ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES

Judicial Reform in Ethiopia:
A Critical analysis on the Case of Addis Ababa City Government Courts

By

Hailu Tadesse Bellete

Advisor:

Dr. Meheret Ayenew

May 2010

Addis Ababa, Ethiopia

ADDIS ABABA UNIVERSITY
FACULTY OF BUSINESS & ECONOMICS DEPARTMENT
OF PUBLIC ADMINISTRATION & DEVELOPMENT
MENAGEMENT

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A Thesis Submitted to the School of Graduate Studies, AAU, Faculty of Business and Economics, Department of Public Administration and Development Management in Partial fulfillment of the Requirements for the Degree of Masters of Public Administration and Development Management (MPADM)

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MURAD ABDO		7 JULY 2010
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Abstract

Addis Ababa City Charter Creates two levels of City Courts, exercising municipal jurisdiction- First Instance and Appellate Courts. There is no Supreme Court in the municipal court system, although a cassation bench is included within the Appellate Court. Cassation review of Appellate court decision can be brought before the Federal Supreme Court. This court has also the power to decide on matters of jurisdictional conflicts between the City and Federal courts. The court system in Addis Ababa City reflects a similar division as between federal and state courts, except being a two level one.

The Ethiopian justice system, according to the Comprehensive Justice System Reform Program baseline study (2005), has three core problems. First, it is neither accessible nor responsive to the needs of the poor. Secondly, it has serious problems to tackle corruption, abuse of power, and political interference in the administration of justice. And thirdly, inadequate funding of the justice institutions aggravates most deficiencies of the administration of justice. As it is part and parcel of the country's legal system the judicial system in the Addis Ababa City government is not absolutely free of the above mentioned insufficiencies.

To carry out this research descriptive method is utilized. The research mainly relied on primary and secondary data. Secondary data sources include books and journals and articles. Internet sources were also extensively used. Out of the eleven courts, including the appellate court, four sample courts, which is more than thirty six percent of the total population .i.e. Bole, Yeka, Arada, and the Appellate court were selected as sample area to collect data. Random sampling is used to collect primary data, particularly using questionnaires and interviews.

The findings revealed that: the JAC in the City Courts is powerless in the selection of judges; the process of selection of judges is not transparent; the A.A. City executive interference in the functions of the courts is high; investigation of ethical misconduct is not made by an impartial body and there is no way to appeal against the decisions of the JAC; judges representation in the JAC is insignificant; the courts are not empowered to independently administer their budget; the court structures in the City contradicts with the constitutional framework; the City courts are inefficient, not accessible, particularly, for the poor. Case management in the courts

is too poor. The Court supporting staffs are unqualified, both in education and experience, and the least paid as well.

Therefore, the judicial system needs to be reformed in the sense of having a predictable judicial environment with the perspective of reliable, independent, and efficient judicial system, which is an essential factor for democratization, good governance, and economic development in Ethiopia.

Acknowledgments

First of all, I owe an intellectual debt to all of my instructors during my stay in A.A. University. I still owe my special gratitude to Dr. Meheret Ayenew for his sincere and unlimited guidance that made me to accomplish this thesis.

I am indebted to acknowledge all authors and writers of the books and journals that I used as secondary sources in my study.

I would like to extend my appreciation to the current A.A City First Instance Courts President and key informant participants that they responded my interview and questionnaires and there by contributed significantly to the thesis.

I am also indebted to my best friend Temesgen Getahun who has given me special courage to write and finish my thesis in time and he did not hesitate to type all pages of this thesis.

As always, I thank my lovely wife Mestawot Getachew, for her tolerance during my study; and my daughter Nardos Hailu and my son Siye Hailu, from the bottom of my heart.

I want to extend my gratitude to Addis Ababa University FBE library staff and Civil Service College Staff who made a contribution to this study.

Finally, I also would like to express my appreciation to Addis Ababa City Government for financing my study.

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ACRONYMS

A.A	Addis Ababa
AACSC	Addis Ababa Civil Service Commission
ADR	Alternative Dispute Resolution
AOJ	Administration of Justice
BPR	Business Process Re-engineering
CDR	Consensual Dispute Resolution
CILC	Center for International Legal Cooperation
CJSRP	Comprehensive Justice System Reform Program
CSA	Central Statistics Authority
ELJSA	Ethiopia Legal and Judicial Sector Assessment
EPRDF	Ethiopian People Democratic Revolutionary Front
EC	Ethiopian Calendar
FDRE	Federal Democratic Republic of Ethiopia
FEDB	Finance and Economic Development Bureau
FEDB	Finance and Economic Development Bureau
FFIC	Federal First Instant Court
FHC	Federal High Court
FIC	First Instance Court (s)
FSC	Federal Supreme Court
HOPR	House of Peoples Representatives
IT	Information Technology
JAC	Judicial Administration Commission
JRPO	Justice Reform Program Office
JLSRT	Judicial and Legal System Research Institute
JRP	Judicial Reform Partnership
MoCB	Ministry of Capacity building
MoEFD	Ministry of Finance and Economic Development
MoF	Ministry of Finance
MOJ	Ministry of Justice
NJC	National Judicial College
RAJP	Russian American Judicial Partnership

RJRPP	**Russian Judicial Reform and Partnership Program**
USAID	**United States Agency for International Development**
USA	**United States of America**

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CHAPTER I

INTRODUCTION

1.1 Background of the Study

Throughout Ethiopia, the justice system is in a state of crisis. The public is fearful and angry especially in the criminal justice system. Practitioners are weary and frustrated. Victims are re-victimized in the process. This widespread sense of dissatisfaction has caused a fundamental rethinking of the justice system in Ethiopia. As a result, justice reform becomes so essential. Hence, an effort to consider the justice system reform all over the country is undergoing. A predictable legal environment, with an objective of reliable and independent judiciary, is essential for democratization, good governance, and human rights in the country as a whole and in the capital City, Addis Ababa, in particular (World Bank: 2004).(www.http:// siteresources.worldbank.org, 2004 (visited on 1/9/2009).

The City Council in Addis Ababa City Government, among its enumerated duties, it drafts and enacts legislations concerning municipal affairs and jurisdictions, establishes judicial bodies, and define their powers and functions in accordance with the City Charter. On this basis, the Addis Ababa City Charter Creates two levels of City Courts, exercising municipal jurisdictions (Proclamation No. 361/2003 as amended).

There is no supreme court in the municipal court system, although a cassation bench is included within the Appellate Court. Cassation review of Appellate Court decisions can be brought before the Federal Supreme Court. This court has also the power to decide on matters of jurisdictional conflicts between the City and Federal Courts. The courts system in Addis Ababa City reflects a similar division as between federal and state courts, except being a two level one. The City Charter allows the operation of "*kebele*" social courts (this days, there are 99 "*kebeles*" in the ten Sub Cities). They have jurisdictions over petty criminal offences and civil disputes up to 5,000 Birr. These courts are supposed to minimize the case load of the City and Federal Courts, thus the Courts serve the vast majority of the community. Decision of such courts can be appealed to the First Instance City Courts (World Bank: 2004).(www.http:// siteresources.worldbank.org, 2004 (visited on 1/9/2009).

The City Charter also confers judicial powers on the Labor Relation Board, the Civil Service Tribunal, the Tax Appeals Commission, and the Urban Land Clearance Matters Appeal Commission (Article 40). The City Courts of Addis Ababa have the following jurisdictions. Civil Jurisdictions: Suits on possessor right; issuance of permit on land use as relating to the enforcement of the City Master Plan; Suits brought in connection with the regulatory powers and functions of the executive bodies of the City Government; Suits on fiscal matters such as fees from land use; Cases connected with administrative contracts concluded by the excusive bodies of the City Government; Disputes arising between executive bodies of the City Government or between other organs thereof; Suits brought in connection with government owned houses administered by the City Government; application for change of name; application of succession certificate; and Application for the declaration of absence and death(Article 41).

Criminal and Petty Offence Jurisdiction: charges brought in connection with financial matters, such as charges in relation to tax evasion on value added tax and other crimes as indicated in Article 52 of the charter. Cases of petty offences without prejudice to the jurisdiction of Federal Courts on the substance of the offences, remand in custody and bail applications without prejudice to the other provisions Article 41 of the charter, and cases of execution of penalties for petty offences imposed by executive bodies of the City Government.

The City Charter also provides a solution in case of conflict of jurisdictions and power of cassation. In case of conflict of jurisdiction that may arise between the Addis Ababa City Courts and Federal Courts, the Federal Court has the power to decide (Article 42 (1) of the charter). Any party who alleges fundamental error of law in a final decision of the Addis Ababa City Courts has the right to apply before the cassation division thereof, and the party has the right to apply to the Federal Supreme Court alleging any fundamental error on the final decision of the Addis Ababa City appellate Court (Article 42 (2 and 3).

Article 43 (5) says, *"Decisions rendered by the appellate courts of the City, except in case of fundamental error of law, are considered to be final"*. Moreover, the City charter provides the

establishment of the Judicial Administration Commission (JAC) of the City Courts. It also indicates as to the appointment, and terms of office of judges (Article 44 and 45).

1.2 Statement of the Problem

Ethiopia is ushered in a new era for the country's legal and judicial institutions with the adoption of a new constitution in 1995. One of the important features of this constitution is Federalism. On this basis, the constitution allocates powers among the three branches of the government. Judicial power is shared as to the Federal Government and the Regional States. It also provides the principles of separation of powers that "*Courts shall be free from the interference of any governmental body, office of government, or from any other source... Judges shall exercise their judicial function in full autonomy and they shall be directed solely by the law*" (Article 79 (1-3) of the constitution).

Article 78 of the constitution creates three levels of courts in the Federal and States i.e. First Instance Court, High Court, and Supreme Courts. In the Charter of the Addis Ababa City Government (Proclamation No 361/2003, as amended), a two level municipal Courts are established, which is contrary to the constitutional framework. These Courts are First Instance and appellate Courts that exercise a municipal jurisdiction. There is a cassation bench with in the Appellate court. This two level court structure has its own impact on the litigants right to appeal i.e. if a case is decided to one of the parties in the First Instance Courts and reversed in the Appellate Court, there is no chance to appeal except applying for cassation on the basis of fundamental error of law (Article 42 (2) of the charter). This contradicts with the constitutional rights of citizens to appeal and the right to access to justice at the proper level of courts.

The Ethiopian justice system, according to the Comprehensive Justice System Reform Program baseline study (2005), has three core problems.

> *First, it is neither accessible nor responsive to the needs of the poor. Secondly, it has serious problems to tackle corruption, abuse of power, and political interference in the administration of justice. And thirdly, inadequate funding of the justice institutions aggravates most deficiencies of the administration of justice. The perception of the independence of the judiciary is very low.*

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

As it is part and parcel of the country's legal system, the judicial system in Addis Ababa City Government is not absolutely free of the above mentioned insufficiencies. As far as the judicial independence (institutional, internal and decisional…) is concerned, judicial independence is not clearly indicated in the revised charter (proclamation No 361/2003).

Moreover, the extent of the autonomy in budget administration, judicial and non judicial personnel administration of the judiciary is not clear. Not only this, the selection and promotion of judicial personnel not transparent enough. Though the A.A. Courts JAC is established under proclamation No 4/2003, which is empowered with the selection of judges for judicial appointment, to determine the transfer, salary, allowance, and promotion and placement of judges, in practice, its institutional independence to perform these powers remain under question. The process of initiation and investigating of ethical misconduct is given to the JAC itself, with no appeal against to its decisions.

These factors have their own direct and indirect impact on the judicial efficiency, access to justice in the City Courts. Hence, the judicial system needs to be reformed in the sense of having a predictable judicial environment with the perspective of reliable, independent, and efficient judicial system, which is an essential factor for democratization, good governance, and economic development.

These realities in the Addis Ababa City Government judicial system call for some research and analysis, since the practice on the ground demand extra efforts beyond the constitutional framework, the City charter, the municipal court establishment proclamation, and other relevant rules and regulations concerning the judicial administration commission (JAC) and other laws that govern the judicial system in the City Government.

1.3 Research Questions

In order to assess the City Courts of the Addis Ababa City Government, in terms of their judicial independence, budget administration autonomy, judicial and non judicial personnel administration autonomy, practicing court case flow management, and the impact of the two level court structure on the rights of citizens, which in turn has its own impact in delivering fair and efficient justice to the expectations of citizens. The study attempts to answer the following basic questions.

1. Is the judiciary in the City Government independent in performing its functions from any other organ of the City Government?
2. Are the selection, appointment, and promotion of judicial personnel, clear and transparent, that are free from the influence of the executive?
3. Is political attitude a requirement for selection of judicial personnel?
4. Is there a clearly identified judicial personnel code of conduct in the City Judiciary to administer the judicial personnel? Is there an impartial and independent body to investigate ethical misconduct issues?
5. Is the judiciary in the City autonomous to administer its budget, and judicial and non judicial personnel?
6. Is the two level court structures in the City narrowing litigants' right to appeal? Are there any legal and jurisdictional gaps that hamper the efficiency and access to justice in the city courts?
7. Is the judicial system efficient in managing court case flows? Does it practice court case flow management system?
8. Does the justice system in the city, in terms of working system, need a fundamental change?
9. Are the laws, rules and regulations in the City Government well organized, clear to the judicial personnel, to other legal professionals, and to the public? Are these Laws available as needed?
10. Are the City Courts in the City accessible in all aspects for the people? (In terms of location, cost, time, and information etc…)

1.4 Research Objectives

1.4.1. General Objective

The main objective of this study is to assess and examine whether the judiciary in the City is independent from the influence of the executive or other organs in performing its functions, administering its budget, and its judicial and non judicial personnel.

1.4.2. Specific Objectives

It has also the following specific objective:

1. To examine if the selection, appointments, promotion, and investigation of disciplinary misconduct of judicial personnel is based on a clearly identified ethical code of conduct or not.
2. To examine if the two level court structure has an impact on the rights of litigants or not.
3. To examine the City Courts, whether they are efficient in managing court cases and deliver decisions to the expectation of citizens in terms of possible attainable efficiency and quality desired by the citizens.
4. To examine if the two level court structure has an impact on the rights of litigants or not.
5. To study whether the judiciary in the city is striving to create an efficient and transparent judicial system that will ensure the prevalence of the rule of law.
6. To assess if the municipal courts are accessible in all terms.
7. To provide the City Judicial system with brief recommendations on the basis of analytical results.

1.5 Research Methodology

1.5.1 Research Design

The study focuses on the institutional and decisional independence of the City Courts of the Addis Ababa City Government, and the impact of judicial independence on the performance and access to justice in the City Courts. The structure and adjudication powers of the City Courts, the process of selection of judicial personnel (judges), the disciplinary action for ethical misconduct of judges, the powers and duties of JAC and its independence, the extent of

budget administration autonomy of the city court, their power to administer the non-judicial personnel (supporting staff), the practice of case flow management system to enhance the efficiency, and access to justice in the City Government Courts were extensively examined.

To carry out this research descriptive method is utilized. This method is selected because it attempts to reveal the process of selection of judicial personnel, the institutional and decisional independence of the City Courts, and its impact on their efficiency and availability to access to justice. Moreover, the role of different actors on the issues of selection of judicial personnel, and budget and non-judicial personnel administration autonomy of the city courts were the focus of enquiry examining their impact on the performance and access to justice in the city courts.

1.5.2 Sources of Data

The research mainly relied on primary and secondary data. Secondary data sources include books and journals and articles. Internet sources were also extensively used, particularly the literature for principles of judicial independence, principles of case flow management and their essentiality for the efficient performance of courts, and access to justice.

The City Government publications and archive documents, proclamations such as the amended City charter, proclamation N0. 361/2003, the Addis Ababa Municipal Courts establishment proclamation N0 1/1990 E.C... etc are the main sources of secondary data. In addition, studies made by other researchers and decisions of the Federal Supreme Court, in relation to the adjudication powers of the City Courts were also utilized in analyzing the data collected through interview and questionnaires. The primary data sources were judicial personnel (judges) and higher court officials of the City Courts, public advocates(legal experts) from the Sub-City Administrations, legal attorneys who handle cases in the City Courts, non judicial personnel or supporting staff who work in the City Courts, and litigants (parties to the lawsuits), were participated as sources of primary data. Further more, the researcher's personal observation is also taken as valuable data for this study.

1.5.3. Area Sampling

To examine this research, it is necessary to select some percent from the total number of courts in the City with a sense of representing the total population. Hence, out of the eleven courts, including the appellate court, four sample courts, which is more than thirty six percent of the total population(of the eleven courts), .i.e. *Bole*, *Yeka*, *Arada,* and the Appellate Court, were selected as sample area to collect data on the issues mentioned in the questions and objectives mentioned above. These sample courts were selected for the following reasons. In selecting the sample area they are characterized into three main categories: periphery area, core area, and combinations of the two.

***Bole* Sub-City First Instance Court:** is randomly selected among the Sub-Cities, such as Akaki-Kaliti, Kolfie-Keranio, and Nefas silk-Lafto for the following reasons. First, these Sub-Cities, which are found in the periphery areas, have similar characters for their illegal sub divisions of land, and illegal settlements. Second, litigations related to land possession, illegal constructions, and house ownership rights are entertained in these courts.

***Arada* Sub-City First Instance Court**: is randomly selected among the core Sub-Cities such as Kirkos, Addis-Ketama, Lideta for the following reasons. These courts are known for the cases related to government houses, such as house rents, ownership rights, possession rights, particularly, on houses taken by the proclamation No 47/1975, which was proclaimed during the military government. These Sub-Cities are not periphery Sub-Cities. However, they commonly entertain cases like illegal constructions, petty offences and the like.

***Yeka* Sub-City First Instance Court**: in this category there are only two Sub-Cities, namely Yaka and Gulele. Sub-Cities are characterized with combinations of both periphery and core Sub-Cities. Therefore, Yeka Sub-City FIC is randomly selected. This court entertains cases that are common to *Bole* and *Arada* Sub-Cities.

The Municipal Appellate Court: This court, which is the higher court level in the City courts, is included in this study for the reason that it receives appeal from all the ten Sub City FICs. This Court is very important to asses the independence of the judiciary in relation to decisional,

administration of budget, judicial and non judicial personnel administration, and the over all institutional independence of the City Courts. And at the same time court administrative official of City Courts, including the JAC are found in this level of court.

In the above four sample areas, there are four benches in each Sub-City Court i.e. civil, criminal, succession, and petty offence benches. This is the arrangement in the municipal first instance courts. In the appellate court, there are four benches to entertain appeals from the entire first instance City Courts. The cassation bench entertains all types of decisions that have fundamental error of law. Of all these benches from the four sample areas, 25 percent of the total populations of the judicial personnel were questioned by the researcher to ensure the reliability of the data.

In addition to this, non judicial personnel or the so called "supporting staffs" of the four sample areas were part of the study and were questioned with questions prepared for this purpose. Moreover, legal experts from the three Sub-City administrations were part of the study. Finally, litigants who have cases in the sample areas and legal attorneys who handle cases in these courts were part of this research in relation to the efficiency and accessibility of the city courts. For all these participants and respondents, the researcher used the same 25 percent of the number of (e.g. the number of legal experts in the Sub City administrations, from the individuals who have cases, (e.g. those who were adjourned in one day), in all the sample courts taken as a total population. The same is with the legal attorneys.

In this research, purposive sampling method is selected because of the nature of the respondents. The reason to select this sampling method is that the nature of the cases in the study i.e. the respondents who participated in the study were selected for different purposes e.g. there were judicial personnel (judges), public legal advocates, attorneys, and supporting staffs.

1.5.4 Respondents Sampling Techniques

Simple random sampling was utilized to collect primary data from five categories of respondents. The first groups of respondents were selected from the judicial personnel (judges)

who work in the selected sample courts. The second category of the respondents was public legal advocates from the sample Sub-Cities Administrations who have direct contact with the City Courts representing the Sub-Cities. The third category was legal attorneys who represent their clients in the City Courts. These legal professionals are supposed to know the issues raised in this study in relation to the City Courts. The fourth category of respondents were randomly selected from the non-judicial personnel or supporting staff of the courts. The fifth and final categories were litigants or people who handle their own cases by themselves in the City Courts. In addition to this, interview was made with the current president of the FICs of the A.A City Courts concerning issues of judicial independence, budget administration and other important issues rose in the study.

