedy trial. (Esayas Yirga, 2017) The repeated adjournments of proceedings are causing delay of justice. The attorney has also concern related to procedural rights. When the litigants from the other side are requested to present document evidences, they are obliged to fax it since they cannot show it to the judge through the plasma screen. So, until the document is faxed, the trial will be adjourned. This causes delay. In addition, the litigant from the other side cannot know what kind of document is sent through fax. This affects the right of the other litigant; the rights to know what evidences are presented against him/her. ‘‘The traditional procedures of courts which are not yet made to fit the modern system pull back the e-litigation proceedings. Sometimes I prefer circuit benches than plasma courts.’’ (Esayas Yirga, 2017)

The lawyer in Bahirdar, Mr. Estibel, explained how the interruption of the proceeding is causing complications.

> ‘‘When the videoconferencing proceedings are interrupted, we are told to hear when the next appointment is from the registrar over the phone. When we call repeatedly, they don’t answer.

Sometimes they make the lines busy deliberately. So, we miss our appointments.'' (Estibel Tesfa, 2017)

The slow response of the registrar in FSC is another cause of delays. Since the traditional system is not operating well, the problems of the modern system are being worsened. The videoconferencing professional in the Federal Supreme Court said that, ''we make calls to the centers in regional states to tell them the time of the next appointment, which was actually the job of the registrar.'' (Filipos Negash, 2017)

The defense lawyer, Mr Esayas, claims that, video conferencing deny the judges, access to understand the whole situation of the litigants. A judge can contemplate something psychologically, by watching the litigants in person, in addition to oral arguments and documents. The judge could be able to understand very important factors, if the litigants can appear physically, especially in criminal proceedings. For instance, if a person with disability appears physically, the judge may consider some of his/her rights which can help to make fair decision. If the judge is watching that person through plasma, he may not understand the extent of the disability. Other sections of the society like pregnant women, breast feeding mothers, HIV/AIDS patients and elders have the right of priority in courts. If the judge can see this clearly, he/she will give priority to such people. This may not be possible in videoconferencing trials. The key informant judge confirms the above opinion. Videoconferencing causes the absence of emotional attachment between the judge and the client.

''If the litigant is in front of you, you can understand his/her immediate emotions. The problems in video and audio quality make it difficult to capture such emotions. The judges and the clients are more concerned about if they can hear well what the person from the other side of the line is saying.'' (Bewketu Belay, 2017)

The judge will be in difficulty to bring out the detail truth. It limits cross-examination. The other problem is since there is not as such much awareness on the technology, some defendants are not

sure whether they actually appeared in the court or not. They usually ask, 'Did I really present my case? Did the court really hear me?'' They also doubt if it is live or recorded. The major worry of the judges and the clients is if they can communicate through the system without interruption or not. The judges focus more on technical issues than the quality of their judgments or the rights of the litigants. The technical problems have caused misunderstanding, miscommunication and noisy conversations in the courtrooms. The judges shout loudly so that the party from the other side could hear. ''We repeatedly shout to the other party, 'do you hear me? Have you understood what I said?'' (Bewketu Belay, 2017) The defense lawyer has mentioned that many plasma proceedings were conducted through audio communication only since the visual connections were so bad.

Since the courts' facilities and the technologies are not organized well, they are causing some problems. For instance, the e-filing service is causing delays and adjournments due to poor internet connection and its inaccessibility at many places. (Bewketu Belay, 2017) Sometimes the litigant, who is arguing through videoconferencing, may be obliged to come to the Federal Supreme Court physically to submit some papers. The failure or inaccessibility of the e-filing system may make the very purpose of e-litigation insignificant.

The other attorney Mr Abiy, who is in Mekele, one of the centers with connection problems, has mentioned the problems of audio and video quality, interruptions and recurrent adjournments just like the other respondents. Mr Abiy is the President of Tigray Bar Association and is representing the opinion of many lawyers. He stated, ''sometimes the adjournments are too much. A case which can be finished with only two adjournments, if you appear in person, can take you much longer by videoconferencing.'' (Abiy Gebrewahid, 2017) He also raised that there were many days they returned in vain from the center, being told 'no network today'. In such cases, it is very difficult to know when the next appointment is. In addition, the connection problems have made it very difficult for the litigants to express their ideas well. In videoconferencing proceedings the likelihood of litigants defending themselves well enough is lower. They may not secure their rights properly.

‘‘You cannot confront the other side properly. You cannot present any evidence without further adjournment. When you appear in person, your access to explain your case will increase. Your chance of convincing the court will definitely be enhanced. Personally when I handle big cases, I will go in person to FSC. People like to be listened; even when they don’t have strong case. The system rips off this privilege from the people to some extent.’’ (Abiy Gebrewahid, 2017)

Mr, Abiy added, when the litigation is between the one who appears in person and the one through videoconferencing, there are many differences. The one who appears in person has more advantages. He/she will have a better chance of focus and can handle the arguments easily. There is a clear imbalance between the two parties. In relation to the e-filing service, Mr. Abiy has expressed his concern. The e-filing service is very good. But if the number of pages of the file is more than fifty, it will not be sent. As most of the appeal cases have many pages, it seems unfair. In such cases the litigant is obligated to open his/her case in person. If he/she is destitute, he/she will drop the case. To some extent, it is discriminatory. Lack of coordination between the federal and the regional operators and loss of files is also raised as the challenges of the system. (Abiy Gebrewahid, 2017)

Since public prosecutors attend many criminal proceedings through videoconferencing, I found their comments very important. They confirmed that, many proceedings are adjourned because of the failure of the network system. One of the public prosecutors told me;

‘‘I know of one case, where a person sentenced to two years in prison was attending his appeal from prison. He was appearing through plasma and arguing for acquittal. Before, the court decided on the case, he served the whole term and was discharged from prison. This happened because of too many adjournments caused by network failures. This affected a person’s right to be presumed innocent. Sometimes we even say ‘it would have been better if the system doesn’t exist at all’.’’ (Walelign Mitiku, 2017)

If he argued without so many adjournments, he could have been acquitted. Even after his release, had he went on arguing properly, he might be found innocent. And he could have been free from any criminal records. The man could continue on the appeal after being released. But most of such persons won't do that. They don't see the point of continuing after they are released. To put it in the exact words of the prosecutor; ''*Sometimes, it is like denying access while trying to create (promote) access.*'' (Walelign Mitiku, 2017)

The system's failures make judges to get bored of the proceedings. The judges push the convicts (litigants) to talk as fast as possible since they anticipate interruption. Sometimes they close the proceedings without giving them the chance to argue well. This also affects rights of the convicts. Issues are not usually well exhausted in the video conferencing proceedings. Mr. Walelign has argued, ''let alone the convicts, we the professionals get confused sometimes. The convicts are always in doubt if the court is hearing them. Personally I never prefer video conferencing to physical appearance especially for first instance cases. I believe, until the network problem is fixed, it is better not to use videoconferencing totally.'' (Walelign Mitiku, 2017)

The other prosecutor interviewed who has a long time experience in criminal video conferencing proceedings, has reminded that the low network quality problem occurs especially during cloudy weather. This forces litigants to explain their claims and defenses in haste. The interruptions can reach up to five to six times per proceeding. In addition, the convicts (litigants) do not like the idea of appearing through videoconferencing. They doubt if they are being heard and seen well by the judge. ''They way litigants argue when they appear physically and when they appear through plasma is so different.'' (Senait Eniyew, 2017) In criminal cases, since the court and the convicts communicate through the Prisons' Administration, complaints and issues which demand quick responses are being delayed. ''Sometimes we question if the system can fit to the current procedural laws of the country. In the e-litigation system, people are being denied of access to courts 'technically'.'' Sometimes when the convicts need to have a counsel by their side, this may not be

possible in the videoconferencing proceedings which are being conducted in prison centers. There must be a way to tackle such impediments. It is the basic right of every individual. (Senait Eniyew, 2017)

I find most of the claims of my interviewee sound, after I observed some sessions of the videoconferencing proceedings. The audio delays cause some uncertainty to the litigants. They are not sure whether they heard the voice of the judge or not. Some of the litigants from the other side of the line do not act as if they are in the court of law. They move here and there, they talk to people beside them and talk over their phones. They go out and come in from and to the room where the videoconferencing system is in progress. Sometimes they miss the details of what the judges are talking. The judges who presided in the Federal Supreme Court do not make much effort to keep the court order. After the judges passed some decisions, they have to make too much effort to ensure if the litigants from the other side understood the decisions.