1.5.5. Sample Size

The following Table 1.1 indicates the total population of the eleven courts including the appellate court in the City Government. Out of the eleven courts four courts are selected as sample areas with sample of key informants.

Table 1.1 Sample Area and Sample of respondents

Key Informants	Total population	Sample of respondents	Sample Areas and Sample Size of Key Informant					
			Bole	Arada	Yeka	Appellate	Total no	Total %
Judicial Personal (Judges)	42	11	2	3	3	3	11	26
Public Legal Advocates	50	13	4	5	4	0	13	26
Legal Attorneys	50	13	3	3	3	4	13	26
Litigants	132	33	8	8	9	8	33	25
Supporting staff	66	17	4	5	4	4	17	26
Total	340	87	21	24	23	19	87	

Source: Computed from collected data

The four Courts of the sample area represent more than thirty six percent of the total population. The sample of respondents represents more than twenty five percent of the total population too. Sample respondents are proportionally distributed in to the sample areas. The researcher believes that the sample size is enough to represent and to draw the required data.

Table 1.2 Respondents Questionnaire Matrix

Questions Posed	Respondents	No	Interviewee	No	Part
Selection of Judicial Personnel in the City Courts	Judges	11	President of the FICs	1	One
	Public Advocates	13			
	Legal Attorneys	13			
Institutional and decisional independence of the City Courts	Judges	11	President of the FICs	1	Two
	Public Advocates	13			
	Legal Attorneys	13			
Rules and disciplinary misconduct of the judicial personnel in the City Courts	Judges	11	President of the FICs	1	Three
Composition and functions of the JAC	Judge	11	Presidents of the FICs	1	Four
Budget administration of autonomy in the City Courts	Judges	11	Presidents of the FICs	1	Five
Court structures and jurisdictional gaps in the City Courts	Judges	11	Presidents of the FICs	1	Six
	Public Advocates	13			
	Legal Attorneys	13			
Non-judicial personnel administration autonomy in the City Court	Judges	11			Seven
	Supporting Staff	17			
Case management and efficiency of the City Court	Public Advocates	13			Eight
	Legal Attorneys	13			
	Supporting Staff	17			
	Litigants	33			
Access to Justice in the City Courts	Public Advocates	13	Presidents of the FICs	1	Nine
	Legal Attorneys	13			
	Supporting Staff	17			
	Litigants	33			

Source: Computed from data collected

The matrix of respondents/ question relationship is presented in the table 1.2 above for sample size. This is helpful in managing the study by identifying key informants and approaching them in respect of their profession and level of understanding on the issues posed.

1.5.6. Background and Profile of the Respondents

Profile of the sample respondents is briefly presented as follows. As indicated in the above Table 1.2 different categories of key informants were participated in order to make the research reliable and complete in assessing the judicial system of the A.A City Government. Thus, an interview was made with the president of the FICs. Questionnaires were also distributed to eleven judicial personnel (judges) from the selected sample courts, to thirteen public legal advocates, who work as government prosecutors and advocates in the three Sub-City administrations. In addition, thirteen legal attorneys, who handle cases in the city courts, were contacted through questionnaires. Moreover, questionnaires were also distributed to thirty three litigants who have cases in the city court. Further more, seventeen supporting staffs of the City courts were made to participate through questionnaires. As indicated above in the Table 1.1, eighty seven key informants were participated through questionnaires. Totally, eighty eight key informants, including the president of the FICs, were participated in the study having five categories.

With regard to their profile, eight of the judges from the FICs, are all with LLB degree and with the range of five to six years relevant work experience. The three judges from the appellate court were the most senior and experienced ones. All of them are LLB degree holders and have eight years and above work experience. In regard to the non-judicial personnel (supporting staffs), six of them are diploma holders with five years and above work experience. Five of them are 10+2, three of them 10+3, and three twelve completed with five years and above work experiences. None of their academic background is related to legal profession

The public legal advocates from the three Sub- City administrations, eight of them are LLB degree holders with six years and above work experience and five of them are diploma holders with five years and below work experiences. Concerning the legal attorneys, thirteen of them were selected randomly from the sample courts in one of the week days. Ten of them are LLB degree holders with six years and above work experience and the rest are diploma holders in law with four and above work experience.

With regard to the litigants, thirty three of them were selected from the four sample courts, which have cases both from the civil and petty offence benches. Twenty of them were diploma

holders in different fields, seven of them twelve complete, and six of them were town farmers. They were randomly selected from the sample court in one of the working days.

1.5.7. Data Collection Techniques

Key informant questionnaire and interview are employed as a means to collect data. This technique is used to exploit the experience, opinions and practices regarding the issues of judicial independences and other important concepts rose in the study. Questionnaires were distributed for the mentioned key informants as presented in Table1.2 above. Interview was made with official of FICs. The researchers personal observation and experience is used as valuable means and serves as the primary sources for the analysis in this study

1.5.8. Data Collection Tools (Instruments)

Questionnaires for key informant and interviews for higher court officials were used to collect the required data from the primary resources. The questionnaires were closed and open ended, where as the interview questions were open-ended, structured, and semi-structured. Check lists were also utilized for document review, questionnaires, and interview, as a means to make sure the availability of the required information for this study. These questionnaire and interview questions were prepared in *Amharic* language to avoid possible misunderstanding and misinterpretations on the parts of the respondents.

1.5.9. Data analysis

In analyzing the data, relevant tools, which are appropriate to the nature of the data obtained, have been employed to test the findings in relation to the basic questions of the study. Raw data obtained by interview, questionnaire, and personal observation, were structured, systematically organized, and analyzed. Interview questions and Questionnaires have structured in qualitative approach. Both key informant questionnaire and interview responses were examined and analyzed in eight consecutive weeks.

1.6 Significance of the study

The study will help to understand the impact of lack of independent judicial system in the City Government and attempts to indicate how lack of judicial independence and lack of budget administration autonomy have direct and indirect impact on the efficiency and access to justice

in the city courts. The study also attempts to show how lack of court case flow management caused the inefficiency and inaccessibility of City Courts. The study may provide feedback for policy makers, justice planers in the city government and other concerned bodies to get reliable information on the judicial systems of the City Government.

Finally, the study may serve as a stepping stone for further and in-depth studies for researchers, experts, particularly; those who need to study the new approach of changing the City Courts performance through the BPR (Business Process Re-engineering), which is not the scope of this study.

1.7 Scope of the Study

As indicated in the background section above, there are ten Sub-City First Instance Courts and one appellate court, consisting of civil, criminal, and petty offence benches, in each Cub City Court. There are 99 *Kebele* social courts in all the 99 *Kebeles* in the city. In addition, there are other judicial organs, such as, the Labor Relation Board, the civil service tribunal, the tax appeal commission, and the urban land clearance appeal commission. Hence, it is beyond the time and financial capacity of the author to assess all the judicial organs in this study including the *kebele* social courts. More over, the focus of this thesis is assessing the regular City Courts only. For this reasons, the study will deal only with the first instance and appellate courts, specifically with the civil and petty offence benches. Hence, the research will not focus on the other judicial organs including the *Kebele* social courts. The study covers the period from 2003 to 2009, excluding the implementation of BPR in the City Courts.

1.8 Organization of the Study

This thesis contains five chapters. The first chapter addresses the methodological part of the study, whereas, the second chapter discusses literature and theories that serve as a bench mark to evaluate the City Courts judicial independence ,efficiency and accessibility for the poor. Chapter three deals with the overview of judicial reform in Ethiopian, discusses the achievements of the A.A. City reform movements began in 2003 in relation to reforming the City Courts, and the experiences of other countries. Chapter four focuses in critically evaluating the extent of judicial independence in the City Courts, the extent of transparency in the process of judicial selection, and other related issues in relation to relevant theories and the

Ethiopia constitutional framework regarding the principles of separation of powers and independence of the judiciary based on primary and secondary data. Chapter five deals with the findings, conclusions, and recommendations, based on the theoretical and policy frameworks.

CHAPTER II
REVIEW OF LITRATURE

In this chapter the concept of judicial independence and separation of powers is discussed. In addition, the requirements for successful judicial reform, the rational for judicial reform, the issues of law and development movement, the role of judicial reform in economic development, case flow management and judicial efficiency, and access to justice and factors that prevent the poor from access to justice are discussed in depth.

The concept Judicial Reform has no single and precise definition. In thesis the concept is used in relation to the independence aspects of the judiciary, the efficiency, and accessibility of courts.

2.1 Judicial Independence

It is the principle that the judiciary should be politically insulated from the legislature and the executive powers. That is, courts should not be subjected to improper influence from other branches of government, or from private or partisan interests. Different nations deal with the idea of judicial independence through different means of judicial selection. One way to promote judicial independence is by granting the tenure or long tenure for judges, which ideally frees them to decide cases and make rulings according to the rule of law and judicial discretion, even if those decisions are politically unpopular or opposed by powerful interests. In some countries, the ability of the judiciary to check the legislature is enhanced by the power of judicial review. The power can be used, for example, when the judiciary perceives that legislatures are jeopardizing constitutional rights such as the right of the accused *(what is judicial Independenc, www.ajs/cji/cji_whatisji.asp)*.

In the United States and its predecessor states, judicial independence emerged in the United Kingdom.

> *"Under the Norman monarchy of the Kingdom of England, the king and his Curia Regis held judicial power. Later, however more courts were created and a judicial profession grew. In the fifteenth century, the kings' roles in the feature governments thus become small. Nevertheless, kings could still influence courts and dismiss judges. The Stuart dynasty used this power frequently in*

order to over power parliament. After the Stuarts were removed in the Glorious Revolution of 1688, some advocated guarding against royal manipulation of the judiciary, King William III finally approved the Act of settlement 1701, with established tenure for judges unless parliament removed them. Under the unwritten British Constitution, there are two important conditions which help to preserve judicial independence. The first is the parliament does not commence on the cases which are before the court. The second is the parliamentary principle. The members of the parliament are protected from preservation in curtail circumstances by the courts powers".

(What is judicial Independenc, www.ajs/cji/cji_whatisji.asp).

In modern times, the independence of the judiciary is guaranteed by Constitutional Reforms, in order to promote the independence of the judiciary, the selection process is designed to minimize political interference. The process focuses on senior members of the judiciary rather than on politicians. The pay for judges is determined by an independent pay review body. It will make recommendations the government having taken evidence from a Varity of courses. The government accepts these recommendations and will traditionally implement them dully. As long as judges hold their positions in "good order" they remain in post until they wish to retire, until they reach the mandatory retirement age (Ibid).

The question of judicial independence in current issues of significant debate within the U.S. political system, although arising under different labels and names. There are current political campaigns to make judges more accountable for allegedly bad decisions, meaning those that allegedly do not follow laws passed by the legislature procedural rules, or precedents of higher courts, or the failure of judges to avoid conflicts of interests and biases, or lack of judicial temperament by judges in how they treat legitimate in their court rooms, or criminal sentences seen by some is too leant or too harsh. In response to these calls for changes to judicial independence, opponents of such change argue for the central importance, in their view, of an independent judiciary of immune from political interferences in the outcome of cases. The 2000 case of Bush V. Gore, in which a majority of the Supreme Court, including appointees of the first president Bush, over–ruled challenges to the election of the president than pending in

the Florida supreme court, whose members were appointed by Democratic government, is seen by many as reinforcing the need for judicial independence, both with regard to the Florida Supreme Court and the U.S Supreme Court. This case has focused increased attention on judicial outcomes as opposed to the traditional focuses on judicial qualifications *(What is judicial Independenc, www.ajs/cji/cji_whatisji.asp)*

Both sides of their debates refer to the doctrine of separation of powers, yet interpret this concept in directly opposing way. On one side of this debate, separation of powers requires that the judiciary alone holds all powers related to the judicial function, and the legislative and executive branches may not interfere in any aspect of the judicial branch. On the other side of this debate, separation of powers means that judiciary is independent and untouchable within the judiciary sphere. In this view, separation of powers requires that the judiciary alone holds all powers relative to the judicial function and legislative and executive branches may not interfere on any aspect of the judicial branches (Ibid).

In this regard, Canada has a level of judicial independence entrenched in its constitution, awarding superior Court justice various guarantees to independence under section 96 to 100 of the constitution act, 1867. This includes rights to tenure (although the constitution was amended to introduce mandatory retirement at age 75) and the right to solely determined by the parliament of criminal law by section 11 of the Canadian Charter of Rights and Freedoms. The year 1997 saw a major shift towards judicial independence, as the supreme court of Canadian in the provincial judges references found an unwritten constitutional norm guaranteeing judicial independence to all judges, including civil law inferior courts judges. There are two types of judicial independence: institutional independence and decisional independence. Institutional independents is the idea that judges should be able to decide cases solely based on the law and facts, without letting the media, politics or other concerns away their decision, and without fearing penalty in their concern for their decisions (West Encyclopedia of American Law, www.answers.com/topic/separation-of powers).

2.2 The Pre-requisites of Successful Judicial Reform

Judicial reform can threaten those with a stake in the status-quo. Inefficient court procedures and management often provide opportunities for rent-seeking by attorneys, judges, and judicial support personnel. As instances show in Argentina, protest by judicial clerks for working more than 132 days a year. The supporting staffs were also challenging a recommendation to curb their power over case management opposition from the nations organized bar. In Uruguay lawyers objected to the introduction of procedures that would speed up civil and criminal trails, fearing that speedier trails would mean less work for them (Vargas: 1996).

Given the opposition that judicial reforming is certain to generate, one view holds that no program should be undertaken absent a broad consensus in the country on the need for significant change. Dakolias (1996) recommended extensive consultation with committees representing judges, members of the Bar, and other affected groups during the preparation and implementation of projects. Shihata (1995) adds that this consensus must include a long term commitment on the part of the government to provide the resources required for an effective judiciary. Blair and Hansen (1994) reached a similar conclusion in as evaluation of judicial reform in Argentina, Colombia, Hondurans, the Philippines, Srilanka, and Uruguay. Absence of a high level of support from the ministry of justice, executive branch officials, legislature, and judges, the authors argue that judicial reform is unlikely to succeed. When such support is lacking, they recommended that both public and private donors forgo judicial reform altogether. Instead, they suggest that donors concentrate on building a consensus for reform by opening Bar associations, business groups, and other non-governmental organization to complain publicly for reform. In the six cases examined, Blair and Harsens found that training judges, improving management system, and supplying computers and other resources to the judiciary had little impact in countries where a consensus for judicial reform was lacking. The lesson they draw is that these traditional components of judicial reform, often termed "institutional strengthening" should not be initiated until more basic reforms have been achieved. In a study of judicial reform projects in 15 Latin American countries, there had been too much emphasis on increasing the number of judges, courts, building, and computers at the expenses more fundamental changes to the legal system. He contends that this imbalance resulted from a lack of consensus on the scope of reforms. Without such a consensus, judges,

clerks, attorneys, and other actors in the legal system are free to pursue their own agendas. (Martinez Neira: 1996).

2.3 Rationales for Judicial Reform

Judicial reform is part of a large effort to make the legal system in developing countries and transition economies more market friendly. This broader legal reform movement encompasses everything from writing, or revising commercial codes, bankruptcy statutes, and company laws through overhauling regulatory agencies and territory justice ministry officials how to draft legislations that fasters private investment. Although the lines between judicial and legal reform blurs at the margin, the core of a judicial reform program typically consists of measures to strengthen the judicial branch of government and such related entities as the public persecutor and public defender officer, Bar Associations, and Law Schools (Dakolias: 1996). The following are some of the rationales for judicial reform.

2.3.1. Make the Judicial Branch Independent

Included here are changes in the way in which judges are selected, evaluated, and disciplined to ensure that decisions are insulated from improper influences. In some cases, the budget for the judicial branch on the authority to administer the funds allocated for the judicial functions is transferred from the ministry of justice or other executions branch dependency to the judges themselves. Independence can also encompass giving judges the power to declare acts of the executive and legislative branches of government in violation of the country's constitution or some other higher law.

2.3.2 Speed the Processing of Cases:

The creation of mediation and conciliation services and other alternatives to resolving disputes in the courts reduce court cases as introduction of small claims court or justices of the peace and the establishment of legal aid societies does. Action may also include transferring responsibility for non-conditions matters, such as name changes, the probate of uncontested wills, and the requisition of property, to administrative agencies, so that the courts have more time for disputed cases (Dakolias: 1996).

2.3.3 Professionalize the Bench and Bars

In services training for judges, lawyers, and other legal professional entails, programs to establish codes of ethics and disciplinary procedures. Increasing the number of law schools, ensuring that these schools have adequate resources, and modifying the curriculum to reflect the demands of market economy are also part of this element. The U.S Agency for International Development (USAID) funds judicial reform as part of its larger effort to strengthen newly emerging democracies around the world (Walker: 1979).

The Inter-American Development Bank, finances judicial reform projects for a combination of political and economic reasons. On one hand, it sees judicial reform as an indispensable element in consolidating democratic institutions in emerging democracies by protecting basic human rights and promoting harmonious social relations. At the same time, it recognizes that a well-functioning judicial system is important in the development of a successful market economy. Judicial reform is part of the recent initiative to help countries modernize the machinery of government. (Armstrong: 1998).

Judicial reform projects, sponsored by the World Bank, aim solely at enhancing a national economic performance. The Bank enjoyed by its articles of agreement from interfering in the political affaires of its member, a prohibition interprets as preventing it from supporting judicial reform unless the projects "is relevant to the country's economic development and to the success of the Bank's is lending strategy for the country" (Shihata: 1995). In practice this means that it does not provide assistance to reform criminal codes, train police or judges or neutral penal institutions (World Bank: 1999).

2.4 The Law and Development Movement

Are the legal technical assistance programs sponsored by the World Bank ignoring the lessons learned in earlier attempts to faster development through law? In the 1960s, the Ford Foundation, and other private American donors underwrote an ambitious effort to reform the judiciary in Asia, Africa, and Latin America. This "law and development" movement engaged professors from Harvard, Yale, Stanford, and other leading law schools and within few years had generated hundreds of reports on the contribution of law reform to economic development

(Merry Man, 1997). Yet after little more than a decade, both key academic participants (Trubek and Gulanter, 1974; Merry Man 1972) and a former Ford Foundation official (Gardner, 1980) developed the programs failure, and support quickly evaporated.
The guiding presumption of the law and development movement was that law is central to the development process. A related belief was that law was an instrument that could be used to reform society and that lawyers and judges could serve as social engineers. As Merry Man (1977) noted that not every one subscribed to this view. A few participants in the movement argued that only minor changes could be effected through legal reforms, and other contended that law reform should follow broader changes in society, that is, that the proper aim of reform was to adjust the legal system to social and economic changes that had already taken place. But the dominant view of law and development practitioners and theorists alike, although still unproven was that law reform could lead social changes, that law itself was an engine of change.

A second important belief was that educating the bench and bar in developing countries would advance reform efforts. The gap between the law on the books and the law in action in developing countries was widely realized, and one of the solutions advanced was professional education (Burg: 1977). It was thought that if lawyers and judges were properly educated about the law's role in development, they could be enlisted to close the gap. The idea was to turn members of both professional into legal activists through education. Yet as one sympathetic chronicler of the movement observed, this idea was supported by nothing more than "hopeful speculation" that education could overcome values installed by family, class, religion, and other social forces (Lowenstein:1970).

The postmortems on law and development identify a number of pitfalls that advocates of judicial reform ought to bear in mind. One is that the movement lacked any theory of the impact of law on development practitioners thus had no way to prioritize reforms on predict the effect of various measurement. A second failing was too little participation by lawyers and others in the target country who would either have to carry out the reform or who would be affected by them. Foreign legal consultants through a combination of experts and access to funding, were often able to dictate the content and pace of freedom on the formal system to the exclusion of

customary law and the other formal ways in which many in developing nations order their lives (Trubek and Gulanter: 1974).

At the 1995 conference hosted by the British Council, participants debated whether the mistakes of the law and development movement are likely to be repeated. Faundeze (1977), argued that

> *"...although the old program and the Banks new initiatives appear to be quite similar on the surface, the context in which the Banks current programs are being carried out in significantly different. Behind the law and development movement was the premises that the states would initiate and promote the process of economic development. By contrast today the Bank sees law as facilitating market transaction by defining property rights, guaranteeing the enforcement of contracts and monitoring law and order. Because the state is no longer the protagonist of social changes, as in the law and development model, there is less room for error..."*.

2.5 Judicial Reform and its Role in Economic Development

Acknowledging the importance of sound judicial system to good governance and economic growth, the World Bank and several other donor organizations have founded judicial reform projects in more than two dozen developing countries and transition economies during the last few years. Yet little is known about the actual effect of judicial reform in economic performance or even about what element constitutes a sound reform projects. The recognition that good governance is essential for economic growth has sparked renewed interest in projects to reform judicial system. Since 1990s the World Bank, the Inter American Development Bank, and the Asian Development Bank have either approved or initiated more than $5 million loans for judicial reform projects in 26 countries (Armstrong: 1998). The U.S. agency for International Development (USID) has spent closed to $200 million in the past similar projects and other government and private groups are also funding program to modernize the judicial branch of government (Metzger: 1997).

Today, the majority of developing countries and former socialist states are receiving assistance of some kind to help reform courts, prosecutors' office, and other institutions that together

constitute the judicial system. Although few are known about the importance of judicial reform for development, little is known about the impact of the judicial system on economic performance. Nor is there any agreement on what makes for a successful judicial reform project. Some argue that reform can not be achieved without a society wide consensus, while other contended that the reform project can help create this consensus. Fears are also expressed that judicial reform program will repeat the mistakes of the law and development movement, an earlier, American sponsored initiative that unsuccessfully sought to export the U.S. legal system wholesale to the developing world. The design and implementation of judicial reform projects are complicated by a lack of knowledge about the relationship between formal enforcement of the laws through courts, and traditional, extra legal- or informal – means of enforcement. Coincident with the emphasis on judicial reform, a body of research has emerged showing that the formal legal system is just one way of ensuring compliances with society and law (Metzger: 1997).

2.6 Case Flow Management and Judicial Efficiency

2. 6.1 Judicial Efficiency

Courts play a vital role in political and economic development. Strong judicial performance enables the vindication of individual rights and liberties, forming the consolidation of democracy, and facilities the enforcement of contracts and property rights, enhancing the efficiency of markets. Judicial performance is closely linked to civil citizenship, commonly cited problems corruption, political interferences, popular exclusion from courtesy, congestion, and delay eroded the civil dimension of citizenship. The need for improved court performance and the expansion of the civil dimension of citizenship, therefore, derives a growing body of research on judicial reform and judicial performance. An efficient judicial sector is a critical component of democracy. Delays prevent others in need of resolution from accessing the justice system. Thus, efficiency and access are closely linked and low levels of efficiency prevent citizens from vindicating individual rights. Delays in the judicial process lead to the erosion of individual and property rights (Dakolias, 2001).

2.6.2 Court Case Flow Management

2.6.2.1 Defining Case Flow Management

Different scholars define case flow management differently. However, all definitions are limited only the management of cases between initiations to disposition. Carl Bar (2000). defines case flow management as supervision or management of time and events involved in the movement of a case through the court system from the point of initiation to disposition, regardless of the type of disposition.

Similar definition is given by David Steel Man (2000) that case flow management is the entire set of actions that a court takes to monitor and control the progress of cases from initiation to the completion of post disposition of court work, to make sure that justice is done properly.

The definition by David Steel Man broadly indicates not only the pre-disposition and trial period but also after disposition which includes supervision steps. Hence, case flow management is strictly a management process; it should not affect the adjunction process of substantive matters in the process. It is only concerned in increasing well organized and efficient court practice with the law. For obvious reasons, court management is not simply the management of a business, and judges are not simply employees to be ordered around Therefore, the purposes of case flow management process are simply to make the sequences and timing of court events more predictable and more responsive to the needs of the public (American Bar Association 1990).

2.6.2.2 Steps in Case flow Management

Some of the important steps in case flow management are: early court intervention; differentiated case event and tactic; meaningful pre-trial event and realistic pre-trial scheduling; fair and credible trial date; trial management; post trial case management.

2.6.2.2.1 Early Court Intervention

This steps deals with progress of cases beginning from the time of initiation to the appropriate disposition of all cases. This include events such as statute conferences, arbitration, and settlement conferences, that are appropriate to the characteristics of individual case deadlines

in condition to the completion but short enough to encourage attention to case, and involvement of judges or courts staff when most beneficial . The point here is that cases vary in their time and resource they take. .i.e. some cases i.e. some cases are simple to resolve in a short period of time with a limited least cost, which others are complex and need much time and resources. So early identification of simple and complex is important to early control their progress towards appropriate disposition cases that are between the simple and complex ones are also identified early so the a plan will developed for them as well. In some courtiers, the procedural codes provide for judges (courts) to engage in case settlement discussion with parties litigants. But in most cases their settlement approach is not applied (Daniel Meador: 1991).

Early court intervention means that important issues have to be addressed early in the judicial process so that cases that arise for resolution either because of no causes of action or because of both parties are ready to settle their dispute amicably, can be resolved without unnecessary trial (Carl, Bar: 1994). Moreover m early court intervention including setting firm trial dates helps to reduce the time to resolve the case through normal procedures. It also needs commitment of the courts to the fixed trail dates developing this form of active case flow management style requires cultural changes, training of judicial and non judicial personnel (Dakolias:2001).

Therefore courts are the most appropriate organs in controlling the pace of disposition of cases and it is their responsibility to supervise the progress of cases through the intervention mechanism as early as possible because an early intervention helps courts before the case takes the time and resources. This is because the main purposes of early intervention is to save courts resources and time and to prevent unnecessary case back logs and some litigants from unwanted expression, in term of money, time , and energy. Hence after, court resource and time in spent, witnesses are hard, and parties are subjected to expenses, court intervention valueless (Dakolias: 2001).

2.6.2.2.2. Differentiated Case Management Tactics

Differentiated case management is a new technique for case management. It means dedifferentiating cases as civil, criminal, complex and simple. This helps court to manage their cases by differentiating them in terms of time, resources to reach at the final disposition. By this concern, differentiated case management requires early determination of court based two factors i.e. the kevel of attorney effort required to proposes the case for final disposition, and the amount of court supervision needed for timely disposition of the case. This implies that it is important to create events and activities to encourage timely disposition and to associate with those activities dealing for completion trail. All cases do not require the same time and events, and not all cases require the time for preparation and disposition. Hence, the traditional approach of case flow basically ahs been practiced as the so called first come first serve court approach i.e. cases are entertained scheduled or entertained in the order they are filed. For example, a very simple case which does not need much time and resources is made to wait for trial behind a complicated case that required substantial judicial resources. For this reason, the concept of differentiating case management is important in this concern (Dakolias: 2001).

Most of the time, courts intervene when a problem is brought to its attention after a valuable time and resource is spent. So, the need for cases differentiation is for all types of cases to be disposed in the time fixed accordingly. Accordingly there are major components of case differentiation, such as: criteria in differentiating among cases; different case processing tracks that meet specified criteria with respect to the amount of time and resources needed to resolve them; early screening a cases to determine the track to which a case should be assigned; assignment of case to the track and specification of deadlines for completing the required activities early, this way of differentiating cases facilitates the use of appropriate alternative dispute resolution mechanism. Hence the point early differentiating important to early evaluation i.e. to settle cases through mediation, arbitration, or judicial settlement conferences. This shows that active case flow management require a court to categorizes case and activities according to their need for judicial attention and to develop procedure to handle cases in each category or cases tracks. This differentiated cases management promotes justice as well as judicial efficiency. Equal treatments of some cases serve the interest of fairness and equity (Ibid).

2.6.2.2.3 Meaningful Pre-trial Realistic Pre-trial scheduling

A case flow management to effective courts should promote and insist in proportion for court events by parties and lawyers. Cases are settled by lawyers (attorneys), not by judges, when they are prepared for significant and meaningful court events i.e. they contribute an important role towards case disposition and parties are to be prepared to make these events meaningful in terms of case progress towards the appropriate outcomes. Case continuances are common without good reasons that contribute to the emotional and financial costs in the continuing trail process (David, Steel Man: 2000).

Scheduling of pre-trail matters, call for a careful exercise of court control. The scheduling future event, should balance the need for reasonable completion of case related activities with reasonable accommodation of the conflicting demands place on the time of participants in proceedings. Coming cases should be scheduled carefully to accomplish them timely. Yet they should be scheduled sufficiently as immediate as the case provide a witness that courts need reasonable case progress through controlling continuance since participants are fairly entertained . Moreover, if possible, case event should be scheduled in relatively short trail dates intervals, especially when a particular stage of a case, such as studying a civil case will have a long duration so the court should schedule intermediate mentionable events, like periodic conference on state to ensure that attorneys remain in sense of urgency about case preparation and case progress. This to mean that courts should engage continuing honest communication with litigants, for instance, reasonable advancing notice to lawyers of deadlines and procedural requirements; notification to lawyers than any request for adjournment and other schedule revision must be made in advance of the deadline date, and will only be granted on the ground of good cause; action in response to judicial personnel's non compliance with the scheduled time and deadlines other requirements. For example, if a court is scheduled for cases hearing, hearing must be conducted as scheduled consistently. In such case the pre-trail proceeding will be realistic, so that progress of case s towards adjournments of cases on good causes will be given in specific situation (Ibid).

2.6.2.2.4 Fair and Credible Trial Date

The emphasis in their concept is that trial should be commenced on the first date scheduled. Creation of expectations that events will be entertained as scheduled, is very important. If litigants are in doubting that the trial or hearing will be conducted at the scheduled time and date, or near, or after, they will not be prepare and ready for that. On the other hand, if the court commencing a trail as per the schedule parties in this case will be ready either for litigation, or to settle their case in other alternatives dispute setting ways. Hence, a reasonable and credible trail date and time is on of the key feature of a successful case flow management practice. This concept, credible trail date, is directly related to disposition of cases through speedy trial. Credible and consistent trial date, bring disposition of cases on a shorter period of time (David, Steel Man: 2000).

2.6.2.2.5 Trial Management

Trail takes the largest portion of courts time than the others steps in a trail process. Hence, the judicial personnel are expected to be critical in trail time management i.e. judges should manage every thing in the court room in relation to cases they handle. By managing trails effectively, judges could continue to fair justice in individual cases while expanding the availability of scarce resources in courts trial time , and other related activities of courts (David, Steel Man: 2000).

In 1970, the American Bar association adopted the trail management standards recommended by the National Conference of State trail judges. The basic concept of this standard is that judges should strictly exercise the duties in managing trial proceedings. The judge should be ready to proceed and take appropriate action to ensure that parties are ready for the trail as scheduled, ensured that parties in the case enjoy equal chance to present their evidence, and ensure that the trial is concluded without ant interruption. The emphasis here is that trails should be managed effectively to provide fair justice and effective trail management has its own impact in scarce resources of concept which is expected from any efficient judicial system in any country (Ibid).

2.6.2.2.6 Trial Management after Disposition (Post trial Management of Cases)

The final step in the concept of case flow management is post trail management of court cases. This concept indicates that case floe management does not end with disposition of cases if continuances after case are finally decided. Researches in case flow management, to date, has focused in cases such as felonies and general jurisdiction on civil cases, in which trail courts often have a relatively little work to do after cases are finally decide or disposed. In fact, some court cases demand a significant amount of time to settle post disposition motion, such as divorce cases. To ensure that justice is given on a fair time and to efficiently allocate court resources, appropriate case flow management is important after the case in finally disposed in implementing the decision of courts. At this step, monitoring cases after dispositions exercising court control over the pace of past disposition of court cases; managing the post disposed case linking to other cases, and determining if all courts work is done properly (David, Steel Man: 2000).

2.7 Access to Justice

2.7.1 Factors that Prevent the Poor from Access to Justice

2.7.1.1. Lack of Legal Information

Among the many obstacle to justice, lack of information always ranks top. For instance, in his classical study on the subject, Mauro Cappelletti referred to what he called the problem of "Legal Poverty" and considered it one of the most important obstacles to legal access. The litigants, he affirms, lack basic information about their legal rights. The general problem of lack of information encompasses many subsidiaries: *not knowing that rights one has*; *not knowing where to go and what to do in order to demand one's rights*; *not knowing the legal language and the legal procedures* (Buscaglia: 2000).

2.7.1.2 Economic Costs

At least as important as the information problem are economic costs of justice. In principle, these difficulties appear in all countries and affect all kinds of people. However, these problems are more serious in poor countries and for poor people in poor countries tend to have more problems in guaranteeing decent minimum social protection and good education for all at the same time; poor people are more likely to be unable even to initiate a legal process. Let

alone carrying it through. First of all, they have to afford the highest costs of paying good lawyers and the court fees. It must take in to account that without a good lawyer the chance of succeeding in a lawsuit is drastically reduced. Judges have to adjudicate in numerous cases that clearly exceed the capacity even the most committed magistrate. In addition to the direct economic costs, there is a myriad of smaller costs that all poor clients have to meet. They need to travel long distance to the cities where the courts are normally located and 'survive" them while completing the formalities; they need to pay to obtain basic documents; they need to make photocopies and phone calls. These items may not count as obstacles for most people but could represent serious barriers for the poor. According to a survey undertaken by the Inter American Bank of Development in seven Latin American countries in 2000, the first conclusion of all local investigation, shows that the economic factors is central . Not only is the economic problem perceived as an insurmountable obstacles, it often is (Thomson, 2000 cited by Roberto Gargarella : 2003).

2.7.1.3. Corruption

Justice is costly in many different ways, but particularly in an economic sense. However, economic costs are not only those normally associated with setting the machinery of justice into motion. It is a widespread perception in Latin America because it requires additional money to "guarantee" a favored outcome. This perception leads many people to think that justice can only be obtained by rich (richer) people; wealth and justice become closely associated (Thomson, 2000 cited by Roberto Gargarella 2003).

2.7.1.4 Formalism

The administration of justices is distinguished by excessively formalistic and bureaucratic procedures that transform justice into something exclusive, which only "experts" can understand. The legal language is complex that even well educated people find it difficult to understand. This fact not only excludes most people from the legal world but also reinforces existing inequalities in various ways, making it mandatory to pay for experienced lawyers. Clearly within this formalities context, a lawyer will perform better when he or she knows how to deal with these complexities and how to explicit them to his or her advantages. Therefore, the outcome of a case commonly depends not on question of substantives justices but rather on

procedural matters and formal subtleties. A criminal may be released or a debt forgiven owing to the clever exploitation of formal details. To understand the depth of this problem, however, one should not reduce it to mater of language. The formalities of justice transcend legal rhetoric and extend to the way in which lawyers and justice dress or behave, even to the structure and architecture of courts themselves, which are commonly known as "place of justice". Ultimately, all these formalities contribute to establish barriers against the people and to reinforcing the perception that justice is not for all (Thomson, 2000 cited by Roberto Gargarella 2003).

2.7.1.5. Fear and Mistrust

Thomson, 2000 cited by Roberto Gargarella (2003) argues that some of the factors that make the poor reluctant to litigate in the courts, which are very much connected with corruption and formalism, are fear and mistrust of justice system. He says,

> *"...the poor are inclined to fear different kinds of abuses of authority. Some public officers may uses the presentation of the poor in the courts as a pretext for prosecuting them; others may take the opportunity to humiliate the poor during trials; some judges may opt to rule against the poor out of sheer of class prejudice. On this basis the poor may reasonably conclude that to bring a case before the courts may not be good idea. It might be wiser for them to remain quiet, acquiescing in their fate..."*

2.7.1. 6 Court Delay

One of the most common answers to questions about reluctance to go to court, Thomson ,2000, cited by Roberto Gargarella (2003) says, is due to inordinate delay. The courts, it is claimed, take a life time to decide a case. Court delays drive from numerous circumstances, some of which are understandable in principle, while others are not. For example, it is true that on many accessions, particularly in poor areas, there are too few judges, whose workloads are too heavy; they lack both adequate equipment and assistance in their work. It is also true, however, that on other occasions judges simply do not care about urgent of poor claimants, or prefer to direct their attention to other cases, which may be more important in terms of prestige, power,

or illegal benefits. What ever the reasons, court delays discourage people who are in need of help from seeking redress and aggravate their situation.

2.7.1.7 Geographical Causes

The geographical obstacles often take a major position proportions, because travel costs are significant and need to be paid repeatedly, when ever the legal process requires. Also, one has to take into account that for many people the trip to the courts is emotionally taxing; the court environment is unfamiliar and arriving there may become a problem by itself. This is particularly important because it suggest how the judicial system was originally convinced. The underlying idea is not to develop it from the people to the judges, quite the opposite. Even worse, the idea was not to spread the tribunals thought the country in order to reach all the people, particularly the weakest segments of the populations. Rather, it seems that the tribunals were "planted out there" just for those who are able to reach them (Thomson, 2000, cited by Roberto Gargarella 2003).

2.7.2 ADR Mechanisms as Opportunities for Improving Access to Justice for Poor

Many researches in this field suggest that most poor people are facing and will face problems when seeking justice. This doesn't mean that the poor have no alternative means on confronting the violation of their rights. Some of the means are the "informal" way setting their disputes have been adopted in many different countries, either due to the capacity of the state to administer justice in certain areas, to the absence of the stats, or due to the people's dissatisfaction with the way in which the states was administering justice. Among many informal alternatives, an example from Peru is instructive. Many Peruvian peasant and indigenous communities have tended not to use the public system of justice, which they found too expensive and unreliable. However, that discouraging situation did not mean that they had no problems to solve or that they did not seek redress. Rather, poor Peruvians, facing multiple legal problems, many of them related to issues of property and payment of debts, appealed to the president of their communities or other lower level local authorities (e.g. the chief the local police). In some cases, they required help from the General assembly of the community/ in other cases they use the so called "*Randas campeninas*". The "*Rodas*" started as a way of dealing with petty robbery (e.g. cattle rustling) that the state authorities were unable to contain.

The "*Rodas*" were neighborhood groups organized during the night with a view to guaranteeing the peace and security of their quarters. According to their established practices, when they found the culprit of crime (e.g. stealing an animal belonging to the community) that returned what had been stolen to the victim and meted out a sanction for the wrongdoer. In this way, the "*Rodas*" soon achieved remarkable success as a local and popular method of achieving justice, and spread too many other regions of the country (Infante, 1999 cited by Roberto Gargarella : 2003).

Infante, (1999), cited by Roberto Gargarella (2003) observed also the similar situation in Bolivia the evolved with the so called communal justice. Bolivia has more than 12,250 communities with less than 25 inhabitants, in which the states virtually absent. Again many of these communities settle their judicial problems in their own ways-normally departing drastically from those of "formal" justice. Similar situations obtain in many other Latin American countries, such as Colombia and Ecuador.

The relative "success" of this "informal" system justice provides lessons to how existing system of "formal" justice can be improved. These experiences underscore the importance of constructing a system of justice that is closer to the people- socially and geographically. People tend feel closer to the judicial system when judge understand their problems and inspire trust. Fortunately many Latin American countries have begun recognizing the importance of such experiences and left behind the hostile attitudes to "informal" systems of justice. Colombia, Peru and Ecuador have changed their constitutions to include explicit clauses recognizing the value of alternatives ways of conflict resolution. These constitutions acknowledge that indigenous communities may resolve conflicts in accordance with their own practices and traditions. On most occasions, however, they concede such "permissions" as long as the "informal" mechanisms of the indigenous communities do not affect the law of the country or the rights of individuals (Revilla ,1999 , cited by Roberto Gargarella :2003).

In recent years, there emerges a some what more "formal" but still interesting experience of alternative conflict resolution. Conflict resolution –some times by non-governmental organizations and some time by "formal" authorities. In Brazil for example, some public

authorities have been using "special tribunals" since the late 1980s, dealing mainly with minor civil and criminal cases. In these cases, the judges are assigned with additional powers, including ample procedural freedom and wider discretion when deciding on the cases. In criminal cases judges are allowed to negotiate a solution with the opposing parties. Since their creation special tribunals have increased enormously with popularity. In the states San Pablo, for example the tribunals tried 1736 cases in 1988 and settled 1,135 of them. By 1993, they had tried 37,418 cases and settled 36,955 of them, and by 1997 the number of cases had reached 164,146 and the number of settled cases 154,934 (Nalini, 1999, cited by Roberto Gargarella: 2003).