In one videoconferencing proceeding from Bahirdar, I observed that the system is deficient in some matters. In this case, the court ordered for the arrest of the defendants who appeared by the appeal of the prosecutor. But the court could not give the arrest order to the regional state's prison administration immediately since the arrest order must be faxed later. The prison administration could not take the defendants without receiving written court order. Then the city's police was ordered to take them on temporary basis. This affects the rights of the defendants. If they can be taken to the prison immediately, they will have all the privileges of a prisoner. They would have got proper food and room. In a police station their right to food and other facilities will be violated because the station is not obliged to serve them just like the prison. I clearly saw the clash between technology based court proceeding and the old system. The procedure is not adjusted to fit the e-litigation system. The easiness of access which is made possible through videoconferencing is delayed by the traditional procedures. But on this instance, I witnessed the network system of Bahirdar is so much better than the other centers. I have seen one videoconferencing from Assosa

being stack for the whole morning. I saw when they try to contact one convict from the Shewarobit Prison. But it failed totally and adjourned to other time. The court uses phone calls to tell when the next proceeding will be. The judges were not able to formally tell the time of the next appointment since the interruption was sudden and recurrent. In other proceedings, I have observed, the judges wanted to have detailed information but they left it since it was so tiresome to shout again and again. Sometimes, when they are unable to hear or understand what the other party is saying, they take their own assumptions and pass decisions. They leave out the details and they tell the litigants to get the details from the papers which will be faxed to them. Since the litigants did not have information on the details, they cannot argue to defend their rights even if the details could have something which may violate/harm their rights. Sometimes the counsel of the convict may not be beside him/her. When points are raised that may jeopardize the convict's rights, it is difficult for the lawyer to consul him/her. This is one of the problems of the system. (Walelign Mitiku, 2017) If there is a translator in the court, the translator cannot be viewed to the litigants through the plasma. The litigants can only hear his/her voice. This also is causing a communication gap.

The camera is not set in a way which can display all the litigants; especially if they are more than two or three. To tell the truth, the judges cannot identify the identity of the litigants unless their identity is checked by the authorities in the other side of the line. The visual blurredness makes it difficult to identify the litigants. Amid such challenges, I observed one instance which reminded me the benefit of videoconferencing. The court was to conduct a proceeding on one appellant who must appear in person from Qilinto Prison. The public prosecutor informed the court that the prisoner cannot appear on time due to traffic jam. If the prisoner could appear through videoconferencing with clear quality, the court could save time and the convict would get speedy justice. I also sa a case which was being appointed for fifth time. On one of the days I observed the instance which may prove that physical appearance have more advantages than plasma appearance. In the criminal case where Liqe Tiguhan Asitatike, the former president of Ancient Ethiopian Patriots Association

(AEPA), was convicted, the court has mentioned why it accepted the mitigating circumstances like old age and sickness of the convict. The judge literally said, ‘‘as we can see clearly, you are too old and weak of sickness of the accused. So we considered these mitigating situations to lower your sentence to six months.’’ The physical appearance made it clear the physical and psychological situation of the litigant. I doubt if this is possible in videoconferencing which is so disturbed with poor visual and audio quality.

Some of the litigants do not know how to use the equipments. The judges will spend some time telling them to approach the microphone so that they can be heard. Since there is only one microphone, the litigants must stand up and sit down in turn to get close to the Mic. Some of them are not sure from where the sound is coming. So, they kill some time until they realize they are talking to the judge presiding in the Federal Supreme court in Addis Ababa.

The technical issues of the court are directly linked to the e-government directorate of the Ministry of Communication and Information Technology. Abiyot gave explanation about the issue.

> ‘‘When the program was first started, there were so many problems. We have been improving the services through time. The court has been operating with the already existing limited capacity of the country. The infrastructure we built can accommodate more internet and data capacity since we installed over 15,000 Km long optical fiber cables. We are working on that. The court is taking portion from the limited capacity as one of our clients. The problems on the quality of video and audio transmissions and the interruptions are caused due to this. So, the problems are understandable.’’ (Abiyot Bayu, 2017)

The Ministry and the Court have a regular joint session of evaluation of the e-litigation system. The problems have been under discussion regularly. The court has been informing the problems to the Ministry through letters regularly. The Ministry has been collecting feedbacks from centers at zonal and regional levels. Most of the feedbacks mentioned the network problems as a dominant challenge.

(Abiyot Bayu, 2017) Ethiopia is one of the countries with the lowest internet penetration. According to the statistics of Internet Live Stats estimation as of July 2016, Ethiopia has only 4.2% internet penetration. (Internet Live Stats, 2016) And according to Global Internet Maps, Ethiopia is 173rd among 180 countries in internet user penetration. The hope is the more the infrastructures of the country are improved, the more the e-litigation services of the court will. The Ministry has not conducted any research on how the network issue is affecting effective access to justice.

4.2.2 The Prisoners'/Litigants' Reaction to e-litigation

All the prisoner's interviewed have raised the issue of network problems and distorted video and audio quality in videoconferencing proceedings. They also mentioned how these problems have been affecting their chance of arguing well. According to Respondent 2, a prisoner in Shewarobit Prison, the network problems are blocking them from expressing their claims explicitly and listening to decisions and judgments clearly.

> ''It is like as if we are denied of the opportunity to present our claims clearly. There is so much confusion since we cannot listen to each other. If I can appear physically, I could have explained my case and argued freely. The videoconferencing proceeding is difficult to present additional evidences. Appearing in person is much better to have a better access to litigate and open trial.'' (Respondent 2, 2017)

As per Respondent 3, another prisoner in Shewarobit, the network problem has caused delay of justice. There are so many adjournments. The delays in getting court's decisions are also pointed out. He prefers appearing in person to videoconferencing. ''Appearing in person gives us an opportunity to face prosecutors and to present additional evidences. We cannot challenge prosecutors through videoconferencing proceedings. And it can also help the court to find the right track.'' (Respondent 3, 2017) The other respondent, Respondent 4, has raised the power problem in the prison. When the power is off, the proceeding will be interrupted since there is no power generator. The other problem

is, after the court passed decision, the copy of the decision is not being delivered quickly. After a prisoner is acquitted by the court, for instance, he/she may be obliged to stay for days until the copy is sent through fax. Almost all of the respondents interviewed have complained on the repetitive adjournments for long time due to network failures. Even if some of the respondents have said 'I can explain myself through videoconferencing', they prefer physical appearance to videoconferencing. One respondent even said, there was a time that the judge could not totally listen to what he was saying. ''I could not present my complaints. I was really disappointed.'' (Respondent 7, 2017) Three of the respondents noted that physical appearance has no any advantage compared to videoconferencing, even if they admitted capacity problems in the system. All of the prisoner respondents view the benefit of the system in terms of reducing fatigue and saving time. The system has enabled them to attend their cases from where they are. One of the respondents said that it is a great opportunity since the system is giving them access to speedy justice. Most of them did not notice the effects of the challenges of the system on their rights. One of my respondents, Yizez Gebre from Bahirdar, has mentioned the confusions during the proceedings. He prefers peaceful/ undisturbed proceeding. The interruptions make him confused. Some of the respondents forget what they planned to say to the court when the system gets distorted. If when the system gets back they skip detailed issues. One respondent, Respondent 9, said ''when I get bored of the whole situation, I wish to leave the room by whatever means.'' The unpredictability of how the system functions has made most of the litigants to focus on the problem rather than their cases. Most of the respondents have been appearing through videoconferencing more than three times. They are getting better from time to time in communicating through plasma. But most of them were afraid and confused on their first experience.

4.2.3 Problems of e-litigation in Terms Litigants' Reaction, Right to Open Trial and Right to Equality

Mr Bewketu, the judge, has observed that, even if defendants have a chance to face witnesses in videoconferencing proceedings, their capacity to confront them is limited to some extent. In a condition where it is difficult even for the judge to contact the litigants, we can imagine how it will be so difficult for the litigants to question the witnesses and to see the documents presented against him/her. (Bewketu Belay, 2017) He/she may not know who is attending his trial in the other side of the line. Even the judges can see only one individual at a time, so do the litigants (appellants). Litigants may also fear if it is their first time to appear through videoconferencing. Mr Solomon has a different view on this claim. ''Some litigants fear when they appear in person in front of the judges. The videoconferencing makes them feel free since they don't confront the judges.'' (Solomon Amare, 2017) We can say the feeling depends on individuals' personal behavior and their level of acquaintance with the technology and the court environment. They may not even believe that they actually appeared in the court of law. No litigant has ever requested to be presented in person, even when he/she feels uncomfortable with the e-litigation. But it should not be prohibited if they want. (Walelign Mitiku, 2017)

There is no any clear policy on how to keep the rights of the litigants intact in video conferencing proceeding. And there are no clear procedures on, which case can be tried with video-conferencing and which demands physical appearance. The current procedural laws of the country require physical appearance. There is no explicit prohibition of technologically assisted courts in both substantive and procedural laws. As long as the convict appeared in the court physically or through video conferencing, it does not make a difference. Provided that the person has an access to the court through whatever means, there is no any legal ground that prohibits appearance through video conferencing. (Walelign Mitiku, 2017) So, there is nothing wrong in using them. But there are some procedural issues that cannot be substituted by the technologies. The judges are compromising many

things. (Bewketu Belay, 2017) The judges need go extra miles to make parties to the proceeding feel they are actually in the court.

As Mr. Bewketu said,

> ‘‘We encourage the litigants and tell them again and again to speak since they are not sure of their appearance in the court. (በተደጋጋሚ አይዞህ ተናገር እንላቸዋለን።።) We cannot boldly say these technologies can substitute the exceeding benefits of physical appearance. It does not have the whole attributes and qualities or advantages of physical appearance, even if some of its benefits are not substitutable.’’ (Bewketu Belay, 2017)

Almost all of my key informants asserted that, proceedings in videoconferencing do not violate the principles of open trial. They believe e-trial is open trial. The judge insists that; ‘‘anyone can attend a video-conferencing bench in the court. This (videoconferencing) is not against public trial. Public trial is important to control if the judge is working properly. It is important to ensure the fairness of the trial. This makes the judges not to decide arbitrarily.’’ (Bewketu Belay, 2017) But he has some reservation. Even if anybody can attend the proceeding in the court, the litigant may not see it from his/her position if he is being attended by people or not; because the camera can show him/her only the judges and not the whole courtroom. So, the feeling of the litigants must be considered. If the litigant feels as if he/she is being tried in an empty room, it must be corrected. Sometimes it may be said, the system may limit open trial to some extent. The public prosecutor believes that since anybody, especially families and friends of the litigants can attend the proceeding in the court, it does not violate the principles of public trial. (Walelign Mitiku, 2017)

In the discussions on effective access to justice, the issue of equality of access to the infrastructure of justice is so vital. Throughout the research process, the researcher has tried to identify the gaps where the technology can affect equality of access to the technologies. The pain incurred by the one who lives around where the service is available and the one who don’t, is not equivalent. The latter may

suffer more. Even if there are financial limitations which hinder the court from installing the service everywhere, the issue of inequality of access must be raised. The public prosecutor sees the issue of equality in different way. ‘‘The unavailability of videoconferencing centers in all prisons or areas, does not affect the right to equality. This does not affect the litigant’s right to appeal with other means. The other options are not yet blocked. They can appear physically.’’ (Walelign Mitiku, 2017) This may be true for criminal litigants who are in prisons. But civil litigants with no access to e-filing and videoconferencing centers will incur more cost and time to proceed with their appeals. The number of e-filing centers are limited to five cities; Mekele, Bahirdar, Diredawa,Harer and Hawassa. The ICT Director of the Federal Supreme Court stated the number of the centers as, ‘‘almost zero.’’ He admitted that they are working hard to dispense the service to other areas too. (Solomon Amare, 2017) The inhabitants of other cities definitely spend more money and energy to send their files to FSC. When compared to early times, it is so much better. At least people can go to the nearby cities to use the service without the need to come to Addis Ababa. But the problems of connection and power are so repellent. (Saba Mekonene and Ribka Addisu, 2017) When we observe the situation in a nationwide view, we see some sort of inequality. The areas which have the priority to the e-litigation system have a better access to justice than others. There is no exact known reason why some areas of the country have been selected for the program. ‘We don’t know if the criteria used to give priority to one location than the other, to install the services, are based on the principle of equality or not.’ (Bewketu Belay, 2017) The ICT Directorate has ample explanation for this. Mr Solomon explained why some areas are given priority.

> ‘‘We have given priority to some areas based on the figures that, from which areas do most cases come. The Amhara, Oromia and Tigray Regional States are those with the largest case flow. In Afar Regional State most cases are resolved through customary dispute settlement mechanism. There was no urgent need there; even including Ethiopian Somalia and Gambella.

So, we gave precedence to the Amhara, Oromia and Tigray Regional States. All Zonal (high) courts of these regional states are equipped with technologies.'' (Solomon Amare, 2017)

Besides equality in the sense of geographical distribution, the disparity in the quality of network between one center and the others is also a big issue. The appellant with access to better internet connection quality is more advantaged. She/he can get speedy justice and no endless adjournments. For instance, according to my observation Bahirdar has better connection quality than the other centers. But such problems will not entirely take away the enduring benefits of court technologies.

The attorney, Mr Esayas, has a different opinion on this issue. He argues, it may not be necessary to install the system everywhere simply for the sake of equality. There is not as such significant number of cases which may come to FSC from some parts of the country.

''As I noticed most of the areas with the e-filing and videoconferencing services are those with high number of cases flow. We can prove this by observing the numbers of cases on which most of the cassation decisions are made and the areas from which these cases came. As we can see from the published Cassation Decision volumes, number one is from Addis Ababa and number two is from Amhara. So, the system is serving the areas with high demand. It is serving where needed most.'' (Esayas Yirga, 2017)

Mr. Esayas believes even if the system is not installed equally in every part of the country, it is designed in a way that can serve the majority. Does this mean that the right to equality is maintained? The other factor which may worsen the inequality is the inconvenience of the technologies to different segments of the society. There are physical barriers to the technologies for the disabled and pregnant women. It is not comfortable for these parties to litigate through these means. The other factor is the digital divide. 'A digital divide is economic and social inequality with regard to access to, use of, or impact of information and communication technologies (ICT). The divide within countries may refer to inequalities between individuals, households, businesses, or geographic areas,

usually at different socioeconomic levels or other demographic categories.' (Norris, 2001) Even if the court would likes to render the services to every part of the country, the disparities of access to technology and internet coverage among different areas of the country will make it difficult. The difference in the literacy level of the people is another face of digital divide. The people may not be able to use the technology even if they have access to it. If they don't have any idea how to use it, for instance, they cannot send their files through e-filing. It is not designed for illiterates, elderly people, disabled and pregnant women. (Solomon Amare, 2017) The disabled and the elderly may not approach to the camera or microphone comfortably. If the litigant needs sign language translator, he/she may not see the translator properly. When the countryside people are made to litigate through videoconferencing, they usually ask, 'is he really the judge we are talking with now?' (Esayas Yirga, 2017) They are always in doubt to their appearance before judges. Their intellectual and physical farness from the technologies make them not to enjoy the fruits of the system effectively. The ICT professional at Bahirdar videoconferencing center mentioned that clients from the countryside do not know how to use the microphone. And instead of looking directly at the camera, they look towards the people in the center. So the ICT professional must always help them. (Tadiye Anegagir, 2017)

The Federal Prisons Administration has viewed challenges of the system, from a very different angle, specifically the videoconferencing proceedings in prisons. Most of the challenges are claimed to be related to the attitudes of prisoners instead of the system itself.