There are also interesting stories about the so called " *jurgudos* depaz" courts created to deal with minor and local affairs. In many countries this " *jurgudos depaz*" are as old as the independent country itself. Having lost much of their initial attractiveness, they have recovered part of their appeal in recent years. Their "renaissance" probably related to the increasing influence of "informal" judicial systems. The formal justice system gained legitimacy and importance when it began to recognize the merit of "informal" systems of justice. These tribunals gained strength when they abandoned the formal methods of administrative justice at the formal justice abandoned the rigidity and centralism that always characterized the inequalities system. The rejuvenated "*Jurgados depaz*" may become excellent intermediary bodies of justice and the communal indigenous devices (Binder, 2002, cited by Roberto Gargarella (2003).

Form the above discussions we can conclude that judicial independence is the basic in creating an efficient and accessible judicial system. In addition, to have a general consensus in the significance of judicial reform is most important prerequisite for judicial reform. Moreover making the judicial branch independent and professionalizing it too are the important rationales in making judicial reform. The importance of the law and development concept and the role of judicial reform in economic development are so essential. Furthermore, to have efficient judicial system employing a modern case flow management system is indispensable in administration of courts

CHAPTER III

JUDICIAL REFORM IN ETHIOPIA AND THE EXPEREINCE OF OTHER COUNTRIES

Having discussed the general conceptions of judicial independence and separations of powers, the pre-requests for judicial reform, the rationale for juridical reform and other important concepts, this chapter is devoted to a brief review of judicial reform in Ethiopia and the experience of other countries.

3.1 Judicial Reform in Ethiopia: a Brief Review

Ethiopia is the oldest state in Sub-Saharan Africa. It is unique among African countries; it escaped colonization and maintained its independence. The country was ruled by kings, Emperor *Hailesilasie* be the last king of such monarchical system. *Hailesilassies's* rule came to an end in 1974, when he was deposed by a military junta (*Derge).* The *Derge*, established a highly centralized socialist state ruled by a military dictatorship and by brutal oppression of its own people. In 1991, a coalition of different opposition force's the EPRDF overthrew the *Derge*. The EPRDF established a transitional government with a transitional charter which serves as a constitution and embarked on a wide ranging-process of democratic centralization (Dakolias: 2004).

As a result, a new Ethiopia constitution was ratified in 1994, and took in effect in 1995. The 1995 FDRE constitution replaced the nation's centralized government with a Federal Republic based on a democratic form of government. The federation consists of nine member states referred as regional states and two municipal districts (the Capital A.A. and the Second City Dire-Dawa). The 1995 FDRE constitution assigns extensive power to the newly-created states (MoCB: 2005).

During the pre-war period, the period before the coming of the Italians, Ethiopia was governed almost entirely by a complex set of traditional customary and religious laws. Arguably, Ethiopia has a long history of legal framework, the most famous which is the "book of the kings" *the Fitha Negest*. Religious and customary laws remain prevalent throughout the

country. In the 1950s and 1960s, Emperor Hailesilassie founded a University with a Law Faculty and initiated the drafting of core group of modern codes. The University's structure and legal codes were based on European model. The emperor hired a *Franco-Swiss* team of specialists of comparative law which created a complete set of up to the latest standards of the late 50s. The codes were, arguably, of an extremely high standard. These codes were not matched with adequate capacity buildings and trainings at the local level. Furthermore, following the development of the codes, procedural provisions subsequently imported from England, India, and the USA, with little regard to the coherence of the system as whole (Dakolias : 2004).

During the *Derge* regime, (1974 - 1991), the basic codes were largely ignored. All land was nationalized and when legislation was imposed, it was done so without due process. The transitional government (1991-1994) under took significant legal revision to replace the socialist era law and re-established a functioning legal system. While many of the imperial codes of the 1960s were being revised, reforms were also under way to ensure that such laws are consistent with FDRE constitution. Law reform is also being under taken to implement the many new rights and requirements delineated in the constitution and to create an environment more conducive to investment and development. The tradition to a Federal Republic and decentralization, which begun in the 1995, added further layers and dimension to an already diverse and complex legal system. This transition has already greatly manipulated the demand placed both on government infrastructures and the legal system. Of the three branches of government, the judiciary has the least history and experience of independence, and requires significant strength to obtain true independence, equality and self-sufficiency (MoCB: 2005).

The judicial and legal sector in Ethiopia presents a variety of significant challenges. It suffers from dismal condition of service, staff shortage, and lack of adequate training, infrastructure and logistical problems. Generally, the judicial system has three core problems. First, it is neither accessible nor responsive to the needs of the poor. Secondly, lack of serious steps to tackle corruption, abuse of power, and political interference. Thirdly, inadequate funding of the justice institution aggravates most deficiencies of administration of justice. The perception of the independence of the judiciary is very law. The operation of courts is managed and

supervised by the court presidents, who therefore, act both as judge and administration officials accountable to the president of the Supreme Court. Potentially this compromises the independence of the judiciary. Besides, the process of selection and promotion of judges is insufficiently transparent and lacks inputs from other legal professions. The same is true with the issue of performance evaluation that court administration and case management are weak. Access to justice of all kinds of legal information is limited. Finally, the judge's poor working condition threatens their independencies, reduce their efficiency, and constitute incentives for corruption. With the objective of changing these challenges in the justice system, the JSRP was established in 2002, under authority of MoCB by assessing the performance of various institutions and to propose appropriate reforms (Dakolias : 2004).

In March 2003, the Center for International Legal Cooperation (CILC) was contracted by the JRPO to under take a base line study of the Ethiopian Justice system and make recommendations for reform, by identifying three core problems of the Ethiopia justice system. Namely, inaccessibility, weak to tackle corruption and abuse of power, and inadequate funding (MoCB: 2005).

In reforming the justice system, three phases were employed: training and upgrading, and law reform and harmonization. In the training phase judges, justice personnel, policy officers and prison administrators were part of the reform. To solve the immediate shortage of training manpower about 3000 judges were in *Woredas* during this phase. In addition, the program was focused on upgrading the skills of low level judges and prosecutors during court proceeding time. These programs were organized at both at Federal and State levels. The Faculty Laws of A.A University and Civil Service College have also carried out upgrading programs. Regarding court administration ways and means were explored to effectiveness in operation and management of the courts. Eleven pilot projects were under as the Federal Supreme Court in collaboration with Donor Agencies. The program was later extended to lower Federal Courts and some State Courts (Ibid).

Law reform and harmonization, which is the second phase of the reform under taken by MOJ and JLSRI who were the role players in implementing the law reform and revision program to

harmonize existing laws as well as updating the existing codes which was part of the important process (Ibid).

3.2 Background of the Study Area

Addis Ababa City, which was established 1886. It is the capital of the Government of the Federal Democratic Republic of Ethiopia; the Seat of the African Union; and the Seat of a number of International Organizations (AACG: 2003).

A.A, as a Capital City, is Constitutionally vested with the right to self Government and operate pursuant to the City charter, proclamation No. 7/1992, latter amended by proclamation 311/2003. This proclamation was most recently re-amended by the proclamation No. 361/2003. As per this charter, the City Council is the supreme authority, and during the transitional period (1991-1994), the council was exercising a combination of legislative and executive function. The Bureau of Justice and Legal Affairs was acting as a chief advisory to the city council and exercises oversight and co-ordination responsibilities between the City's Prosecution Office, and penitentiary administration. The city council, in addition to its other enumerated duties, it draft and enacts legislations concerning municipal affaires and jurisdictions, establishes judicial bodies, and defined their powers and functions in accordance to the city charter. In many ways, the creation of entities, such as the City Courts, which are focal points for the judicial excellency and competition, were important effort in the history of the city administration (Dakolias: 2004).

The total area of the City covers 540 Square Kilometers. However, the pattern and the trend of settlement has characterized with spontaneous and horizontal expansion rather than a planned pattern of urban development. The City's existing land use pattern shows that 39.8 percent of the total land of urban area is for mixed-use construction, 23.4 percent occupied by green area, 33.4 percent for urban expansion in periphery area, 2.4 percent for industrial zone, and 1 percents for social services (AACG: 2008). The table 3.1 presented below indicates the population growth trend of city.

Table 3.1 A.A City Population Growth Trend

Census Year	Total population			Average house Holds sizes	Population growth rate
	Male	Female	Total		
September, 1962	230,180	218,332	448,512	3.5	
October, 1968	337,350	369,180	683,530	3.9	6.9 (1962-1968)
September, 1979	553,681	613,620	1,167,301	4.4	4.5 (1968-1979)
May, 1984	685,184	737,927	1,423,111	5.2	3.5 (1979- 1984)
October, 1995	1,023,452	1,089,285	2,112,737	5.1	3.2 (1984-1995)
October, 2007	1,304,318	1,433,750	2,738,248	-	2.1 (1995-2002)

Source: CSA 3rd population and housing census 2007 report

As illustrated in Table 3:1 within 23 years, this is from the year 1984 to 2007, the population growth increased by 92.4 percent. The average houses hold sizes also increased from 3.5 to 5.1. As it has been shown in the 2007 census, the total male and female population contributes 47.6 percent and 52.4 percent respectively.

According to the City population and development policy document (2008), poverty, high rate of unemployment, lack of dwelling houses, lack potable water…etc are some of the major problems. Furthermore, most of the dwelling houses in the city are slums in high-congested areas marked by deteriorating, poor sanitary, and overcrowding high population density.

Overall, the mismatch between the A.A City Courts performance to absorb the complex economic interactions and natural population growth including the high rate of immigration are the major challenges of the City Government.

3.2.1. Reform Movement in the A.A. City: a Brief Review

The year 2003 was marked with many administrative structural changes and reforms in the City administration. Some of the reform movements were:

3.2.1.1. Administrative structural Reforms: a Brief Review

Before the reform movement in the City administrative powers were vested on City Administration, *Woreda and Kebele* Administration levels. These administrations level includes 24 *Woredas* and 309 *Kebels* in the City. These types of administrative power structure were changed by A.A City Government which comprises10 Sub-Cities and 99 *kebeles.* As per the amended charter proclamation number 361/2003 articles 10(1) the City Government was made to have the following organs of powers:

a) The City Council
b) The City Mayor
c) The City Cabinet
d) The City Judicial Organs
e) Office of the City Chief Auditor

The Sub-City Administration comprises the following organs of powers: Sub-City Council; Sub-City Chief Executive; Sub-City Standing Committees. The charter also provides organs powers on *kebele* level: *Kebele* Council; *Kebele* Chief Executive; K*ebele* Standing Committee; and *Kebele* Social Courts. The powers and functions of each organ of Administration are exhaustively detailed in the charter. Here, the author would like to note that the scope of the study is not to discuss about the administrative powers of the City Government. The purpose of the above discussion is to tip the administrative reform movement in the City Government.

The A.A City Council is the Supreme Authority in the City Government, which is found in the upper apex of the City's power Structure (Article 10 (1)(a) of the City character, proclamation, No 361/2003). In addition to other enumerated duties, the A.A City Council establishes judicial bodies, and defines their powers and functions (Article 14(1) (e) and article 41 of the City charter).

The organizational structure presented below in figure 2.1 indicates that the City Council is found in the upper apex of the City Government Authority. The A.A City judicial body is organized directly under the City Council to indicate its independence from the City executive, though the practice is quite different.

The City Courts JAC is found at upper level in the A.A City Courts organizational structure to indicate that it is this body who is supposed to administer the day to day activities of the Courts, though the reality shows a different picture as discussed in chapter four of this paper.

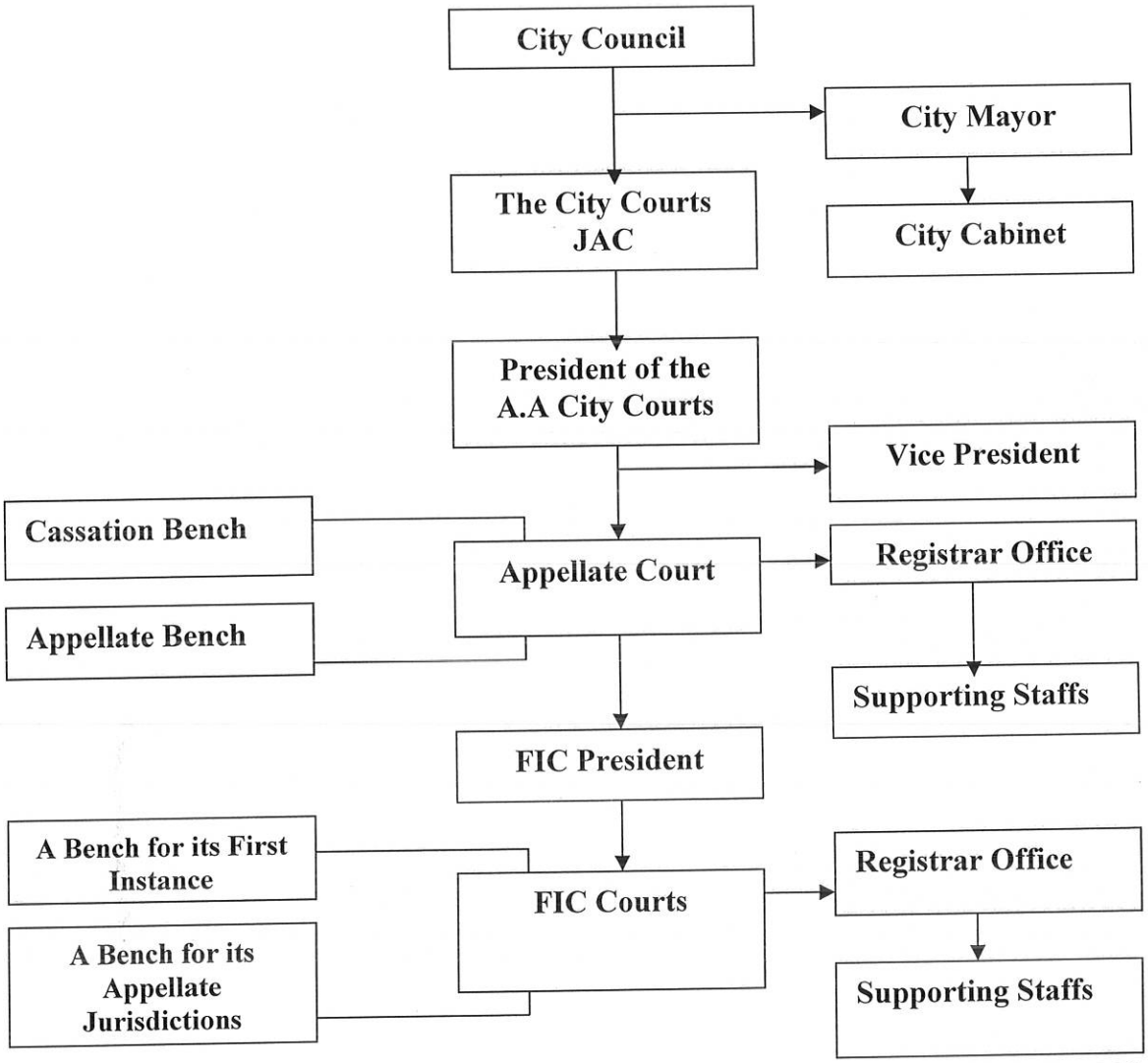
In addition, Figure 3.2 indicates the appellate Court has it own president and vice president. It further shows that the appellate court has two different benches within it namely the appeal bench and a cassation bench. The appeal bench entertains judgments rendered by the A.A FICs. On the other hand, the cassation bench receives applications on final judgments rendered by the FICs on their appellate jurisdiction (cases of *Kebeles* Social Courts) and final decision of the Appellate Court alleging only on fundamental error of law (Article 42 (2), and Article 50 (3) and (4) of the City charter, proclamation No. 361/2003). The point to be noted here is that the judicial personnel (Judges) of the Appellate Courts are founde in the above mentioned benches.

On the other hand , though not mentioned in the City Charter, the practice of the Appellate Court includes the so called " registrar office", which is supposed to handle the activities and benefits of the supporting staffs organized under it, as shown in figure 3.1 below.

Regarding the FICs, they are the lower courts found under the Appellate Court having two types of benches exercising jurisdictions namely, first instance jurisdiction and appellate jurisdiction (in case judgments rendered by *Kebele* Social Courts).

The organization with regard to the Registrar office and Administration of supporting staffs, it is similar with the Appellate Courts. The figure 3.2 presented below shows how the A.A City Courts are organized to perform their activities.

Figure 3:2 the A.A City Courts Organizational Structure



Source: Computed from A.A Municipal Courts Establishment Proclamation No. 1/1990 E.C and The City Charter.

3.2.1.2. Reform in Re-organizing the City Courts in Location and in Enacting Laws

3.2.1.2.1 Reforms in Reorganizing the Courts in each Sub-City

Before the year 2003, the municipal courts of the A.A. City were made to locate at two separate places i.e. the municipal FIC at one place and the appellate court, which is the second and final level, at another separate place. As mentioned above, to absorb this administrative reform and changes, the name municipal courts were changed by "City Courts" and the FIC were re-organized from one center to each Sub-city to harmonize with the newly created Sub-City administrations. However, these reform movement is supported neither by the revised

charter proclamation No. 361/2003, except the naming "Municipal" changed into "City" court, nor by any regulation thereof. It seems the City Courts were spread in to each Sub-City only informally.

However, this reform movement, by itself though not supported by law, is an achievement comparing to the in accessibility of the municipal courts, before the reform movement, with all its short comings. With regard to this reform movement in relation to the City Courts it is difficult to find formal documents indicating the real causes to re-organize the courts into each Sub-city. The only indication is that to harmonize the over all reform movement in the City, a committee to handle the reform of the city courts was formed by the City Executive itself (personnel observation).

This reform movement, which distributes the Courts as mentioned above was made without harmonizing the municipal courts establishment proclamation No 1/1990 E.C. to recognize the reorganized Sub City Courts, which serves as the only proclamation for that matter.

3.2.1.2.2. Reform Movement in Enacting and Amending Laws

Laws concerning the JAC in the city courts: before the year 2003, there were no clear laws and regulation concerning the powers and functions of the JAC. The A.A municipal courts establishment proclamation number 1/1990 E.C, under its Article 22 indicates the existence of the JAC. This proclamation includes members of the JAC which comprise the president and vice presidents of the appellate, and all judges in the appellate and FIC. This proclamation provides also function and powers of the JAC. This proclamation has many short comings. It makes all the judges of the city municipal courts members of the JAC, which over representing the interest of judges. It doesn't clearly indicate the issues of disciplinary action in cases of ethical misconduct of judicial personnel (Judges). There was no clue as to who selects and present the appointment of judges and the procedural process. One of the achievements of the 2003 reform movement, regarding the City Courts, is enactments of proclamation No. 4/2003, which establishes the JAC of the A.A .city courts. This proclamation clearly defines what disciplinary offence is and other important concepts (Article 2). It provides the composition of the JAC which clearly identifies seven JAC members (Article 3).

The short coming of this proclamation is that the City Court judges are represented by only one judge, which is extremely different from the above mentioned proclamation No. 1/1990 E.C. The other important improvement in this proclamation is that the powers and functions of the JAC are clearly stipulated. For example, selection of judges is to be made by the JAC; it approves the code of ethics of judges of the courts; determine the transfer, salary, allowance, promotion and placement of judges, study and make proposals to the Mayor on the implementation of medical and other benefits (Article 4). It includes also procedures on meetings of the JAC, powers and functions of the chairperson of the JAC, which includes preparing the summary of the curriculum vitae of candidate judges for consideration of the JAC; forward the lists of candidate judges, selected by the JAC to the concerned bodies; it also includes the requirements for judicial appointment …etc (Proclamation No. 4/2003, Articles 5, 6, and 7).

This JAC establishing proclamation is very much better than proclamation number 1/1990 E.C. with regard to identifying the powers and functions of the JAC, though it has many shortcomings with regard the independence of the JAC. To sum up, the reform movement of 2003 in the City wide has achieved some developments in harmonizing, amending, and enacting new law that are important to the administration of justice.

3.2.1.3 Relationship between A.A City Courts with the Federal and *kebele* Social Courts.

a) With the Federal Courts

The Federal and A.A City Courts relate each other in two ways. First, in case of conflict of jurisdiction i.e. when there is a conflict of jurisdiction, the Federal Supreme Court has the power to see the case (article 42 (1) of the revised charter, 361/2003). Second, a party alleging a fundamental error of law in a final judgment rendered by the A.A City Courts may apply for cassation before the Federal Supreme Court (Article 42 (3)) of the charter.

This relation between the Federal and A.A City Courts is restricted only when there is conflict of jurisdictions and when there is fundamental error of law. This relationship does not provide a solution to the gap created due to the two level court structures regarding the right to appeal.

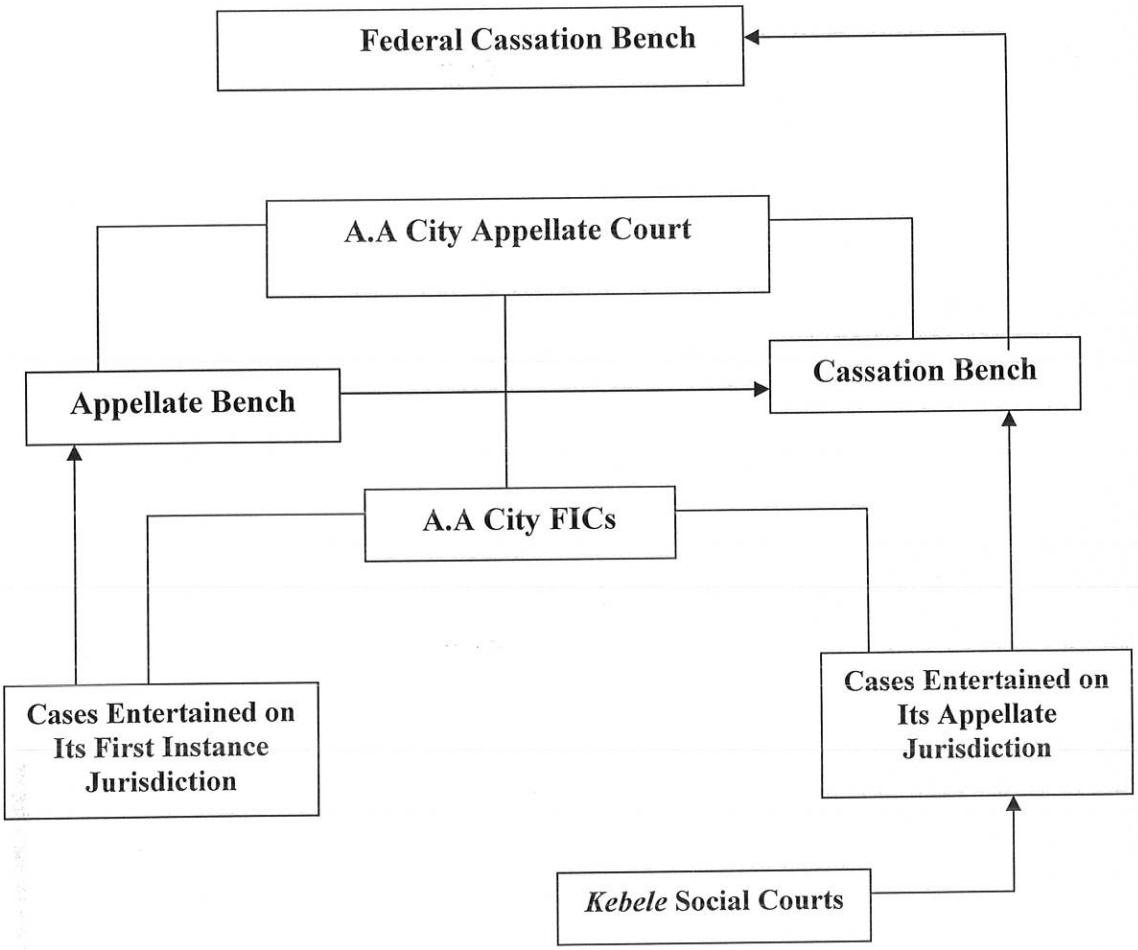
b) Relations with *Kebeles* Social Courts

Kebeles Social Courts have jurisdictions over cases of petty offences money claimed where the amount involved does not exceed Birr 5000 contravention of the City hygiene and public health regulations (Article 50 (1) and (2)) of the A.A City Charter.

In this regard the *Kebele* Social Courts interact with A.A City Courts in two ways. First, a party dissatisfied by the decision of a *kebeles* Social Court may appeal to the corresponding FIC of the City and the decision of the later is final (Article 50(3)).Second, where a final Judgment rendered by the City's FIC in a case lodged with it on appeal contains a fundamental error of law, application for cassation thereon may be brought before the City's appellate Court (Article 50 (4) of the City charter). This shows that the relation between the *Kebele* Social Courts and the City Courts is similar with the Federal and A.A City Courts.

The Figure 3.3 below, indicates that relation between A.A City Courts with Federal Courts, and Kebele Social Courts.

Figure: 3.3 the A.A City Courts and their Relation with Federal and *Kebele* Social Courts



Source: Computed from A.A City Charter Proclamation No.361/2003

3.3 Experience of Other Countries in Reforming their Judicial System

The experience of Russia and Taiwan is discussed in this paper as examples in the process of reforming their judicial system.

Most studies in the field do not explore possibility and, indeed, the reality that judges can play a positive role in judicial reform under an authoritarian regime. In general, the dynamics of judicial reform come from three types of sources, or three types of actors. The first is international organizations, such as the World Bank, the International American Development Bank, and the United States Agency for International Development (USAID).The International Organizations offer not only funding but also blueprints for judicial reform for some third

World Countries. The second is politicians and political parties may have many different reasons for their decision to carry out judicial independence reform. Most cases involve farsighted politicians who control the judiciary but give up this very power. Politicians are risk adverse forward looking. They know that if they lose some day, their opponents would use the controllable judiciary to attack any established politician who did not surrender control and let the judiciary gain independence which is called "*insurance theory*". The third type of resource is non-governmental organizations. One example of this resource is Human Right First, whose mission includes building respect for human rights and the rule of law ((Dakolias, 1995).

3.3.1 The Experience of Taiwan

The dynamics of Taiwan's judicial independence reform came from an unexpected source i.e. from the district judges and persecutors at the bottom of the judicial hierarchy. The case of Taiwan is spectacular. First, Taiwan's judiciary reflects the great influences of Japan and Germany to some degree; we can put Taiwan in the civil law tradition. In this tradition, judicial service is a bureaucratic carrier the judge is a functionary, a civil servant; the judicial function is narrow, mechanical, and uncreative (Merry Man:1985).

Second, like the case of Japan, the case of Taiwan presents a situation in which political parties and politicians control the judiciary and discipline its personnel not by strictly appointment examination but by controls internal to the judiciary particularly, the control of promotion, hence the district judges and prosecute at the bottom of the judicial hierarchy come under the most control. However, in the case of Taiwan, the main leaders and activities of the judicial independence reform movement have been district judges and prosecutors. They not only initiate the reform of the corrupt and controlled judiciary, but their reform strategies are very innovative , as well as most important is that almost all their reforms have been successful (Guarnier:2001).

Compared to other third wave democracies, the case of Taiwan is unbelievable. It is difficult to find that district-court judges in third-wave democratic countries initiate reform actions. Japan is a useful object of comparison. Japanese judicial system has greatly affected Taiwan because Japan ruled Taiwan for fifty years. The court structure and the legal education in Japan are

similar to those of Taiwan. However, the Japanese judges who joined the left and the reform-minded organization that was called the Young Jurists League often obtained positions in rural areas and receive fewer and less substantive promotions. If these appointees criticized the judiciary or ruled against the Japanese government in same politically sensitive cases, the court might punish them. Most important, reform-minded judges in Japan do not play a very important roles in the Japanese judicial (Ramseyer and Ramusen: 2003).

3.3.1.1. Reforms in the Court System

3.3.1.1.1. Case Assignment Reform

The two major avenues through which the ruling party can control the judiciary involve cases and personnel and in effect personnel control facilities cases control. Before 1993, in Taiwan the chairperson (president) of the courts would decide case assignment at the end of the year, even though there was a sixty years-old law according to which all judges in judicial council were to decide case assignment. The chairperson could easily assign important cases, particularly, cases involving politics or charges of corruption, to particular judges whom the chairperson- and therefore the ruling party could trust. In order to obtain more bribes from defendants, judges might bribe the chairperson who would assign the judges to important sections which are in charge of important case (Chin-Shou-Wang: 2007).

The first reform that targeted a case assignment was started on December 1993 that nine judges held a press conference in which they stated that decision regarding case assignment should belong not to the chairperson (president) of the courts but to all judges. They also decided in a democratic manner, and not solely on the basis of the chairperson's internal control in the Taiwan's judiciary. Their ideas for reform received support from news papers by calling the reform *"judges self government-movement"* (Lu, 1994).

On December 29, 1993, after several hours long debate and quarrels and four separate votes, the judges in Taichung District court voted 41 to 34 to pass the resolution stating that all judges in judicial council would decide case assignment. Judges in other district courts followed the steps of Taichung District court and asked for a change in the method of case assignment.

After this reform, Taichung District court become both the motor and fuel for judicial reform in Taiwan's judicial system (Chin-Shou-Wang, 2007).

3.3.1.1.2 Reforming Personnel Review Council of Judges (JAC)

The success of case assignment reform could not guarantee judicial independence if personnel-based control did not submit to a parallel line of reform. Peter Russell (2001), argues that

> "*...the danger pint for judicial independence may be more in the process of promotion and career advancement than initial appointment. This problem of judicial personnel control is serious in Taiwan because of the initial appointment. This is relatively easy to accomplish if some one can pass the judicial exam and the training, the person will likely obtain a position as a judges or prosecutor*".

The personnel Review Council in the judicial Yuan controlled judges' promotion, punishment and transfer. In 1994, there were twenty one members in the personnel Review Council of judges (JAC). Eleven out of twenty one members were representative who had important administrative position, such as president of the judicial Yuan and chairperson (president) of the high court, and the members were not eyeleted by judges. The other ten members were elected by judges in courts occupying different levels. However, before 1994, the so called elected members in fact, were elected by the chairpersons of the courts. In 1994, three Reform-minded judges in the district courts campaigned, and won, three respective seats. In the following years, almost all the reform-minded judges who campaigned won elections and with this the situation started changing, even though they were a minority still there were quarrels in the meetings of the personnel Review Council. Reform-minded judges in the council refused any suspected cases. The movement of the reform-minded judges was described by some judges as "the blood that follows become a river". Though the reform minded judges were not able to nominate any candidate for promotion or transfer, they did block the promotion of many unqualified or corrupt judges. This situation came to an end when judges Lu Tai-Lung, one of the most important leaders in the judicial reform movement, became the director of personnel issues and sent personnel cases to the Personnel Review Council for approval (Chin-Shou-Wang, 2007).

In addition to the personnel Review Council's reform of judges' career path, there were two actions that helped break down the promotion map. One such action was a survey conducted by three judges who were members in the personnel Review Council, in which judges in district courts reviewed their chairpersons (presidents) and sent the results to the president of the judicial Yuan. Almost all the chair person in the district courts failed to obtain the passing grade, which was 54.5 percent and 21.9 percent the lowest grade. Several chair persons retired not too longer after the survey was finished. The other action centered on judges' election of some candidates for section of chief-candidate who were from that very pool of judges. These judges no longer needed the chairperson's endorsement to gain promotion. As a result the institutional hindrance to judicial independence was almost totally removed. This liberation of sort made it extremely difficult, if not impossible, for either the judicial Yuan or the ruling party to interfere in litigation through institutional control, although judges might still accept bribes or engage in other forms of individual oriented corruption. Hence, the judicial independence reform movement in Taiwan was praised by several judges and lawyers (Ibid).

3.3.2 The Experiences of Russian Federation Judicial Reform Movement

Russia has undergone considerable transformation since the collapse of the Soviet Union in 1991, a transformation that continues to this day. Throughout this process, USAID has partnered with government of the Russian Federation and the Russian Judiciary to support their effort to promote the rule of law, thus further democratization and achieve the establishment of the effective market economy. Rule of law is a central element of good governance necessary for any country to achieve the political, economic, and social development. It requires an effective judicial system with independent, competent, and ethical judicial officers, who have the resources and the capacity to administer justice properly for all citizens. At the time of independence, the Russian judiciary had limited capacity to properly select and train judges. Judges were burdened with excessive case loads and administrative procedures, received inappropriate salaries and lack a detailed and comprehensive code of ethics to govern their work. Most importantly, the judiciary was impeded by the fact of having been designed to work under a different political system, one without a market economy or the many rights and freedom embodied in the constitution of the 1993 (USAID : 2008).

Recognizing these and other challenges, USAID began its partnership with the Russian Judiciary in 1994. The early emphasis was on exposing Russian Judges, policy makers, lawyers, and other stakeholders to international concepts of the rule of law, separation of powers, and other fundamentals of law in functioning democracy. The international community also sought to create opportunities for Russia to interact with colleagues from other countries, share experiences, and build productive relationship. As a result, the Russian-American Judicial Partnership (RAJP) was launched in 1997 by USAID. This partnership has different project phases. The RAJP project, which was implemented by international and the National Judicial College (NJC), was designed to help the legal system support democratic processes market reforms better administer, apply and enforce the law. In 1998, a judicial ethic component was added, as both the council of judges of Russian Federation and the Supreme Judicial qualifying collegiums of Russian Federation (Ibid).

When RAJPI project was concluded in August 2000, the project had, conducted events, on Russian law, court procedures, best practices for judicial selection, ethics, and discipline for nearly 2000 judges, court administrators, and courts staff. The project also introduced electronic training and administration to the courts, implemented the first e-mail system for disseminating commercial court decisions in Russia, and assisted in the creation of a website for the Judicial Department of the Supreme Court. The RAJP project also helped empower the Russian Judiciary to police itself by defining and regulating ethical behaviors. Most importantly, the projects success was its emphasis on transferring judicial training and administrative skills to Russian Institution, judges, court administrators, to build their capacity to support judicial reforms. Furthermore, the project kept Russian judges to abreast of changes in the law while simultaneously building relationships between the Russian and US judiciaries, especially between the Department of the Supreme Courts and the Administrative office of the US Courts. Indeed, by the time the project ended in 2000, USAID had established lasting professional relationship with the Russian newly established judicial institutions (USAID: 2008).

Starting in June 2001, RAJP II project leveraged US and Russian expertise to build on previous successes by further strengthening the capacity of the Russia judicial system and increasing its transparency and efficiency. This project was also notable in that its project team in Moscow was entirely Russian, which further ensured that all project activities were appropriate for the Russian context and emphasized, Russian ownership of reforms and recommendations. Under RAJP II, the council of judges asked US judges to help develop a new coded of judicial ethics for Russian judges. This project, further, helped the council to produce a journal which published and disseminated judicial disciplinary decisions to the judicial community, media, and the public. This was the first time such conformation had ever been publicized, and was an important step toward judicial transparency (Ibid).

Significantly, under RAJP-II, USAID began with two pilot courts that would serve as laboratories to test new methods of customer service, case management and court administration techniques, random case assignment procedure, and improved archiving. These pilot courts were among the first in Russia to establish the position of law clerk, thus freeing judges from administrative duties, lessening potentially in appropriate contacts of judges with only one party to a case and increasing the pace of case flow. Despites the successes, when RAJP-II ended in 2005, many challenges emerged, such as the work load on judges and court staff was still too high for efficient administration and the administration of justice lacked sufficient resources to train court staff . Consequently, that same year, USAID launched the judicial reform and partnership program (JRP) to strengthen judicial independence, self government, and administrative development. Since 2005, JRP has worked successfully with the Russian Court partners, including the supreme court of the Russian Federation Council of judges. JRP also extended reform efforts to these additional pilot courts. Hence, theses partnerships were the key to success in judicial reform movement in Russia (USAID: 2008).

The other very important experience in the Russian Judicial Reform movement is donor coordination. Recognizing that judicial reform is best served when international donors coordinate efforts. The coordination includes sharing materials and conducting joint activities. Donors coordination also led to the cross fertilization of ideas and innovations when some project lacked resources, others were able to pick up on strategies and run with them. For

instance, the above mentioned JRP worked with the World Bank in designing its judicial support loan projects. The \world Bank project drew on USAID's experience under JRP to develop case management software, publish court decisions, provides audio recording of trials, train court personnel in new systems, and use pilot courts to introduce reform and the result has been so successful (Ibid:2008).

To sum up, since 2005, when the most recent USAID judicial reform contract began, JRP and its Russian partners have realized a significant effect by creating new draft cases management instructions to improve the performance improve the performance of 2,500 district courts of general jurisdictions; writing a standard code of conduct for all Russian 80,000 court personnel ; training more than 1,800 judges and court personnel ; supporting judicial independence by facilitating the publication of specialized publication on judicial ethics, and installing electronic information "kiosks" and audio recording equipment for court hearing to improves transparency and public access to information were the most important achievements of the Russian Judicial Reform program (USAID: 2008).

3.3.3. Relevance of the Experiences to Ethiopia

When we compare the experience of Russia and Taiwanese judicial Reform movements, Taiwanese Judicial reform was focused on judicial independence; unlike Russia and other democratic country judicial independence theories, the Taiwanese reform movement emphasizes the importance of politicians or international organizations; the corresponding theories and experiences unique to Taiwan rarely have politicians play important role in the process of Taiwanese judicial independence reform within the judiciary.

The other, unique character of the Taiwanese judicial independence reform is that these reform-minded judges and prosecutors have come from almost the bottom of the judicial system. Finally, the reform minded judges and prosecutors' reform strategies are very innovative, such as integrating the ideas of democracy and the rule of law in to reform-movement strategies to mobilize and persuade their fellow judges, and built a road to judicial independence.

In Russia, the judicial reform movement was an all rounded one. Reforming the exiting judicial system to harmonize to the market economy and democratization was the focus of the reform movement. Unlike the Taiwanese the reform movement was supported by international organizations and financial support from international donors to sustain and enhance the performance of the judiciary in Russia, mainly through partnership with other countries.

The Ethiopian experience is almost similar to that of Russia in using international organizations and donors agencies in reforming their judicial and justice system respectively. The difference is that Russia focuses on reforming the judicial system by employing a very intense partnership with international organizations and international donors to make the reform process sustainable, where as, Ethiopia focuses in reforming the over all justice system which does not sustain long in the practice. As a result of the JSRP failure, currently the justice system in Ethiopia is introducing the implementation BPR all over the country. Regarding the experience of Taiwanese, the important lesson to be noted is judicial reform is more effective when the reform is initiated from the legal professional who are at the bottom of judicial hierarchy.

The above discussions show that important steps were taken to reform the judicial system in Ethiopia in terms of training and up-grading skills of professionals, law reform and harmonization in collaboration with international organizations and donors. In regard to this, the A.A City Government takes a wide administrative reform in the City in 2003, which had less attention to the A.A. City Courts' problems. The experience of Russian Federation, in reforming its judicial system, is to be taken as an important lesson to Ethiopia, which built its judiciary in collaboration with other advanced countries in a sustainable way which Ethiopia has not.

In this regard the experience of the Russian Federation is very important even to the A.A. city Government courts in improving their court management, efficiency, and access to justice.

CHAPTER IV

DATA PRESENTATION AND ANALYSIS

Having the pervious discussions in chapter two and three, this part critically analyzes the extent of judicial independence in the A.A City Courts in relation to institutional and decisional independence, and the budget administration autonomy of the City Courts, within the framework of the FDRE Constitution and international conventions. It further critically assesses the efficiency of the courts in relation to the existence of modern court case management, and their accessibility in relation to different factors of access to justice.

4.1. Selection of Judicial Personal (Judges) in A.A City Government Courts

Table 4.1 shown below presents the data concerning issues of selection of judges, the actors who involve in the selection process. The table further shows whether there is strict evaluation for ethics and qualification in the process, if other stakeholders participate in the evaluation and selection process, and if there is frequent transfer of judges in the city courts or not.

As shown in table 4.1 below 54.1 percent or 20 out of the 37 of the sample confirmed that selection of judicial personnel is made by the president of the city courts, while 45.9 percent or 17 out of the 37 sample responded that selection of judges is made by the JAC of the City Court. This data show that almost more than half of the sample believed that selection of candidates for judicial appointment is made by the presidents of Courts, not by the JAC.