> ''The prisoners do not like it. They intentionally try to hide in their cells to avoid appearance in videoconferencing. Every time they have appointment, they want to go out and see the outside world. They take it as a means to meet their families and friends in the court, who were not able to visit them due to remoteness of the prisons. The physical appearance gives them a relief from the prisons' confinement.'' (Chief Superintendent Reta Abebe, 2017)

For whatever reason, the prisoners 'hate' the system. Mr. Reta has said when the system was launched, the prisoners had a doubt and they rejected it. They used to say, 'it is not real. They are faking it. They are cheating us. It is a recorded video. Are they really judges? They want to decide whatever they want without us appearing in the real court' and other contentions. Later they began to send their families to the court to check if the system is genuine. After their families attended the proceedings, they tell them 'it was real' and the prisoners began to trust the system. After a coalition of the justice sector institutions is formed, courts and public prosecutors have been visiting the prisoners and giving them explanations on the system, to boost their trust on the system. But there is still such problem. (Chief Superintendent Reta Abebe, 2017)

Poor network and redundant interruptions are also cited by the Prisons Administration as challenges. The court is usually late to start the proceeding on time. ''After we make ready the system and the prisoners, we wait for long period of time till the judges begin the proceeding. This causes boredom on us and the prisoners. '' (Chief Superintendent Reta Abebe, 2017) In terms of interruption of networks, if the system is not successful for consecutive appointments, the administration will transport the prisoners to the court.

The researcher discussed some side issues with the key informants in relation to the e-litigation system in FSC. The judge, Mr. Bewketu, has stated that the technologies have not much to do with the ethics of the judges. It may not prevent corruption. But if the proceedings are recorded, it can help to clear ambiguities because it will be easy to retrieve data. The prosecutor also insists that the independence of judges is intact in such system. The other issue is the security issue. Since most of the technologies operate through internet system, cyber attacks and computer viruses are definitely a real threat. There is no any security measure provided by the court or by the Information Network Security Agency (INSA). The INSA was not willing to give information on the matter. But as I found out from anonymous source, there is no cyber security protocol planned for courts IT infrastructure.

4.3 The Implementation of Human Rights-based Approach and Effective Access to Justice in e-litigation system of FSC

What do all these mean? The benefits and the challenges of the system are discussed from various angles. But we have to know what they mean according to the principles of human rights-based approach and effective access to justice. Most of the government officials present the court's technology in a palatable way. The enduring benefits of the system inevitably contribute a lot to access to justice. But the achievements must be evaluated with the principles of human rights based-approach and effective access to justice. This is one of the main goals of this research after all. The proximity of the judicial services to the public and reduction of cost were the major objectives of the program. We can conclude from the interviews, the observations and literature studies, the whole e-litigation programs of the Federal Supreme Court is directed to dispensing the judicial service to different areas of the country. This saves time and cost for the people and the government. People can get justice proximately with less cost. These are important components of effective access to justice; but not the only. After the people get the access, the administration of justice is another important component of effective access to justice. The system is actually causing many impediments to the proper administration of justice. In some areas it worsens the administration of justice which is already marked by many age old problems.

The first problem we can observe is on the general framing of the program itself. The Federal Supreme Court and the justice sectors in general have not gave a thought on how the technologies can affect some rights of litigants. Taking the service of the court to the people and sparing costs overshadowed the importance of basic rights of litigants. The major principle of human rights-based approach is every development program must promote human rights principles. And these programs should be guided by human rights principles. (UN HRBA Portal, 2016) More of a result-based approach was followed in framing the program. Being result-based is not a problem by itself. But if it ignores human rights principles, it may violate some rights of the people. The government officials

demonstrate the success of the program by mentioning how much money is saved because of the services. And some of the litigants interviewed are satisfied since they are spared from too much costs and toil. I never got any report on how e-filing or videoconferencing have promoted right to equality, how they improved the quality of justice, how they helped the litigants to present their cases well, how they help to avoid justice delay or how they promoted the rights of the disabled and illiterate segments of the society. The success of any program must be measured by human rights standards in human rights-based approach. All these are basic components of access to justice which needed due attention when the program is being formulated. Accessibility, efficiency and effectiveness were the three basic objectives. The court has strived to meet these objectives but unintentionally caused some problems on the rights of litigants. Unintended discrimination must be avoided in human rights based approach. (OHCHR, 2006) The program has created a disparity in opportunity of access among different areas. Especially the e-filing service which is limited to only five cities has caused a difference among cities and regional states. As per Mr Solomon, the priority is given to those areas with most cases flow. The limitation of resources may make it impossible to dispense the technology-based services in all places. But according to human rights-based approach, during such cases priority must be given to the poor and less advantaged ones. The criteria for priority do not comply with this principle. The other manifestation of difference among litigants is the 'digital divide'. The system is not usable by and comfortable to illiterates and elderly. The difference in availability of internet in the country makes it impossible to dispense the service to everyone. With only 3.7% internet coverage, disparity in services of e-filing and videoconferencing services is expected. This problem is beyond the mandate of the Federal Supreme Court. Some parts of the country are left because of these limitations; especially the undeveloped ones. The other source of difference among litigants is in the quality of connection. Some videoconferencing centers like Bahirdar has the best internet quality which is so helpful to conduct good court proceedings. Other centers like Assosa and Mekele are so problematic where many cases are being adjourned

repeatedly. Even among the centers there is a difference in judicial services which affects the speed and quality of justice. The misunderstandings and the boredom are more common at the centers with bad internet connections. The litigants who get served in these centers are technically denied of proper and meaningful access. Development or reform programs should not be source of inequality or discrimination. The public prosecutor, Mr.Walelign has argued, as long as other options are not closed, we cannot see it as inequality. But the pain and the cost incurred by the one who lives in area where there is no e-filing or videoconferencing service is not equivalent to the one with the service. So, in terms of cost and physical distance, the other options like appearing physically or waiting for circuit benches are not definitely the same as getting served through court technologies. There is no systematic discrimination (inequality). But there is some level of unfairness between different litigants.

The second point which is missed from the human rights-based approach is public participation. As we can infer from the interviews, the people have not received the technology full heartedly. The prisoners hate and don't trust it. Other litigants are not feeling comfortable with it or they are stranger to it. I have met many people who have no any idea if about such service being given by the court, including lawyers. Let alone the layperson, the lawyers even feel estranged from the technologies. They do not embrace it well. In human rights-based approach the public must take part in each development process and must feel the sense of ownership. I don't see such sense of ownership. Some appreciate the benefits but they see it as if it is imposed from someone. I found out that at the beginning most of the judges were not happy with the system. There were some efforts made to introduce the system to the justice sectors and the public to some extent but not satisfactory. The prisoners' resistance is one big indication. Dr Abiyot said; ''the problem is that there is not much work done on disseminating the perceived usefulness of the technologies. And the use of technology is not a norm yet in the justice sector. Most problems can be handled easily when it becomes norm of the society.'' (Abiyot Bayu, 2017) To make it a norm, the society must take part in

the whole process of the program. The reaction of the society can be observed through such processes. The justice personnel and the society must believe the system can help them and can enhance justice if the program be successful.

The third important point is the understanding of the government officials and the people on court technologies is not harmonized with human rights principles. The people are already satisfied for being spared from big hustle and cost. They are happy for just appearing in the Federal Supreme Court, which is the highest level of courts without the need to go to Addis Ababa. Some of them are not too concerned about the network problem or how many times their cases are being adjourned. The officials are too busy in calculating how much money is saved from the pockets of the people and the Government. Some of the institution like Prisons Administration cannot tell many things about how the service is benefiting the prisoners. They are mainly concerned with reducing the Government's costs and inconvenience. There is nothing wrong in minimizing expenditures unless it is done at the cost of the people's rights. The government is not much concerned about, at what cost is the money being saved. The program must be understood and evaluated with human rights principles. As a judicial institution the court must focus on how the rights of litigants are enhanced in the system. A human rights based-approach will help them to adjust their annual and monthly plans.

How the principles of effective access to justice were interpreted in the e-court system is another very important question. Since the scope of the research is limited to judicial access to justice, let's see some measurements of courts' performances. There are certain criteria for the measurement of quality of court's performance. The US applies five standards of performance: access to justice, expedition and timeliness, equality, fairness and integrity, independence and accountability, public trust and confidence. (Pim Albers) The Netherlands and Finland focus on five parameters of measurement. They are independence and impartiality, timeliness of proceedings, expertise of the judges, treatment of the parties at court sessions and judicial quality. (Pim Albers) Many other countries use these performance measurements. The administration of FSC also uses these

parameters as guidelines. Whether the courts administer justice through traditional means or through technologies, they must follow these guidelines. These measurements coincide with human rights standards and principles of effective access to justice. So, we have to see how these criteria are observed in the e-court of the Federal Supreme Court. According Cappelletti and Garth equal accessibility to all and socially and individually just results are the manifestations of effective access to justice. This means the whole process of judicial proceedings must finally lead to just results. The other manifestation of effective access to justice is avoiding obstacles to equal accessibility, just results and speedy justice. All constitutional rights of citizens must be observed. Any impediments which make litigants to waive their rights must be avoided from courts. The European human rights system claims, 'the right to access to a court must be 'practical and effective'. For the right of access to be effective, an individual must have 'a clear, practical opportunity to challenge an act that an interference with his rights.' (European Court of Human Rights, 2013, p. 14)

In the research conducted, we see many problems in this regard. The first problem is delay of judgments or decisions of the court. The recurring adjournments and interruptions of proceedings have caused delay of justice. The videoconferencing proceedings have also caused tension on judges and litigants. The judges are more worried about the technical issues. They worry if the proceeding will continue without interruption or not. They cannot concentrate on the quality of their decisions or judgments. Instead of concentrating on the rights of litigants, they focus on completing the session before it interrupts. If the quality of their decisions is compromised, the rights of litigants will be affected. The quality of judgment will affect the litigants' right of liberty, right to be presumed innocent and other civil rights. The reason for litigants' (prisoners') preference of physical appearance is, it allows them explain their causes clearly. And it enables them to defend their rights and liberty. Such opportunity is not available as much as needed in videoconferencing proceedings.

The other issue is on the fairness of the proceedings. The system must be fair to all parties to the suit. In any proceeding equality of arms is expected since it is one of the components of effective access

to justice. The proceedings of videoconferencing are causing some imbalance between disputing parties. The one who appear in person is left with better chance of securing his claims than the other. The technical issue is making such proceedings unfair to one side. This is a human rights issue and affects the quality of judgment. 'Litigants must have the opportunity to present their case in conditions without substantial disadvantage compared to the other party. This is guaranteed in Art 14 of ICCPR.' (Human Rights Law Resource Center, 2009) Fairness includes procedural fairness, the state of mind of judges on litigants who appear in person and through videoconferencing and the stress level of litigants.

The challenges of the system sometimes discourage litigants from appealing and keeping up on their appeal. Especially if the sentence they are serving or the punishment is low, they may opt to serve it instead of dealing with the annoying technical problems. They waive their right to appeal and the right to be presumed innocent. As we have seen from the instance given in one of the public prosecutor's interview, litigants may get annoyed and drop their cases. The other problem is the difference of treatment between litigants who appear physically and who appear through videoconferencing. The judge's psychology and contemplation of the whole situation of the litigants may differ in the two scenarios. Especially in the Ethiopian courts' ICT system which is marked by many malfunctioning, this problem is noticeable. If the judge misses important points that can help for fair decisions, he/she may not deliver quality judgments. Both in civil and criminal proceedings the litigants must be able to explain their claims and defenses at every stage of trial without any barrier. This right is hindered in the videoconferencing litigations to some extent.

One of the components of effective access to justice is creating awareness about the means of justice. The court has made some efforts to create the awareness but not enough. The large part of the society including lawyers is not aware of the technology. This has caused a variation in the utilization of the system. The ICT Director of the court revealed that they have a plan to advertise the service using different Broadcasting Media. (Solomon Amare, 2017) But the Court admitted that, they have not

done what should have been done. In effective access to justice, the awareness creation includes giving education on people's rights and the means to enforce their rights. The right to counsel is also affected to some extent in the e-court system. In conclusion, the predicaments of videoconferencing proceedings and the e-filing services of the Federal Supreme Court have affected some components of effective access to justice. Even with the commonly used performance measurements of courts, the current performance of the Federal Supreme Court has not yet achieved much.

Chapter Five

5. Conclusion and Recommendation

5.1 Conclusion

When we begin this paper, we started with the intention to see how access to justice is handled and administered in the technologically assisted judicial services. It is not to focus on the benefits of the system instead it is to observe how the e-litigation system is challenging the administration of justice and the rights of citizens. The judicial sector needs to continue with the e-litigation system by adjusting its deficiencies. The Ethiopian justice system which is already marked by many deficiencies is facing another challenge nowadays. We are not forgetting the opportunities that came with the court technologies. But as the justice sector which handles the most delicate issue of human rights, the challenges of the technologies should not be ignored. Three main important points can be concluded from the whole discussion. One, technology is not the final answer to the problems of the justice sector. Technology has always gaps. When technology is applied to courts, it came with all its gaps. The gaps should not affect the rights of citizens. So the actors in the justice sector must identify and fill the gaps. Two, the already existing problems of the Ethiopian justice sector are being reflected in the proceedings of the court with technologies. The technologies are not the only source of the above problems. The new technologies with the unchanged attitude of actors in the justice sector, is also big obstacle. The attorney Mr Esayas said, ‘‘the boredom of judges and their influence on the litigants to speak fast in videoconferencing proceedings are the problems of many judges; even before the system was introduced. The technical troubles have aggravated this behavior of judges.’’ He added, ‘‘if the justice system is already disorganized, corrupted, indifferent and insensitive to the rights of litigants, the technologies cannot help much.’’ (Esayas Yirga, 2017) Three, the concepts of effective access to justice and human rights-based approach are not well interpreted in terms technologically assisted courts. Much thought is not given on how such concepts will be understood in the new system given the country’s limited capacity and infrastructure. Even after the

problems have occurred, they are not analyzed in relation to the rights of litigants. They are considered as technical problems and only technical solutions are being sought for them. The whole understanding of justice administration through technologies must be tuned to human rights-based approach. Dr Abiyot has commented that the system is not re-defined in the institutional term. The whole flow of the process must be entangled with the main objective and system of the institution. Technology is not an obstacle to access to justice. But if it is not adjusted to the principles of effective access to justice, it may cause a barrier.

The courts of foreign countries have passed through the same challenges and some of them have managed to deal with it. We can learn from them that, the responsibility to seek solutions for the challenges of e-litigation is of many stakeholders: MCIT, ethio-telecom, the Federal Supreme Court, Prisons Administration, the Attorney General, lawyers and others. The legislative branch of the state must work on laws which can help to handle effective access to justice. The judges, prosecutors, lawyers and other participants in e-courts must fill the non-human gap of the technologies. The final goal of the system is the satisfaction of litigants. The satisfaction of litigants is not only in terms of cost and proximity. The process and the outcome of the judicial proceedings must be just and fair.