The president of the A.A FICs does not agree with the information in the data collected. He said that selection of judges is made by the JAC based on their curriculum vitae and selecting those who fulfill the requirements. However, he admitted that in the past, the decisions of the JAC, including its decisions on the selection of judges were refused by the executive and it was common to see judges appointed by the executive without following the normal selection procedure and process. He argued that this might not only because the JAC is not independent. It is because the JAC was reluctant to exercise its power by saying "why?". But he did not deny the interference of the executive body, which is contrary to the constitution of the country

including the A.A City Courts establishment proclamation Number 1/19900 E.C. The above argument of the president seems persuasive, that the JAC was reluctant to exercise its power by challenging the interference of the executive.

Let us see some provisions from the JAC establishment proclamation No 4/ 2003 that reveals how the JAC in the City Courts is technically designed to be powerless in the real terms. It says "*...The commission shall have the power to select and present to the Mayor eligible judges for their appointment by the City Council after soliciting the opinion of the Federal judicial Administration commission and complementing its opinion...*"

Here, the JAC in the City is required to present the selected judges not directly to the City Council but to the Mayor i.e. to the executive body. This is contrary to the FDRE constitutional framework regarding recommendation of appointment of judges. As per Article 81 (1) of the FDRE constitution the president and vice-president of the Federal Courts are to be appointed by HOPR upon recommendation of the Prime Minister. At the state level, the practice is similar regarding the recommendation of the precedents and vice presidents of the regional state Courts (Article 81/3). However, state Supreme, High Courts and FIC judges are to be appointed by the state council upon recommendation of the concerned state JAC (article 81 (4)). This is the constitutional framework that empowers the JAC in every regional state in the Country.

The practice in A.A City Government is contrary to this constitutional stipulation i.e. the AA. City government JAC establishing proclamation No 4/2003 Articles 4(1) contradicts with the supreme law of the land for it undermines the constitutional powers of the JAC to select nominees, and directly recommend for their appointment to the City Council.

The implication is that executive interference in the function of the judiciary goes to the extent of enacting laws contradicting with the constitution that allow directly the involvement of the executive in the process of appointment of judges.

Table 4.1 Selection of Judicial Personal (Judges) in A.A City Government Courts

Questions Posed	Responses from Key Informants															
	Judges				Public Advocates				Attorneys				Total no		Total %	
	Yes		No		Yes		No		Yes		No		Yes	No	Yes	No
	no	%	no	%	no	%	no	%	No	%	no	%				
1. Selection of Judicial Personnel is made by																
A) Presidents of the Courts	3	27.3			8	61.5			9	69.2	4	30.8	20		54.1	
B) Judicial Administration Council	8	72.7			5	38.5			4	30.8			17		45.9	
2. Before appointed as judicial personnel in the City Courts, strict evaluation and assessment about their ethics and qualification is mandatory	4	36.4	7	63.6	5	38.5	8	61.5	2	15.4	11	84.6	11	26	29.7	70.3
3. If it is done as above, do other stakeholders (such as the public, the Bar association and so on) participate in the process?	2	18.2	9	81.8	0	0	13	100	0	0	13	100	2	35	5.4	94.6
4. Do the judicial personnel in the City Courts, frequently transfer from one court to the other?	6	54.5	5	45.5	11	84.6	2	15.4	11	84.6	2	15.4	28	9	75.7	24.3
5. In selection of judicial Personnel in the City Courts, more emphasis is given for their:																
A) qualification and ethics	5	45.5			5	38.5			5	38.5			15		40.4	
B) political attitude	6	54.5			8	61.5			8	61.5			22		59.5	
6. With regard to appointment and promotion of judicial personnel, the emphasizes is given to																
A)their education, experience, capability & ethics	4	36.5			4	30.8			4	30.8			12		32.4	
B) political attitude and interest	7	63.6			9	69.2			9	69.2			25		67.6	

Source: Computed from collected data as primary sources

Not only this, the power of the JAC is limited to select among the nominees prepared by the president of the appellate court, who is yet the chairperson of the JAC. This practice is clearly provided under the proclamation No.4/2003 Article 6 (4). The process of selection of nominee judges is not transparent i.e. the role of the JAC in identifying nominees that fulfill the required quality seems taken by the president of the A.A City Appellate Court, who is expected to satisfy the interest of the City Government. As already discussed above, nominee that pass through such non transparent selection process are yet to pass through the careful observation of the Mayor through the Justice and Legal Bureau before their appointment by City Council (personal observation).

On the other hand, as indicated in table 4.1 above, 70.3 percent or 26 out of the 37 respondents replied that strict evaluation and assessment about the ethics and qualification of the nominees is not mandatory before their appointment as judges. Only 29.7 percent or 11 of the sample agreed that such evaluation and assessment is a requirement. As shown in the data above, from the three categories of respondents, of the eleven sample judges, seven of them i.e. 63.6 percent of them replied nominated judges are not evaluated strictly before their appointment as judges.

In this regard, the Consultative Council of European Judges, issued on 19 November 2002 on its opinion number 3 says:

> *"...The ethical aspect of judges' conduct needs to be discussed for various reasons. The methods used in the settlement of disputes should always inspire confidence. The powers entrusted to judges are strictly linked to the values of justice, truth and freedom. The standards of conduct applying to judges are the corollary of these values and a precondition in the administration of the justice...whatever methods are used to recurrent and train them and however broad their mandate, judges are entrusted with powers and operate in..."*
> (www.Civiljusticecouncil.gov.uk-files-oct;o4/access/to/justice.pd4
> (bold).visited on 1/9/2009.

The point is that if judges are selected and appointed with out assessing their integrity, behavior and qualification, strictly, it has an adverse impact to the justice system itself and to citizens who solely depend on judges appointed.

Regarding the participation of other stakeholders in the process of selecting judges, 94.6 percent or 35 out of the 37 respondents responded that other stakeholders such as the Bar and other professional associations do not participate in the process. Only 54 percent or 27 of the respondents believed that there is such participation. In line to this, the president of the A.A City FICs admitted that the selection of judges was not transparent in the past due to the weakness of the JAC. So, the public and other stakeholders were not participating in the process of nominating candidates for judicial appointment.

In this regard, the A.A City Courts JAC establishing proclamation No 4/2003 says nothing concerning the participation of other stakeholders in the process of selection of nominees for judicial appointment. Rather, the A. A City Municipal Courts establishment proclamation number 1/1990 E.C. includes some important stakeholders within the JAC to present their opinion in the discussion of JAC's meetings with no voting power during decisions. This was a very important progress, though it was not practiced. However, proclamation number 4/2003 does not include this important provision to ensure the participation of such stakeholders in promoting transparency and enhancing democracy.

As indicated in the table above, 59.5 percent (22 out of 37) of the respondents agreed that focus is given for political attitude and interest during selection of judicial personnel (judges) in the City Courts. Surprisingly, as shown in the table 4.1 above, six of the judges affirmed that the emphasis during selection of judicial personnel is not for their qualification and experience but for the political attitude. This is in-fact shows that executive interference is evident in the selection of judicial personnel since the respondent judges are still in office.

The implication is that judicial independence during selection of judges in the City Courts is questionable. The practice is that those who fulfill the interest of the executives for being supporters or even being members of the ruling party are selected for appointment as the City Courts judicial personnel.

Regarding the appointment and promotion of judicial personnel, 67 percent (25 out of 37) of the respondents believed that it is based on the political attitude and interest of the individual

judges. Here, as seen in the table 4.1 above, seven out of the eleven judges agreed with the above assertion. This implies that appointment and promotion of the city judges depends not on their qualification and ethics but on their loyalty to the City executive or the ruling party. The responses from the judges show how the issues of executive interference are serious in the city courts.

These acts of the City executive amount to violations of the United Nations Basic principles on the independence of the judiciary which says,

> *"...persons selected for judicial office shall be individuals of integrity* and *ability with appropriate training or qualification in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judicial personnel, there shall not be discrimination against a person on the grounds of race, sex, religion, political or other opinion, national or social origin, birth or status...except a requirement that a candidate for judicial office must be a national of the country concerned..."*
>
> (World Bank, 2004).

With regard to the frequent transfer of judges, 75.7 percent or 28 out of 37 of the respondents believed that there is frequent transfer of judges. Only 9 respondents disagree to this question. Most of the time frequent transfer is directly related with the constant influence and interference of the City administration bodies in the decisions passed by the Courts. The author personally confirms this because he has been working in the City administration as public advocate for many years. Judges in the city courts were frequently transferred when they pass decisions against the City administration; he/she is frequently condemned by the Sub-City officials, by the City Justice Bureau, and claim for transfer of such judges. Almost always, it is getting done. The other reason, for frequent transfer of judges, is when the individual judges political attitude is against the needs of the executive bodies in the City, when he/she resists the interference of the executive, they are frequently transferred to other court or made to work in the criminal benches to handle only petty offence cases or to remand criminal cases, that are to be trialed by the Federal Court. As identified in the data in table 4.1, above frequent transfer is

aimed to harm the morals of such judges, as a result most of them were left their office by themselves.

Furthermore, frequent transfer and rotation of judges often meaning the same judges who heard testimony may not decide the disputes taking way thereby much of his incentive to pass forward the preceding to judgment and seriously impending the process of continuous trial; the new judges may have to repeat some of the procedural requirement already fulfilled. This affects the performance of the City Courts since cases are to be adjourned for some more months to be studied by the new comer.

Therefore, frequent transfer of judges affects institutional and decisional independence, the morals of judges, and the efficiency of the judicial system in the City. This frequent interference of the executive body is against international principle of separation of powers independence of the judiciary, which is also stipulated in the FDRE constitution.

4.2 Institutional and Decisional Independence of the City Courts

The following table 4.2 below, indicates the responses of key informants to the question posed in relation to institutional and decisional independence of the City Courts

The data in the table 4.2 below indicates that 64.9 percent or 24 out of the 37 respondents affirmed that there is a conflict between the City Courts and the City executive bodies with regard to decisions given by the city courts. In addition, 75 percent or 28 out of the 37 respondents agreed that the City executive interferes in the internal affairs of the City Courts. Furthermore, the author personally observed that the executive interference in the City is exercised through the presidents and vice president of the City Courts since these officials are implicitly appointed to technically safeguard the interests of the executive by controlling the judiciary.

With regard to the random assignment of cases, 64.9 percent or 24 out of the 37 respondents believed that the practice is that special cases are assigned for some selected judges. In addition, 67.6 percent or 25 out of the 37 respondents asserted that specific cases are assigned to judges who are believed to be appointed on the basis of their loyalty as discussed above.

Such practice is common on cases when the City executive bodies or administrative bodies are parties to the lawsuit. This reality implies that the existence of impartial judicial organ in the City is under question, which is contrary to the Constitutional and universal declaration on the rights of citizen to be judged by an independent and impartial judicial body.

With regard to the decisions or internal independence of the judges, 56.8 percent or 21 out of 37 of the key informants agreed that the City Court judges are free to put their decent opinion in decisions rendered by the city courts. On the other hand, the rest of the respondents disagreed with above assertion. Though majority of the key informants' responses to this question, which refers to the internal or decisional independence of the judges, is as presented in the table 4.2 above, seven out of the eleven sample judges i.e. 63.5 percent of them denied that the judges put their decent opinion without fear. This response is important to consider since it is given by the judges who are still in office in the City Courts. Not only this, 62.2 percent or 23 out of 37 the key informants believed that there are judges who are appointed for their being loyal to the executive body. The implication is that there is mistrust among the judges who work in the same bench or court, especially in the appellate court. The data in the above table 4.2 show that the executive influence in the City Courts is so grave, which is against o the constitutional provisions of the country, regarding independence of the judiciary.

Judicial independence is proclaimed in the FDRE constitution. Article 78 (1) stipulates that "*...the judiciary is independent*". The constitution also explicitly provides for principles of separation of powers on the Federal and State levels. Article 79 (2) provides, "*...courts of any level shall be free from any influence of governmental body, governmental official or from any other sources*" Paragraph (3) of that same article says "*...Judges shall exercise their function in full independence and shall be directed solely by the law*"

Moreover, the Universal Declaration of the basic principle on the independence of the judiciary, drawn up by the UN in 1985 stipulate that

> "*...the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law without any restrictions, improper influences, inducements, pressure threat or interference, direct or indirect, from*

any quarter or any reason. Judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and the independence of the judiciary" (world Bank: 2004).

In addition, the Consultative Council of European Judges, on the principle and rules governing judges' professional conduct states that "*Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and the facts, and in pursuance of the prevailing rule of law...*" (World Bank: 2004).

As already discussed above, the City Courts are not independent in exercising their function. They are influenced by the City executive, contrary to the constitutional provision of the country. The implication is that the judicial body in the City is not institutionally independent in the process of judicial selection and appointment of judges. Furthermore, the data presented above indicates that judges are not free and independent in exercising their function. There is no trust among the colleague judges due to the problem in the selection and appointment process, which is indirectly controlled by the City executive in contrary to the FDRE constitution and the Universal declaration on the principles of independence of the judiciary as already discussed above.

Judicial reform aimed at consolidating the judiciary's independence and enhancing its professional capacity should be made a high priority to avert the existing situation in the city judicial body. The data clearly show that there are influences from the executive that could be detrimental to the independency of the City judiciary. In this regard, the reform movement, began in 2003 in the City did not address the problems of judicial independence. As mentioned in Chapter three, the reform movement in the City has contributed a lot in re-organizing the Courts in to the newly created Sub Cities, and in reforms harmonizing the laws. However, the reform movement never realized the real problems of the courts that are to be tackled through reforming them. Here, the author personally observed that as the reform movement was initiated by the City executive, it is difficult to expect the existence of a judiciary which is free to exercise its function independently.

Table 4.2 Institutional and Decisional Independence of A.A City Government Courts

Questions Posed	Responses from Key Informants															
	Judges				Public Advocates				Attorneys				Total no		Total %	
	Yes		No		Yes		No		Yes		No		Yes	No	Yes	No
	No	%	no	%	No	%	no	%	no	%	no	%				
1. Does the City Executive interfere with the case decisions of the City courts?	8	72.7	3	27.3	7	53.8	6	46.2	9	69.2	4	30.8	24	13	64.9	35.1
2. Do you believe that special cases are assigned to specific judicial personnel in the City Courts?	6	54.5	5	45.5	10	76.9	3	23.1	8	61.5	5	38.5	24	13	64.9	35.1
3. If your answer for Question number 2 is *"yes"*, do you believe that this happens when the City administration is a party in the lawsuit?	6	54.5	5	45.5	10	76.9	3	23.1	9	69.2	4	30.8	25	12	67.6	32.4
4. Among the judicial personnel in the City Court, do you believe that there are judges who are appointed without consideration of their qualification and experience, due to patronage?	9	81.8	2	18.2	7	58.8	6	46.2	7	53.8	6	46.2	23	14	62.2	37.8

Source: Computed from collected data as primary sources

Here, it must be noted that independence of the judge is an essential principle and is the right of the citizens in the City, including its judges. It has both an institutional and an individual aspect. As the FDRE constitution is a modern and founded on democratic basis with the principle of separation of powers, each individual judge the City court should do everything to uphold judicial independence at both the institutional and at the individual level. The rational of such independence and the precondition of the impartiality of judges is essential to the credibility of the judicial system and the confidence it should inspire in a democratic society. Hence, the practice of assigning cases, in which the City administration body is a party, to specific judges causes citizens to suspect that their cases are not judged by an impartial judicial body.

As mentioned above, the FDRE constitution unequivocally declares the independence of the judicial body. However, the declaration of independence does not equate to the creation of independence, if institutions and systems are unable or unwilling to shoulder the burdens and share the power. This is the reality in the A.A City Government in relation to the independence of the City judicial branch.

4.3 Disciplinary Action in the A.A City Courts

The table 4.3 below presents the data collected regarding the issues of disciplinary action in A.A City Government Courts.

With this regard to the existence of clear disciplinary rules and regulations, 45.5 percent or 5 out of the 11 respondents agreed that there is a clear law and regulation for disciplinary action. While 54.5 percent or 6 out of the 11 respondents confirmed that the laws and regulation for disciplinary action are not clear.

The Ethical code of conduct of the A.A City Court judges, enacted in 1997 E.C on the basis of proclamation No. 4/2003 Article 4 (2) with the objective of creating an impartial judicial system in a democratic society and creating an independent judicial body which is trusted by the public. As judges are supposed to exercise their duty with full independence, it is important

to establish a procedure to entertain complaints against judges and a procedure to defend themselves.

The regulation has two chapters and four sections. Section one includes title of the regulation, the authority who issues the regulation, and definition and the scope of its application. Section two has two parts, ethical principles and work performance principles, and code of conducts.

The first part requires the judges to be thoughtful and careful when he/she exercises his /her job. It also requires judges should be seen as good example in every thing, their work place and where the live. They are also required to perform their judicial work based on the law not on unnecessary fame. Respecting office hours is the other requirement. Keeping the secret of cases that are not yet decided the procedures of withdrawal from bench, not to accept bribes, not to abuses judicial power, to avoid conflict of interest, and accountability of the judges.

The second part of this section includes applying the laws, treating litigants equally, showing ability and effort, reducing delay, respecting the name of the court in exercising their work, having a good work relation with his/her colleague judges, allow litigants to see their cases amicably ...etc. In this regard, the author believes that the rules on ethical issues are clearly stipulated. Section three identifies the disciplinary misconducts and procedures how allegations on ethical judges misconduct are initiated and the procedures to be followed for their decision.

The second chapter of the regulation deals with initiation of disciplinary misconduct under its Article 33 which specifies that initiation could be made by any body who believes that disciplinary misconduct is committed by any judge. It could also be initiated by any member of the JAC if he/she believes that ethical misconduct is committed. Moreover, it could also be initiated by the JAC itself, when it has good causes that any ethical misconduct is committed.

Table 4.3 Disciplinary Action in the A.A City Courts

Questions Posed	Respondents from judicial personnel of the sample courts											
	Bolie		Yeka		Arada		Appellate		Total no.		Total %	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Are there clear laws and regulations for judicial Personnel disciplinary misconduct?	0	2	3	0	1	2	1	2	5	6	45.5	54.5
2. Is there a separate body for the investigation of the City judicial personnel disciplinary misconduct?	2	0	0	3	1	2	3	0	6	5	54.5	45.5
3. Do you think the organ that sees the disciplinary misconduct of the judicial personnel has enough power to do so in practice?	0	2	1	2	0	3	1	2	2	9	18.2	81.8
4. It there any procedure to appeal against disciplinary action on Judges?	0	2	0	3	0	3	0	3	0	11	0	100

Source: Computed from collected data as primary sources

On the other hand 54.5 percent or 6 out of the 11 respondents confirmed that there is a separate body for investigation of the City judicial personnel disciplinary misconduct. While 44.5 percent or 5 out of 11 respondents responded that there is no separate body to investigate such cases.

In this regard, the A.A City code of conduct of judges, Article 33 (2) and (3) says any member of the JAC or the JAC itself can initiate allegations against any judge of the A.A City Courts. In addition, Article 35 (a) of the same regulation provides that the JAC can investigate any cases of judicial misconduct or it may order a committee for its investigation.

Here, it is clear that the JAC is given with the power to initiate any allegation of judicial misconduct and at the same time to investigate those cases by itself. The implication is that there is no an independent body to investigate cases of judicial misconduct in the A.A City Courts. In addition, as shown in table 4.3 above, 81.8 percent or 9 out of the 11 sample responded that the body that investigates the judicial ethical misconducts of judges, which is the JAC, in the City Courts is not powerful in practice to enforce its decisions.

The interview made with the current president of A.A City Court, regarding the enforcing power of the JAC asserts same. He said that the JAC in the City is not as such strong enough even to enforce its own decisions. There are times that its decisions were ignored by the City Executive, by the City Council and the JAC did nothing. He added that the JAC's reluctance and weakness to practice its power, is not because it is not free to do so, but because it is unwilling to do so.

In this regard, the author disagrees to the president's answer of "unwilling to do so." This is because beginning from its composition, as indicated under proclamation No. 4/2003, the JAC is technically made not to independently exercise its functions. Some times, the JAC is called by the chairperson (the President of the appellate court) only when there are urgent meetings and no more. However, the JAC is supposed to control and administer the day-to-day activities of the City Courts.

Finally, the data in the table 4.3 above show that 100 percent of the sample confirmed that there is no any procedure to appeal against disciplinary sanctions imposed by the JAC. The implication is that issues of discipilinary misconduct of judges are investigated and decided by the JAC, which is not supposed to be impartial and independent. In addition, sanctions imposed by such un-impartial body have no mechanisms for appeal. However, the right to appeal is the constitutional right. Despite of this constitutional right neither the proclamation No.4/2003 nor the ethical code of conduct of judges issued on 1997 E.C, have no procedural remedies to this gap on the rights to appeal.

4.4 The A.A City Courts' JAC, it's Components, Functions, and it's Independence

The data colleted as shown in the table 4.4 below presents whether there is a JAC that performs its activities in the selection of judicial personnel, that plays a significant role on the improvement of judges salaries, its role on the disciplinary ethical misconduct of judges, its power to administer the overall activities of the courts, and assess whether the JAC, including the judicial body, is under the influence of the executive.

The data in the table 4.4 below show that the judges from the sample courts, 100 percent of them confirmed that there is a JAC that administer the affairs of the court. On the other hand, 54.5 percent or 6 out of 11 of the respondents agreed that the JAC is composed of members who have influential power over the matters to be decided by the JAC.

The data also show, 81.8 percent or 9 out 11 of the respondents believed that the JAC does not play a significant role in the selection of judges in the City Courts. Moreover, 90.9 percent or 10 out 11 of the respondents also disagreed that the JAC plays a significant role in improving the compensation of judges, such as salaries and allowances. The data also show that 63.9 percent or 7 out 11 of the respondents believed that the JAC has no substantial power (at list in practice) to decide over disciplinary misconduct of judges other mattes of the City courts. As indicated in the table 4.4 below, 100 percent of the sample judges asserted that the JAC in the City Courts does not actively administer the day to day activities of the Courts. In addition to this, 81.9 percent or 9 out of 11 of the sample judges believed that the City judicial body, including the JAC, is under the influence of the City executive body.

As to the existence of the JAC, it is already expressed in the A.A City Charter proclamation No 361/2003 under Article 44, proclamations No.1/1990 E.C., and proclamation No 4/2003 which establishes the JAC in the City judicial body.

Concerning the composition of the JAC, the above mentioned JAC establishment proclamation enumerates the following members:

- President of the City Appellate Court .....Chairperson
- Vice President of the City Appellate Court..... Member
- Two People Designated by the City Council..... Members
- President of the City FICs..... Member
- One Person Designated by Federal Courts.....Member
- One Judge, Elected by Judges of the City Courts.....Member

This composition of the JAC implies that out of the forty two judges in the City Courts, only one judge from the FICs is a member in the JAC. Both the presidents and vice presidents of the courts, including the president of the FICs are assumed to be appointed as representatives of the executive body, at least implicitly. In addition, the two members designated from the City Council represent the interest of the executive since they are party members. So, they are not expected to promote the interest of the judges or judiciary body in the City. From this fact it is easy to conclude that the JAC in the City Courts is composed of members who safeguard the interests and wishes of executive. The implication is that executive influence on the City Courts JAC is apparent which affects the independence of the judicial body in City.

Table 4.4. The JAC, it's Components, Functions, and its Independence

Questions Posed	Respondents from judicial personnel of the sample courts											
	Bolie		Yeka		Arada		Appellate		Total no.		Total %	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Is there a JAC that administers the affairs the City Courts?	2		3	0	3	0	3	0	11	0	100	0
2. Do you believe that the JAC actively participate in the process of selection of judicial personnel?	0	2	1	2	1	2	0	3	2	9	18.2	81.8
3. Do you believe that the JAC plays significant role on the improvement of judicial personnel compensation such as salaries and other fringe benefits?	0	2	0	3	1	2	0	3	1	10	9.1	90.9
4. Do you believe that the JAC has a substantial power to decide on the judicial personnel's misconducts other matters of the courts?	1	1	1	2	2	1	0	3	4	7	36.4	63.6
5. Do you believe that the judicial system including the JAC is under the influence of the City Executive bodies?	1	1	3	0	2	1	3	0	9	2	81.8	18.2

Source: Computed from collected data as primary sources

With regard to the power and functions to the JAC, the proclamation No. 4/2003 mentioned above stipulates that the JAC has the power to select and present to the Mayor eligible judges for their appointment by the City Council after soliciting the opinions of the Federal Courts JAC and in complementing its own opinion.; direct and administer the judicial operation in the City Courts, approve the ethical code of conduct of judges of the courts; determine, in accordance with government policy, transfer, salary, allowances, promotion and placement of judges; study and make proposal to the Mayor on the implementation of medical and other benefits/incentives, investigate any cases submitted to it regarding termination of appointment and case of disciplinary ethical misconducts of judges, where it finds necessary, it may suspend the judges from office pending its decision (Article 4).

In this regard, the JAC, at least in paper, is empowered with the above mentioned powers and functions. The practice, as seen in the data at table 4.4 above, is different from what is in the law. As already shown in the data regarding the selection of judges, 81.8 percent or 9 out of 11 of the respondents believed that the JAC's role is insignificant in practice.

The process of selection of judges is not transparent. Article 6(4) of the above mentioned JAC establishment proclamation clearly stipulates that the chairperson i.e. the president of the appellate Court, is entitled with the power and function of "*preparing summary of the curriculum vitae of candidate judges for consideration of the communion, and forward the lists of candidate judges selected by the commission to the concerned bodies*". This implies that the chairperson makes the selection and presents the list to the JAC. The point is that the JAC selects among the candidate judges presented by chairperson.

The implication is, the JAC's insignificant role is not only in the selection process, but also the process how the candidate judges' are selected is not transparent by itself. There may not be a problem as such concerning the academic backgrounds. The problem is that this un-transparent process opens the gate for executive influence. So, the data collected with regard to the role of the JAC in the selection of candidate judges shows that it is insignificant and nominal. Fromit is safe to concluded that the president's (chairperson's), who is considered as representative of the executive, role is high which has a direct impact on the independence of the judicial body

in the City Government . Therefore, the JAC is systematically and technically made powerless by giving the power to selected and present the lists of candidates to the chairperson and by making the process non transparent.

Furthermore, as already mentioned above, the JAC in the City Courts is empowered to select eligible judges and present to the Mayor for their appointment by the City Council. In the discussion above we have seen how the JAC's power is undermined by law and practice. In the same manner the JAC has a mandatory to present the list of selected judges to the Mayor for their appointment. The Mayor is the chief executive of the City Government. The implication is that the JAC is intentionally made to be powerless and dependent, while executive involvement in the process of selection of judges is gave.

The question is what if the Mayor is not interested by the selection. As the author's personal observation is concerned, practically, the selection process is not made even by the president of the appellate court as indicated in the proclamation No 4/2003. The selection process has to pass the strict observation and involvement of the A.A City Justice Bureaus which is the advising body of the City Mayor.

Regarding the selection and appointment of judges, the FDRE Constitution Article 81(4) and (5) empowers the Regional State JAC to select and present nominee judges for appointment the concerned State Council. So, the process and the practice in the A.A. City Government, regarding the selection and appointment of judges are not consistent with the constitutional framework.

On the other hand the JAC is empowered to determine the compensation and other fringe benefits of judges. But the power is limited only to make proposal and present to the Mayor. This implies that the JAC's function is yet directly controlled and connected with the City executive. Therefore, the law, the practice and the data collected as presented in the table 4.4 above show that the JAC's role is insignificant. Therefore, from the above discussed facts, it is safe to conclude that the City judicial body including the JAC is badly influenced by the City

excutive, which is contrary to the provisions of the FDRE constitution on the independence of the judiciary and the principles of separation of powers.

4.5 Budget Administration Independence of the A.A City Courts

The table 4.5 presented below shows the data on the issues of the City Courts budget preparation, submission and approval and their independence to determine and administer their budget.

The data in the table 4.5 indicates that 100 percent or all the 11 respondents believed that the City Courts do not prepare their own budget and directly submit to the City Council for approval. In addition, 90.9 percent or 10 out of the 11 respondents opined that the Courts do not determine and independently administer their budget. Moreover, 100 percent of the respondents believed that the City Courts have no freedom to prepare and to independently administer their budget without the interference of the City executive.

On the other hand, the City judicial body is not, in practice, entitled with the power to determine its own budget and directly submit to the City Council for approval and to administer its own budget. First of all, the budget of the courts has to be presented to the City FEDB. It is this executive body which decides on the courts budget. There is no formal budget debate and no body accepts for complaints concerning the courts budget. As per the budget priority of the A.A city government, the judicial budget is put at the least in the priority of budget allocation. This inadequate funding makes the City Courts inefficient, inaccessible in terms of providing justice as needed. In general the Courts' budget is determined and administered by the A.A City FEDB (Interview with the president of the A.A. FICs).

From the above discussions, it can be inferred that the judicial body in the City has no autonomy to determine and administer its own budget. The implication is that the concept that the non alteration and independence of the judiciary concerning budget administration is only in theory.

These facts show that the judicial body in the City is not independent to determine its budget as needed and directly submit to the City Council on the basis of budget objective criteria. Rather the judicial budget is made to pass the priority requirements of the City Government.

Table 4.5. Budget Administration Independence of the A.A City Courts

Questions Posed	Respondents from judicial personnel of the sample courts											
	Bolie		Yeka		Arada		Appellate		Total no.		Total %	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
1. Do the City Courts prepare their own budget and directly submit to the City Council for approval?	0	2	0	3	0	3	0	3	0	11	0	100
2. Do the City courts have any say in drafting their own budget, independently administer and implement without the interference of the city executive body?	0	2	0	3	0	3	1	2	1	10	9.1	90.9
3. Do the City Courts have the power to determine their own budget independently?	0	2	0	3	0	3	0	3	0	11	0	100

Source: Computed from collected data as primary sources

The problem of budget insufficiency, as per the CJSRP base line study (2005), is one of the core problems of the Ethiopian judicial system. The CJSRP stipulates that *"...Inadequate funding of the justice institution aggravate deficiencies of administration of justice"*. The trend, in Ethiopia, is that judicial budget is still administered by the MoFED.

As indicated in the data collected in table 4.5 and already discussed above, the City judicial budget is determined and administered by the City executive, contrary to the principles of separation of powers provided in the FDRE constitution, Article 79 (6) which says "*...Federal Supreme Court shall draw up and submit to the HOPR for approval the budget of Federal Courts and upon approval administer it*". The constitutional legal framework mandates judicial budget independence; the executive nonetheless, is having substantial influence on certain aspects, including the budget allocation, and administration of the City judicial function.

As already mentioned above, the practice prior to the coming of the FDRE constitution in the country is that the MOF administers the budget of the judicial organ, which is supposed to be the exclusive role and function of the judiciary. This trend has had its own consequence; there were experiences that MOF rejected a salary increase for judges that had already been negotiated in Federal Courts (World Bank: 2004).

With regard to the Administration of the City judicial budget, neither the City charter, proclamation No. 361/2003, nor in other laws of the City Government is clearly provided whether the judicial body is empowered to administer its budget or not. The practice is that the judicial budget is determined and administered by FEDB of the City as already discussed above.

Since the budget of the City Courts is determined by the executive (FEDB) the A.A. judicial body is one of the undermined sectors in the City Government. Even the JAC is not concerned whether the budget allocated by the executive is enough to perform the activity of the courts or not. In this regard the court officials including the JAC were not strong enough to struggle for their budget administration. Generally the City Courts have no good image by the executive

and the Council so that the A.A. City Courts and forgotten in every aspect of the needs of the courts including their budget in the past years. These facts have contributed to the inefficient performance and inaccessibility of the courts (Interview with the President of the A.A City FICs).

The implication is that judicial body in the City is not legally empowered to administer and determine its budget. This clearly contradicts with the constitutional framework of budget administration independence of courts. The executive is involving in determining the budget of the courts which hampered the independence of the City Courts. This also contradicts with the principles of separation of powers which is very crucial for judicial independence.

4.6 Jurisdictional gaps and Impact of the two level Court Structure in the City

The table 4.6 below indicates the data from Key informants with regard to questions presented in the table.

As to the first question, 89.2 percent or 33 out of the 37 respondents confirmed that the two level Courts structure have an impact on the rights of citizens to appeal. In addition, 91.9 percent or 34 out of the 37 respondents believed that application for cassation in case when a decision is reversed at the appellate court will not serve as an appeal for litigants since applying for cassation deals only with fundamental error of law not with the substance of the case.

The FDRE constitution, Article 78 to 84, deals with the structure and powers of the courts both at Federal and State levels. It provided a three level Federal and State Courts' structure. On the state level, the court system is comprised of FFIC, FHC, and FSC. At the state level, the courts system is State First Instance (*Woreda* Courts), State High Courts (Zonal Courts), and State Supreme Court. This is the constitutional framework for structure of courts to be establishes in the Federal and State level.

As per article 49(2) of the FDRE constitution A.A City is vested with autonomous self Governance. On this basis, the City was named "*region fourteen*" before the reform movement

in 2003, comprising of the three branch of Government. However, the two level court structures are contrary, not only to the constitutional of framework, but also affect the right of citizens to access justice at the proper levels of court systems.
The impact is that if a case decided at the City First Instance Court is reversed at the appellate Court of the City, a party whose case is reversed has no chance to appeal on the substance of the case except applying for cassation for fundamental error of law.

As far as the right to appeal is concerned, the FDRE Constitution (Article 20 (6) clearly provides that "*All persons have the right to appeal to the competent court against an order or judgment of the court which first heard the case*". This is concerning criminal cases. Regarding the issues of civil cases, the Federal courts establishment proclamation N0 25/1996 and other laws including the current Civil Procedure Code includes the right to appeal to the proper level of courts.

In this regard the experience in *Oromia* Regional State is a best example in solving such problems. "*Oromia* adopted, the so-called Municipal Administration Proclamation in 2003. Pursuant to this proclamation, any City with a population more than 10,000 citizens may establish a Municipal Administration, First Instance and a Municipal Appellate Courts. The decisions of the First instance Courts are to be appealed to the appellate Municipal Court. If the decision of the First Instance Court is reversed by the Appellate Court, an appeal may be taken to the State High Court. If an error of law is committed, the case may be taken for cassation to the State Supreme Court" (Dakolias: 2004).

Comparing to the *Oromia* practice, the A.A City Courts have no solution for gaps created by such Court structures, which undermines the constitutional right of citizens. Due to this, litigants have only one chanc i.e. only applying for cassation for fundamental error of law. As mentioned above, the data collected indicates that applying for cassation will not replace the right to appeal on the substance of the case.

The implication is that for the past ten or more years, litigants in the City Courts were deprived of their constitutional rights to get justice in the proper structure of courts. The A.A. City Court Structure contradicts with the constitutional framework regarding Court structure too.

Concerning the powers and jurisdictions given to the City Courts, with regard to criminal cases the data in the table 4.6 shows that 97.3 percent or 36 out of 37 of the respondents verified that the City Courts jurisdictions are limited to the issues of petty offences, remand in custody, and exercising bail applications, while the power to trialing the crime and decide on such criminal cases is given to the Federal Courts. As indicated in the data, this practice creates a sense of dissatisfaction on judges. In addition, the practice creates inconveniency on the part of criminal suspects and their attorneys.

Table 4.6 Jurisdictional Gaps and Impacts of the Two Levels of the City Courts Structure

Questions Posed	Responses from Key Informants															
	Judges				Public Advocates				Attorneys				Total no		Total %	
	Yes		No		Yes		No		Yes		No		Yes	No	Yes	No
	No	%	No	%	No	%	no	%	no	%	no	%				
1. The City Courts, being two tiered, do you believe that it has a negative effects on the rights of litigants to appeal?	**8**	**72.7**	**3**	**27.3**	**12**	**92.3**	**1**	**7.7**	**13**	**100**	**0**	**0**	**33**	**4**	**89.2**	**10.8**
2.Do you believe that party whose case is reversed in the appellate court will not affect his or her rights to appeal since there is a cassation bench?	**3**	**27.3**	**8**	**72.7**	**0**	**0**	**13**	**100**	**0**	**0**	**13**	**100**	**3**	**34**	**8.1**	**91.9**
3. Do you agree that the provisions regarding the issues of succession are vague in relation to the jurisdiction the of A. A. City Courts?	**11**	**100**	**0**	**0**	**12**	**92.3**	**1**	**7.7**	**13**	**100**	**0**	**0**	**36**	**1**	**97.3**	**2.7**
4. In criminal cases, the City Courts are empowered for remand in custody and bail applications whereas trialing and execution of such cases is given to the federal courts. Do you believe that it has an effect on the moral of the judicial personnel?	**10**	**90.9**	**1**	**9.1**	**12**	**92.3**	**1**	**7.7**	**12**	**92.3**	**1**	**7.7**	**36**	**1**	**97.3**	**2.7**
5. Do you think the fact question number 4 creates inconveniency for criminal suspects, their advocates, and their family?	**11**	**100**	**0**	**0**	**13**	**100**	**0**	**0**	**13**	**100**	**0**	**0**	**37**	**0**	**100**	**0**

Source: Computed from collected data as primary sources

continued.....

Table 4. 6 Jurisdictional Gaps and Impacts of the Two Levels of the City Courts Structure

Questions Posed	Responses from Key Informants															
	Judges				Public Advocates				Attorneys				Total no		Total %	
	Yes		No		Yes		No		Yes		No		Yes	No	Yes	No
	no	%	No	%	No	%	no	%	no	%	No	%				
6 Do the Judicial personnel have sufficient knowledge about the City Courts jurisdictional power as stated in the proclamation No. 361/2003?	0	0	11	100	0	0	13	100	10	76.9	3	23.1	10	27	27	73
7 If your answer for question number 6 is *No* dose that mean the proclamation have ambiguity in such cases?	9	81.8	2	18.2	13	100	0	0	12	92.3	1	7.7	34	3	91.9	8.1

Source: Computed from collected data as primary sources

This existing problem, which is the result of legal and jurisdictional gaps, becomes worse when seen in relation to the inaccessibility of the City Courts. The inconveniency is not only to the criminal suspects and their attorneys, but also to the police departments, who are responsible to present the suspects to the A.A. City and Federal Courts that are located in different and far places. Moreover, this practice creates a sense that the City Courts are not supposed to deliver proper justice by handling complex Cases. The data collected shows that this has its own impact on the morals of legal professionals. This is also the author's personal observation.

As presented in the table 4.6 above, regarding the issues of succession rights, 97.3 percent or 36 out of the 37 respondents confirmed that the A.A City charter proclamation No. 361/2003, is vague regarding the issues of succession cases and the limit of jurisdictions of the A.A City Courts. Article 41(1) (h) and (i) say *"...the A.A City Courts shall have the following power over the applications for succession certificates and application for the declaration of absence and death"*. When we see Article 41 (1) (h) it says *"applications for succession certificate'*. This provision is not clear whether it includes declaring the properties of the diseased and deciding on properties to be succeeded by the successor. Due to this vagueness, the A.A City Courts were practicing issues of certificate of succession, order accounting the properties of the deceased and decide that these properties are properties to be succeeded.

However, after ten or more years, the Federal Supreme Court cassation bench, which is vested with the power to interpret the laws of the country, with exception of the FDRE constitution, has passed a decision regarding the jurisdiction of the A.A City Courts on the issues of succession cases. On the decision civil file No. 142015, passed on *Hidar* 29, 2002 E.C., which says *"...the A.A City Courts have jurisdictions only to issue the certificate of succession, and declaration of absence and death..."*

Regarding the matters of accounting the properties of the diseased and declaring as properties of succession is not given to the A.A City Courts. The problem is that the City Courts have been practicing, as discussed above, this jurisdiction for many years and passed so many decisions that are negated by the Federal Supreme Court considering beyond its jurisdiction. As to the author's personal observation, the purpose of giving the power to decide on the

properties of succession to the Federal Courts is not persuasive since succession cases are not as such complicated. Moreover, when we see these issues in relation to access to justice, it is completely unfair and injustice to make citizens appear in to two different courts for the same case, which is costly in terms of money, time, place, and emotion, especially in courts which are found in different locations like our case. In this regard, the author disagrees with the above mentioned decision of the Federal Supreme Court, for it is not rational in terms of access to justice and for it is too late to correct the decisions passed by the City Courts in the past years.