The challenges of the technologies have been observed at the pilot level. There are only forty videoconferencing and five e-filing centers. At this stage it is easier to adjust the program in a desirable way. The opportunities and the challenges observed at the pilot stage of the system in relation to litigants' human rights must be interpreted for the larger scale. The benefits can be doubled and tripled while the challenges can be diminished. The rights of citizens are not something to be compromised whatever benefits the system may deliver. Most of the technical problems are beyond the capacity of the court. They are actually national matter. But some of the problems are caused due to lack of prior preparation and due to reluctance. Preparing legal and procedural bases for the smooth operation of the system is more of legal work than technical issue. There are many

assignments that should be accomplished by law and human rights professionals. They should adopt human rights sensitive operational procedures for the system.

Judicial proceedings are more based on personal interactions between litigants and the judges. The oral arguments and the judges' discretion are based on how well can the parties to the suit can communicate with the court. The whole process affects the people's rights; rights on their property, right to their liberty etc. Being technically inaccessible may be worse than physical inaccessibility, because people may actually think they got the access while they are actually suffering from a number of adjudications and justice delay. So in conclusion, the delays, the unintentional and indirect waiver of rights, the discomforts of the proceedings and the discrimination among different segments of the society which are caused by the technologies must be dealt well.

5.2 Recommendation

- The program should be reformulated in a human rights-based approach. Effective access to justice must be set as the primary goal of the program. All government sectors which are working on the court's ICT projects must be acquainted with the knowledge of human rights of litigants. They should consider human rights in every decision regarding ICT in the justice sector.
- The technology must be all inclusive. The e-filing must be restructured in different languages and must have a manual that can be accessed by different groups of the society; disabled and pregnant women. Those who cannot use it anyways must be assisted by ICT personnel who must be there all the time. The e-filing system must be accessible for 24 hours. This is so important especially for those who are at the verge of deadline of appeal.

- The technologies should come up with the means which substitute the traditional ways of communication which delays justice, like faxing of documents/evidences, sending court orders to and fro prisons administrations and sending arrest orders.
- All the necessary equipments must be fulfilled. Like comfortable court rooms, cameras, microphones, speakers and chairs and tables. The cameras of the videoconferencing must be installed in a way that can show the whole courtroom.
- Exceptions and other alternatives must be provided to the e-court system. If the system fails other choices must be sought quickly. Circuit benches must not be abandoned totally. Mobile phone applications must be introduced for some services of the court; for e-filing for instance. Until the network is fixed the circuit bench should not be left. Physical appearances or circuit benches or other videoconferencing centers with best quality should still be open.
- Laws, rules and procedures must be made which guide the whole e-court system in the Federal Supreme Court. For instance, after how many interruptions of proceedings is adjournment allowed or when other options must be sought and other procedures must be put in detail. Rules and regulations must be set to decide when a person can appear through videoconferencing and whether the person has an option to appear physically or not.
- The government must take the initiative to direct more internet capacity to courts even by cutting from other less urgent sectors. This can be used until the connection problem is fixed nationwide. And also there should be a strict security protocol for the e-court system to avoid on-line file theft, computer viruses and hacking.
- Graduates of ICT, computer science and other technology fields must be organized and get funded by the government to open and operate additional e-filing and videoconferencing centers throughout the country. They can also fix the technical problems immediately. This is also recommended by the ICT Directorate of the court. The ten billion youth revolving fund can be one of the sources of finance.

- The government must consider giving license to private internet providers. Since government if the sole internet provider, the load must be shared by others to enhance internet penetration of the country.
- The litigants must be made to prepare psychologically for the technologies and must be told in clear terms that they are appearing at the court of law. They have to be made to assume that the whole grace of the court is intact.
- The physical conditions of the litigants must be well explained to the judges so that they can have some idea on how to deal with the situations. Their decisions may need information on the physical condition of the litigants. For instance, if there is a fraud in contract and one of the parties who sue for being cheated is blind, this will be very important information that the court must know. Otherwise the videos must be so clear that show the whole situation of the litigants.
- The litigants must be given ample chance to question the witnesses from the other side of the line. They must have the right to see any document presented against them in the court which is located at the other side of the line. If not they may not be ready to defend themselves and their constitutional rights will be violated. They should not be strangers to the evidences.
- There must be someone in the other side of the line, who controls the discipline of the court proceedings. Since some of the videoconferencing centers are in government offices, the litigants from the other side may not realize that they actually appeared in the court. As I have mentioned, I observed when they talk to each other and over phones and showing some inappropriate behaviors. The law of contempt of courts must be applied strictly. Sometimes, they miss what the judge in the Supreme Court had said to them while they are talking or out. This must be avoided. They may not defend themselves if they don't listen carefully what the judge is saying. Such things happen amid network and quality problems.

- The law education curriculum must accommodate the e-litigation system. The law professionals must be well trained on how to handle the rights of litigants through the challenges of the e-litigation system.

Bibliography

Abiy Gebrewahid, A. a. (May 16, 2017). Court Technologies. (E. Seife, Msaili)

Abiyot Bayu, D. o.-g. (May 22, 2017). Court Technologies. (E. Seife, Msaili)

Access to Justice Advisory Committee. (1994). *Access to Justice:an action plan.* Canberra: Canberra: Australian Govt.Pub.

American Association of Law Libraries. (2014). *Law Libraries and Access to Justice; A Report of American Association of Law Libraries.* American Association of Law Libraries.

Bewketu Belay, J. a. (March 17, 2017). Court Technologies. (E. Seife, Msaili)

Bosio, J. V. (2014). Improving Court Efficiency: the Republic of Korea's e-Court Experience. *Doing Business* , kur. 66-70.

Bruce L.Berg, C. S. (2001). *Qualitative Research Methods for the Social Sciences.* Needham Heights: A Pearson Education Company.

Central Statistical Agency. (- -, 2016). *Opera*. Imenukuliwa June 27, 2017 kutoka Central Statistical Agency: http://www.csa.gov.et

Chief Superintendent Reta Abebe, F. P. (May 8, 2017). Videoconferencing in Prisons. (E. Seife, Msaili)

Cisco Systems.Inc Internet Business Solutions Group. (2006). Ethiopia Accelerates National Development through ICT. *Customer Case Study* , kur. 1-5.

Clarke, T. (2005). *NCSC (Nattional Center for State Courts)/*. Imenukuliwa December 10, 2016 kutoka NCSC: www.ncsc.com

Cresswell, J. (2007). *Qualitative Inquiry and Research Design:Coosing among Five Approaches 2nd Edition.* Thousand Oaks: CA:Sage.

Elin Skaar, I. S. (2004). *Aid to Judicial Refiorm: Norwegian and International Experiences.* Bergen, Norway: Chr. Michelsen Institute.

Eniyew, S. (March 3, 2017). Court Technologies. (E. Seife, Msaili)

Esayas Yirga, A. (May 5, 2017). Court Technologies. (E. Seife, Msaili)

Estibel Tesfa, A. i. (May 11, 2017). Court Technology. (E. Seife, Msaili)

EU Agency for Fundamental Rights and Council of Europe. (2016). *Handbook on European Law relating to access to justice.* Luxembourg: Publication Office of EU.

European Court of Human Rights. (2013). *Guide on Article 6 of the European Convention on Human Rights.* Strasbourg; France: Council Of Europe/European Court of Human Rights.

Evert-Jan Van der Vlis, M. o. (2011). Videoconferencing in Criminal Proceedings. Kwenye S. B. L.Taylor(Eds), *Videoconference and Remote Interpreting in Criminal Proceedings* (kur. 11-25). Guildford, UK: Center for Translation Studies, University of Surrey.

FDRE. (1995). *FDRE Constitution.* Addis Ababa: Birhanena Selam.

FDRE HoPR. (1996). *Federal Courts Proclamation No. 25/1996.* Addis Ababa: Birhanena Selam Printing.

FDRE. (2013). *National Human Rights Action Plan 2013-2015/ The English Version.* Addis Ababa: FDRE.

Federal Justice Sectors. (May 2017). Message of the President of FSC Dagne Melaku. *Fitih* , uk. 5.

Filipos Negash, V. P. (May 4, 2017). Videoconferencing in Ethiopian Courts. (E. Seife, Msaili)

Francioni, F. (2007). The Rights of Access to Justice Under Customary International Law. Kwenye F. Francioni, *Access to Justice as a Human Right* (uk. 64). New York: Oxford University Press.

Garth, Mauro Cappelletti and Bryant. (1978). Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective. *Buffalo Law Review* , 181-292.

Hare, H. (June 2007). *Survey of ICT and Education in Africa:Ethiopia Country Report ICT in Education in Ethiopia.* AA: FDRE.

Hon. Marilyn Warren AC, C. J. (2015). Embracing Technology: The Way Forward for the Courts. (kur. 1-16). Melbourne: Supreme Court Victoria.

Human Rights Committee. (2007). *ICCPR General Comment No 32 on Art 14.* Geneva: Human Rights Committee, UN.

Human Rights Committee. (2004). *ICCPR General Comment No. 32 Paragraph 7.* Geneva: Human Rights Committee UN.

Human Rights Law Research Center. (March 2009). *The Right to a Fair Hearing and Access to Justice: Austalia's Obligation Submission to the Senate Legal and Constitutional Affairs CommitteeInquiry into Australia's Judicial System, the Role of Judges andAccess to Justice .* Melbourne: Human Rights Law Resource Centre Ltd.

Human Rights Law Resource Center. (2009). *The Right to a Fair Hearing and Access to Justice: Australia's Obligation, Submission to the Senate Legal and Constitutional Affairs Committee.* Melborne, Australia: Human Rights Law Resource Center.Ltd.

ICT Directorate of FSC. (2017). *Monthly Performance Report of the ICT Directorate ,Miazia 01-Miazia 30.* Addis Ababa: not officialy published.

ICT Directotate of The Federal Supreme Court. (2017). *ICT Services in The Federal Supreme Court of Ethiopia.* Addis Ababa: The Federal Supreme Court.

Informant 1, c. (May 1, 2017). Court Technologies. (E. Seife, Msaili)

Internet Live Stats. (July 1, 2016). *Opera*. Imenukuliwa June 28, 2017 kutoka Internet Live Stats.com: http://www.internetlivestats.com/internet-users-by-country/

Internet Society. (- -, -). *Opera*. Imenukuliwa June 27, 2017 kutoka Internet Society: http://www.internetsociety.org

Kokebe, W. (May 2014). Rethinking the Ethiopian Justice System. Kwenye k. J. etal, *Acess to Justice in Ethiopia:Towards an Inventory of Issues* (uk. 32). Addis Ababa: Ceneter for Human Rights AAU.

Kovacs, P. R. (May 27, 2015). *Canadian Lawyers for International Human Rights (CLAIHR)*. Imenukuliwa April 10, 2017 kutoka CLAIHR: htttp://www.claihr.ca

Legal Services Institute. (December 2012). Improving Access to Justice: Scope of the Regulatory Objective. *Intrim Strategic Discussion Papers* , 10.

Louis Cohen, L. M. (2007). *Research Methods in Education 2nd Edition.* New York: the Taylor and Francis e-library.

M.K. Sahu, R. P. (2015). Video-conferencing in Criminal Trials vis-a-vis Speedy Justice in India: Problems and Perspective. *Law Mantra Journal* .

MCnamara, J. B. (October 2014). *International Access to Justice: Barriers and Solutions: Bingham Center for the Rule of Report.* Bingham: International Bar Association.

Ministry of Capacity Building. (February 2005). *FDRE,Comprehensive Justice System Reform Program Baseline Study Report.* Amsterdam: Ministry of Capacity Building.

Ministry of Communicationa and Information Technology (MCIT). (- -, 2016). *Opera*. Imenukuliwa April 8, 2017 kutoka MCIT: http://www.mcit.gov.et

Ministry of Communicationa and Information Technology. (2012). *ICT Initiatives in Ethiopia.* AA: FDRE.

Ministry of Finance and Economic Development . (2010). *Growth and Transformation Plan (GTP) 2010/11-2014/15.* Addis Ababa: FDRE.

Ministry of Finance and Economic Development. (November 2010). *FDRE Growth and Transformation Plan, 2010/11-2014/15, Volume 1, Main Text GTP I.* Addis Ababa: FDRE.

Ministry of Finance and Economic Development. (November 2010). *GTP I 2010/11-2014/15.* Addis Ababa: FDRE.

Natasha Mack, C. W. (2005). *Qualitative Research Methods: A Data Collectors Field Guide.* North Carolina: Familiy Health International.

National Center for State Courts (NCSC). (n.d.). *National Center for State Courts (NCSC)*. Retrieved from www.ncsc.org.

National Planning Commission. (April 2015). *Second Five Year (2015/15- 2019/20) Growth and Transformation Plan Final Draft (Amharic version).* Addis Ababa: FDRE.

National Planning Commisssion. (2016). *GTP II 2015/16-2019/20 Volume II Policy Matrix.* Addis Ababa: FDRE.

Neuman, W. (2007). *Basics of Social Research: Quantitative and Qualitative Approaches.*

Norris, P. (2001). *Digital Divide: Civic Engagement, Information Poverty and the Internet Worldwide.* Cambridge University Press.

Norwick, M. D. (2006). *Report of a Survey of Videoconfrencing in the Courts of Appeals.* Washington D.C: Federal Judicial Center.

OHCHR. (2006). *Frequantly Asked Questions on a Human Rights-based Approach to Development Cooperation.* New York and Geneva: UN.

Pim Albers, S. A. Performance Indicators and Evaluation for Judges and Courts. *Council of Europe* (kur. 1-14). Strasbourg, France: Council of Europe.

Ponce, J. C. (November 2010). Measuring the Rule of Law. *The World Justice Project – Working Paper Series* , 13-14.

R.Bock, S. (June 29 2016). E-Filing: A Guide for Attorneys. *Clerk and Comptroller, Palm Beach County* , uk. 3.

Radaphat Chongthammakun, P. (2014). *Preliminary Study Report on e-Court Development and Implementation: LessonsLlearned from Korean e-court Experience.* Daejeon: Office of Administrative Courts of Thiland.

Representatives, FDRE House of People's. (2013). *FDRE National Human Rights Action Plan 2013-2015 (Amharic Version).* Addis Ababa: FDRE.

Respondent 2, P. i. (May 16, 2017). Videoconferencing. (E. Seife, Msaili)

Respondent 3, P. i. (May 16, 2017). Videoconferencing. (E. Seife, Msaili)

Respondent 7, P. i. (May 16, 2017). Videoconferencing. (E. Seife, Msaili)

Rooij, I. V. (February 2008). Access to justice and Legal Empowermnet: Making the Poor Central in Legal Development Co-operation. *Law, Governance and Develpment: Research and Policy Notes* , uk. 12.

Ros Macdonald, M. B. Ensuring the Integrity of the E-court Process. *Justice Environments Conference*, (uk. 1). Melbourne.

Ros Macdonald, M. B. (2006). Justice Environments Conference:Ensuring the Integrity of the E-court Process. *Proceedings Justice Environments Conference*, (kur. 1-12). Melbourne.

Saba Mekonene and Ribka Addisu, N. A. (April 13, 2017). The e-filing Service of the Federal Supreme Court. (E. Seife, Msaili)

Sen, S. (August 30, 2014). About 14,000 Courts have been Computerized: Ravi Shankar Prasad. *MINTONSUNDAY* .

Senait Eniyew, P. P. (March 31, 2017). Court Technologies. (E. Seife, Msaili)

Setlur B.N. Prakash, N. L. (2014). E Judiciary: a step towards Modernization in Indian Legal System. *Journal of Education and Social Policy vol.1 no.1* , 111-124.

Solomon Amare, D. o. (March 7, 2017). Court Technologies. (E. Seife, Msaili)

Stebek, E. N. (December 2015). Judicial Reform Pursuits in Ethiopia, 2002-2015:Steady Concrete Achievements - versus - Promise Fatigue. *Mizan Law Review, Volume 9, No 2* , 236.

Tadiye Anegagir, I. P. (May 11, 2017). Videoconferencing . (E. Seife, Msaili)

The Federal Supreme Court. (March 16, 2016). *Ethiopian Federal Courts*. Imenukuliwa December 26, 2016 kutoka www.fsc.gov.et: http//www.fsc.gov.et

The Federal Supreme Court of Ethiopia. (April 2015). Technologies for Effcient and Accessible Service. *Chilot Magazin Volume 1 Number 3* , uk. 9.

The Federal Supreme Court. (June 2015). *Strategic Plan of Federal Courts for 2015/16 – 2019/20.* Addis Ababa: The Federal Supreme Court.

the Kansas Supreme Court Research Clinic at the University of Kansas School of Law. *Recommendations for Videoconferencing in Kansas Courts.* Kansas: the Kansas Supreme Court.

theguardian, J. R. (October 5 Wednsday, 2011). Access to Justice is a Fine Concept. What does it mean in view of cuts to legal aid? *theguardian* .

UN General Assembly. (1966). *ICCPR.*

UN HRBA Portal. (2016). *HRBA Portal*. Imenukuliwa March 16, 2017 kutoka UN Practitioners' Portal on Human Rights Based Approach to Programming: www.hrbaportal.org

UNDP. (2004). *<http://www.undp.org>*. Imechukuliwa toka <http://www.undp.org>.

UNDP. (2000). *Human rights and Human Development.* New York: Oxford University Press.

UNDP. (2005). *Programming for Justice: Access for All A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice.* UNDP.

United Nations. (1948). *UDHR.* Paris.

Velicogna, M. (2011). Electronic Access to Justice: From Theory to Practice and Back. *Droit et Cultures* , 14.

Velicogna, M. (June 2007). Justice Systems and ICT; What Can Be Learned from Europe? *Utrecht Law Review Volume 3 Issue 1* , 129.

Walelign Mitiku, P. P. (March 31, 2017). Court Technologies. (E. Seife, Msaili)

Wan Satirah Wan Mohd Saman, A. H. (2013). E-Court: Information and Communication Technologies for Civil Court Management . *2013 Proceedings of PICMET '13: Technology Management for Emerging Technologies* , kur. 2296-2304.

Worldometers. (June -, 2017). *Opera*. Imenukuliwa June 27, 2017 kutoka Worldometers: http://www.worldometers.info/world-populations

Yitayehu Alemayehu and WondemagegnTadesse. (2013). *Human Rights Research: A Practical Guidebook on Methodology and Methods.* A.A: Center for Human Rights, AAU.

Yizez Gebre, C. (May 11, 2017). Videoconferencing . (E. Seife, Msaili)

Annex

Annex 1 List of Respondents

No	Full Name	Status	Institution
1	Bewketu Belay	Judge	FSC
2	Solomon Amare	ICT Director	,,
3	Filipos Negash	ICT Professional	,,
4	Tadiye Anegagir	ICT Professional	,, Bahirdar
5	Ribka Adisu	e-filing professional	,,
6	Saba Mekonen	e-filing professional	,,
7	Walelign Mitiku	Public Prosecutor	Attorney General
8	Senayit Eniyew	Public Prosecutor	Attorney General
9	Esayas Yirga	Defense Lawyer/former Judge	Private
10	Estibel Tesfa	Defense Lawyer	Private/ Bahirdar
11	Chief Superintendent Reta Abebe	Director	The Federal Prisons' Administration
12	Abiy Gebrewahid	Defense Lawyer/ Judge	President of the Tigray Bar Association/Mekele
13	Dr Abiyot Bayu	Director of E-governemnt Directorate	MCIT
14	Yizez Gebre	Litigant	Bahirdar
15	Respondent 1	Litigant	A.A
16	Respondent 2,3,4,5,6,7,8	Prisoner Litigants	Shewarobit
17	Respondent 9	Released Convict	A.A

Annex 2 Semi-structured Intereview Guides

Common Questions for all of the Respondents

Full name and current status

Are you willing to give the interview?

Questions for the Federal Supreme Court ICT Directorate

1. What are the major objectives of the ICT programs in the court?

2. Is there any human rights based approach followed when the program was planned by the court?
3. Do the technologies promote right of access to justice?
4. How is the concept of 'access to justice' perceived in the e-litigation court system?
5. Which countries' experience is taken to introduce the system in Ethiopian courts?
6. How many video conferencing centers are there in the country? In how many prisons?
7. Can citizens claim for video conferencing access as a right?
8. What are the unique advantages of technologically assisted courts when compared to ordinary courts?
9. Can the court technologies serve the society equally? What about the disadvantaged groups?
10. Is awareness created for the society equally?
11. What about the ICT infrastructures of the country and the efficiency of courts?
12. What is the future plan of the court with respect to technologies?
13. How do you see access to justice in the present day judicial system of the country?
14. How is the court interacting with different sectors of the state; like ethio telecom, INSA, Ministry of Communication and Information Technology, Federal Prisons Administration, Attorney General, Police and other organs?

Questions for the Federal Supreme Court Judges and Attorneys

1. Do the technologies promote right of access to justice? If yes, in what way?
2. Can citizens claim for video conferencing access as a right?
3. What are the unique advantages of technologically assisted courts when compared to traditional courts?
4. Can the court technologies serve the society equally? What about the disadvantaged groups?
5. How do you see access to justice in the present day judicial system of the country?
6. What will be the future of courts in general? How will the notion 'access to justice' be understood in the future?
7. Is there any procedural ground for the use of video conferencing in courtrooms?
8. How about the reaction of judges? Are they comfortable? Do they fit in the system?
9. Can the system improve the quality of justice?
10. Do you think citizens are more privileged by the system?
11. What are the practical challenges of the system? How the challenges can affect the citizen's right of access to justice?

Questions for Federal Prisons Administration

1. What advantages does the videoconferencing service have for the prisons administration?
2. In what ways does the service benefit the prisoners?
3. Does it have any implications on the quality of services and judgments delivered by courts?
4. What possible violations can happen on the rights of prisoners due to technical difficulties and network problems of the system?
5. What about the response of other justice organs; courts, public prosecutors, attorneys?
6. Generally, in what way does videoconferencing influence prisoners' right of access to justice?

Questions for prisoners/Litigants

1. What advantages does the videoconferencing/e-filing give you?
2. Can you mention any benefit that you would get if you do not attend your case through videoconferencing?
3. Is there any right that you think is violated due to the system?
4. What challenges do the network problems pose on your cases?
5. Can you express and defend yourself in the videoconferencing proceedings?
6. What unique advantages could you gain if you appear in person?

Questions for Public Prosecutors

1. How do you see the contribution of video-conferencing/e-filing (e-litigation) to right of access to justice?
2. What are the basic elements of access to justice?
3. In what ways does public prosecutor make sure that the rights of defendants are protected in video conferencing proceedings?
4. What are the challenges in video conferencing and other court technologies? Technical and legal challenges?
5. Is there any substantive (legal) base for the use of technologies in courts?
6. Are there any procedural provisions which strictly require physical appearance of a defendant?

Questions for MCIT

1. What kind of services do you deliver to FSC?
2. What contributions do your services have in enhancing access to justice?

3. In most sessions of video-conferencing proceedings, there are connection problems and audio delays. Have you identified the causes?
4. Have the courts informed you about the connection problems?
5. If yes, what solutions have you proposed?
6. What plans do you have concerning electronic justice? How do you plan to work with courts in the future?
7. What more services can be introduced to courts?
8. What are the major challenges that you are facing when working with courts?
9. What is the status of internet coverage of the country?

Annex 3 Observation Checklist

The researcher has observed the following things in the e-litigation proceedings of the Federal Supreme Court

Setting of the Electronic System; camera, plasma screen and microphone

The Operation of the System; the connectivity speed and functioning of the equipments

The whole process of e-litigation; presentation and reaction of litigants, judge's approach, time consumed in e-litigation