The other important issues regarding the jurisdictions of the A.A City Courts is whether the judges in the City Courts are sufficiently clear regarding the powers provided in proclamation No. 361/2003 , Article 41 (1) (f) in relation to Government owned houses. As shown in the table 4.6 above, 73 percent or 27 out of 37 of the sample respondents confirmed that the judges in the City Courts are not clear as to the jurisdictions of the City Courts that are provided in the City Charter. Only 27 percent or 10 of the sample respondents agreed that the jurisdiction given to the City Courts are clear to the judges. Moreover, 91.9 percent or 34 of the sample confirmed that the jurisdictions provided in the City charter are vague. Only 8.1 percent or 3 of the respondents disagreed regarding the vagueness of the charter in terms of the powers given to the City Courts.

Let us see Article 41 (1) (f) of the charter. It says *"...the Addis Ababa City Courts shall have jurisdictions on suits brought in connection with government owned houses administered by the City Government..."* These 'government owned houses' include houses taken by proclamation No. 47/1975, during the *Derge* regime that administered by the City Government. The author believes that the stipulation of the above mentioned on Article 41(1) (f) is a very clear provision that needs no interpretation. The problem is, again, the Federal Supreme Court Cassation bench, on its decision civil file No.33841, passed on T*ikimit, 6, 2001 E.C.* interpreted this provision that the jurisdiction of the A.A City Courts is only with regard to issues such as litigations on house rents and no more. However, the City Courts have been entertaining issues of ownership and were passing decision for many years.
Here, it is not difficult to imagine the impact of the Supreme Court's decision on citizens who got rights by decisions of the City Courts, and third parties who bought houses from people

who got their houses through the decisions of the City Court. It has also an impact on the City administration since the already closed cases are to be re-opened in the Federal Courts. In this regard, the Federal Supreme Court seems less concerned in rationalizing the impacts of its decision as equal as the governing power of its decision in all courts through out the country.

And yet, the author partially disagrees with responses of key informants that the judges in the City Courts lack knowledge and clarity regarding the jurisdiction of the City Courts that are provided in the City Charter. Since the provision regarding the government owned houses is clear there is nothing wrong in applying it. The implication is that it is not because the laws are vague but the interpretations given by the Federal Supreme Court are derived by thought that the City Courts are not allowed to exercise any complex issues.

4.7 Non- Judicial Personnel Administration in the City Courts

The following table 4.7 indicates that how the non judicial personnel administration autonomy of City Courts look like.

As presented in the table 4.7 responses to the first question show that 75 percent or 21 out of the 28 respondents replied that the A.A City Courts have no power to determine the qualifications and increase the number of non judicial personnel (supporting staff) as needed. With regard to the issues of placement and promotion of their supporting staffs, 82.1 percent or 23 out of the 28 respondents confirmed that the City Courts do not have the autonomy to placement and promoting their supporting staff. In relation to determining and fixing the salaries, allowances, qualification, and increasing the number, 92.9 percent or 26 out of the 28 respondents replied that the courts do not exercise these powers. In addition, 85.7 percent or 24 out of the 28 respondents believed that the City Courts are not empowered to transfer, and provide their supporting staff with trainings.

In this regard, the interview made with the president of the A.A City FICs coincides with the data indicated in the table. He said that the supporting staffs work in courts is still reminded as civil servants, who are supposed to be governed by the civil service law. So, their benefits and qualification requirements are yet determined by the civil service commission. Of course, the

court is expected to administer them through its Registrar Office which is supposed to perform these activities. Yet, this office is not well organized to handle these cases for the benefits and qualifications of the supporting staffs in the city courts. But this is not the practice in reality. Due to this failure the A.A City Courts are staffed with unqualified people.

In this regard, the interview made with the president of the A.A City FICs coincides with the data indicated in the table 4.7 below. He said that the supporting staffs who work in the courts are Civil servants that are supposed to be governed by the civil service law. So, their benefits and qualifications, and requirements are yet to be determined by the civil service commission. Of course, the court is expected to administer them through its Registrar Office, which is supposed to perform these activities. Yet, this office is not well organized to struggle for the benefits and qualifications of the supporting staffs in the City Courts. As a result, the A.A City Courts are staffed with unqualified personnel.

Moreover, researches show that in the Federal Courts, the judiciary does not administer its own supporting staff or determine the qualification, function, and recruitment of supporting staffs. These functions are controlled by the Civil Service Commission (World Bank: 2004, http:// siteresources.worldbank.org, 2004 (visited on 1/9/2009)

It seems that the A.A City Civil Service Commission follows the same trend as the Federal Civil Service Commission. That means the recruitment, salaries, and other benefits of the supporting staff are determined by the A.A Civil Service Commission which is an executive body of the City Government. Hence, their promotion, transfer, and other disciplinary issues are determined by the civil service law and administered by the City executive not by the courts.

As a legal framework, the above issues concerning the supporting staff are to be autonomously handled by the City judicial body. However, the practice in the City courts show the executive body in the City is exercising its influence by determining the manpower of the City courts, which are supposed to be the most important actors for the courts to perform their function efficiently.

On the other hand, the data collected show that the supporting staffs are not provided with training to improve their performance. Hence, 100 percent or 28 out of the 37 respondents opined that the supporting staffs are not getting any training to enhance and upgrade their skills. This fact coincides with profiles of the respondents, as indicated in chapter one under the respondents profile section. The academic background of the sample respondents show that almost all of the supporting staffs are below diploma. This reality shows that the City Courts are not provided with qualified manpower.

The implication is that the executive body, intentionally or unintentionally, is hampering the City Courts by undermining their needs. The Court Officials, including the JAC and the Registrar Office, did nothing to solve this critical situation.

The existing situation proves that the executive interference in determining the over all fate of the supporting staff is contrary to the stipulation of FDRE constitution on the autonomy of courts to administer their judicial and non judicial personnel. Furthermore, this practice contradicts withy the principle of separation of powers.

Again, the existing fact implies that the judicial reform movement in the City began in 2003, did not give much attention to such critical problem of the City Courts.

Table 4.7 Non- Judicial Personnel Administration in the City Courts

Responses from Key Informants

Question Posed	Judges		Supporting Staff		Total no		Total %	
	Yes	no	Yes	No	Yes	no	yes	no
1. Do the City Courts have the power to determine and increase the number of supporting staff (non-judicial personnel) as needed?	3	8	4	13	7	21	25	75
2. Do you believe that the City Courts have the power to exercise placement and promotion of non-judicial personnel (supporting staff), and the power to take disciplinary action against them?	3	8	2	15	5	23	17.9	82.1
3. Do the City Courts have the power to fix salaries, allowance and types and number of posts to their non-judicial personnel (supporting staffs?	0	11	2	15	2	26	7.1	92.9
4. Do the City courts have the power to placement? Transfer and training over their supporting staffs?	2	9	2	15	4	24	14.3	85.7
5. Are the non-judicial personnel or supporting staff provided with trainings to up grade their efficiency?	0	11	0	17	0	28	0	100

Source: Computed from collected data as primary sources

\4.8 Efficiency of the A.A City Courts

4.8.1 Performance the of Courts in the City

To analyze the performance of the City Courts, questions as indicated in the table 4.8.1 were posed to the sample respondents. As shown below, 90.8 percent or 69 out of the 76 of the respondents confirmed that the City Courts do not resolve cases qualitatively and timely. In addition, 75 percent or 57 out of 76 of the sample responded that the cause for not resolving cases as indicated above is due to judges' lack of interest. Only 25 percent or 19 out of the 76 of the sample confirmed that it is due to mismatch of judges with number of cases. On the other hand, 96.1 percent or 73 out of 76 of the respondents agreed that the reasons why judges lack interest in performing their function are due to insufficient salaries and other benefits. Only 3.9 percent or 3 of them responded that it is because judges are busy in their own private business.

The data below at table 4.8.1 implies that the City Courts are not efficient in performing their functions. It further indicates that lack of attractive compensation and other benefits have an adverse impact on the performance of the City Court. To further prove these points, let us see the performance of the Courts from the year 2005 to 2009. For instance, from the year 2005 to 2006, there were 331 civil cases not resolved in the FICs of the City.

Regarding criminal petty offences, there were 500 backlogs of cases charged by the public prosecution office of the A.A City and not yet adjourned by the City Courts. In addition, 9371 criminal petty offence cases were initiated in these years but not yet adjourned. There were 98 criminal petty offence cases were adjourned in the courts before 2005 and yet not resolved until the year 2009. Moreover, 2298 criminal petty offences cases were adjourned from the year 2005 to 2008 but yet unresolved. In the appellate Courts 825 cases of all types were found undecided from the year 2008 to 2009. This is the data properly recorded for the first time in the history of the A.A. City Courts (Wondwesen Demessie, 2009).

Table 4. 8.1 Performance the Courts in the City

Responses from Key Informants

Questions posed	Public Advocates				Attorneys				Supporting Staff				Litigants				Total no		Total %	
	Yes		No		Yes		No		Yes		No		Yes		No					
	no	%	No	%	no	%	no	%	no	%	no	%	no	%	no	%	yes	no	yes	no
1. Do the Courts resolve cases qualitatively and timely?	0	0	13	100	3	23.1	10	76.9	1	5.9	16	94.1	3	9.1	30	90.9	7	69	9.2	90.8
2. If your answer for q.no.1 is "**No**", which of the followings are the causes?																				
A) Mismatch of judges with number of cases	2	15.4			5	38.5			4	23.5			8	24.2			19		25	
B) Judges lack of interest	11	84.6			8	61.5			13	76.5			25	75.8			57		75	
3. If your answer for question number 2 is "**B**" which of the followings are the causes for?																				
A) Judges are busy for private business	0	0			0	0			0	0			3	9.1			3		3.9	
B) Judge's insufficient compensation and other benefits	13	100			13	100			13	100			30	90.9			73		96.1	

Source: Computed from collected data as primary sources

From the above discussions; we can conclude that the data in table 4.8.1 above is reliable, regarding the performance of the courts. The point is that the courts were not efficient in these years until the implementation of PBR. Furthermore, the primary data shown in the table 4. 8.1, and the secondary data discussed above proved that no effort was made to improve the efficiency of the A.A City Courts even though theses Courts were reorganized at Sub-City level, by the reform movement in 2003.

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The point is that an efficient judicial sector is a crucial component of democracy and good governance. Court case delays prevent the timely resolution of conflicts and also prevent others in need of resolution. Hence, courts efficiency and access to justice are closely linked, and low level of efficiency prevents citizens from exercising individual rights. Delay in the judicial process leads to the erosion of individual and property rights. An inefficient judiciary therefore, prevents full citizenship and is a barrier to the consolidation of democracy too. The implication is that the A.A City Government Courts were not efficient to realize the rights of citizens, and this implies that the reform movement in the city begun in 2003 was focused only on reorganizing the location and places of the courts, and improving the laws to govern the judiciary ignoring the important aspects of reforming the courts to enhance their independence, efficiency, and access to justice.

4.8.2 The Courts Performance and its Impact on the Economic Activities of the City

In the table 4.8.2 below, questions were distributed to the sample respondents to address the issue of court performance and economic interaction relationship.

As presented in the table below, 100 percent or 76 of the respondents pointed out that the courts performance has an impact on economic interaction in the City. Moreover, 100 percent or 76 of them confirmed that the A.A City Courts are not efficient to manage equally with the complex economic interactions of the City. Furthermore, 100 percent of them insisted that the A.A City Courts need a fundamental change to respond the existing situation in the City. Regarding to this, Sherwood (1995), says,

> *"...what ever the rational for judicial reform, it is widely believed that the reform will significantly improve economic performance. Without efficient judicial*

system, traders would be reluctant to enter into wealth enhancing exchange for fear that the bargain would not be honored..."

Noth (1990) also asserts that

"...the presence of low-cost means of enforcing contract is the most important source of both a high performance economy one that is characterized by a significant number of long term contracts just the type of business relationship that is unlikely to thrive in the absence of a well-functioning judicial system. This view holds that economic development depends upon a legal system in which not only contracts between private parties are enforced but the property rights of foreign and domestic investments are respected and the executive and legislative branches of government operate within a known framework of rule..."

The judiciary is in a unique position to support sustainable development by holding the executive branch of government accountable for its decisions and underpinning the credibility of the overall business and political environment. However, the reality in the A.A City Courts is different from the above discussions concerning the importance of efficient legal system in enhancing economic development.

The implication is that the reform movement of the 2003 did not give much attention to create an efficient and independent judiciary in the City to absorb the complex economic interactions in the capital.

Table 4.8.2 The Courts Performance and its Impact in the Economic Activities of the City

Responses from Key Informants

Questions posed	Public Advocates				Attorneys				Supporting Staff				Litigants				Total no		Total %	
	Yes		No		Yes		No		Yes		No		Yes		No					
	No	%	no	%	no	%	no	%	no	%	no	%	No	%	no	%	yes	no	yes	no
1. Do you agree that courts' inefficient performance have an impact on economic activities of country?	13		0		13		0		17		0		33		0		76	0	100	0
2. If your answer for question number 1 is "**yes**", do you believe that the City Courts are efficient enough to absorb equally with the complex economic interaction of the A.A City?	0		13		0		13		0		17		0		33			76	0	100
3. If your answer for question number 2 is "**No**", do you believe that the City Courts have to take fundamental changes to respond the existing situation?	13		0		13		0		17		0		33		0		76	0	100	0

Source: Computed from collected data as primary sources

4.8.3. The Practice of Court Case Flow Management System in the City Courts

To asses this issues some question as shown in the table 4.8.3, below were posed to the sample key informant.

Regarding the first question 100 percent or 76 of the sample respondents confirmed that the City Courts do not practice case flow management system to enhance their efficiency and performance. Moreover, 100 percent of them asserted that case delay in the City Courts is due to lack of case flow management practice and all of them believed that this modern court case management system is crucial to enhance the efficiency and access to justice in the City Courts. Furthermore, 100 percent of the sample agreed that the City Courts have no fixed time schedule to manage their case flows.

From the data presented below at table 4.8.1 it is clear that the City Courts do not have a system of modern cases flow management to control the progress of cases, a tactic to differentiate their cases in terms of the time they consume, to have a realistic pre-trial schedules of their cases, by preparing a faire and credible trial data to ensure the efficiency of the courts for cases from initiation to disposition. The implication is that lack of modern court case flow management system is one of the core causes of all deficiencies in the A.A City Courts.

Table 4.8.3. The Practice of Court Case Flow Management System in the City Courts

Responses from Key Informants

Questions posed	Public Advocates				Attorneys				Supporting Staff				Litigants				Total no		Total %	
	Yes		No		Yes		No		Yes		No		Yes		No					
	No	%	no	%	no	%	no	%	no	%	no	%	no	%	No	%	yes	no	yes	no
1. Do the City Courts have a court case flow management system to enhance their efficiency and performance?	0	0	13	100	0	0	13	100	0	0	17	100	0	0	33	100	0	76	0	100
2. If your answer for question number **1** is **"No"** do you believe that such system is crucial to enhance the efficiency and access to justice in the city courts?	13	100	0	0	13	100	0	0	17	100	0	0	33	100	0	0	76		100	
3. Do the city courts have a time schedule for cases from initiation to disposition?	0	0	13	100	0	0	13	100	0	0	17	100	0	0	33	100	0	76	0	100

Source: Computed from collected data as primary sources

4.8.4. The availability of IT Equipment and its Impact on the Performance of the City Courts

As shown in the table 4.8.4, 100 percent, or 76 of the sample disagreed that the A.A City Courts utilize IT equipment like recording the arguments of litigant during trial hearing. In addition, 100 percent of them agreed that the absence of such trail recording equipment cause fatigue for judges and their decision be mistrusted by parties. Again, all the entire respondent believed that if trials are to be recorded by hand writing, judges may not properly record important arguments of the parties. So it will be difficult and fatigue for judges to record all arguments of parties (litigants) by hand writing, which might create fear and mistrust to the parties.

The interview made with the president of the A.A City FIC shows a similar response except in the issues of audio recording equipment during trails. He agreed that the courts are not equipped with all the necessary IT materials and the absence of such equipments have contributed to the inefficient performance of the City Courts during the past years. However, he disagreed that the absence of recording equipment during trails are not as such urgent and have contribution to the poor performance of the courts, since complex civil and criminal cases are not entertained in the City Courts.

The author agrees with the president argument only in the issues of criminal cases. It is true that the A.A City Courts are not empowered to see complex criminal case such as homicides, except remanding such cases before they pass to the Federal Courts. But the issues of immovable properties are entertained in the A.A City Court one way or the other. Litigation of immovable properties is not as simple as that.

The point is that the absence of IT has an impact in the efficiency of Courts. As already discussed above, the availability of audio recording equipment during court trails relieves judges from the restless recording of arguments of litigants through hand writing. Further, the IT equipment saves the time to re-write all the arguments in the form of judgments through hand writing.

Table 4.8.4 the availability of IT Equipment and its Impact on the Performance of the City Courts

Responses from Key Informants

Questions posed	Public Advocates				Attorneys				Supporting Staff				Litigants				Total no		Total %	
	Yes		No		Yes		No		Yes		No		Yes		No					
	no	%	No	%	no	%	No	%	no	%	no	%	no	%	no	%	yes	no	yes	no
1. Do the City Courts use IT equipment to facilitate their function, such as recording during trials and hearing of cases?	0		13	100	0		13	100	0		17	100	0		33	100	0	76		100
2. If your answer for question number **1** is **"No"**, do you believe that the absence of such equipment causes fatigue for judges, and the decisions of the courts are mistrusted by parties?	13	100	0		13	100	0		17	100	0		33	100	0		76		100	
3. If your answer for question number **2** is **"yes",** to which of the followings does the impact it has?																				
A) During hearing of cases the judge may not properly record the important arguments of the parties	0				0				0				0				0			
B) It will be too difficult for judges to record all arguments of the parties by hand writing																				
C) All	13	100			13	100			17	100			33	100			76	100		

Source: Computed from collected data as primary sources

The other important point is equipping courts by IT equipment makes things easier for court work and the public. For example, in February 2007, USAID judicial reform and partnership program installed tamper-resistant touch-screen information kiosks at five pilot courts across Russia. These kiosks help citizens gain quick access to legal information while freeing court clerks from answering routine questions, thus making the courts more efficient (World Bank: 2008). This practice is also available in the Federal High Court and Supreme Court, though it is not in its fullest sense, in Ethiopia.

The point is, if the A.A City Courts were equipped with IT systems, it would be easy to use software like the practice in Russian and our Federal courts, and it would be easily integrated to make the courts efficient and accessible.

Therefore, the above mentioned facts show that the absence of IT equipment and skilled manpower in the City Courts contributed to the inefficiency and inaccessibility of the Courts. However, the City Courts did not have the courage to copy what is in practice in the Federal Courts.

4.9. Access to Justice in the A.A City Courts

4.9.1 Access to Public Hearing in the City Courts

To asses the issues of public hearing in the City Courts questions were posed to different categories of key informants as indicated in the table 4.9.1.

Regarding the first question, 93.4 percent or 71 out of the 76 sample informed that public hearing is not in practice in the City Courts. On the other hand, the reason why the City Courts do not practice public hearing, 93.4 percent or 71 of the sample responded that it is due to lack of proper hearing benches or places, the rest 6.6 percent or 5 of the respondents informed that that public hearing is not a practices because the judges are insisted to handle and decide cases as they wish. Concerning the third question, 92.1 percent or 70 out of 76 of the informants confirmed that lack of public hearing in the City Courts create a negative impact on litigants. Only 7.9 percent or 6 of them said that it has no such impact on parties.

Regarding the convenience of the courts for court users, 100 percent or 76 of the sample believed that the A.A City Courts are not convenient for courts users. For example, there are no

resting-places, toilets...etc for litigants, and the locations of the courts are not accessible particularly for the poor.

In this regard, the International Declaration of Human Rights on its Article 10 says *"... every one is entitled to a public hearing in the determination of his rights and obligations and of any criminal charge against him..."* In addition, the Civil and Political Rights Covenant under its article 14 (1) stipulates *"...in the determination of any criminal charges against him, or of his rights and obligations in a suit at law, every one shall be entitled to a public hearing..."* (Stefan Trechsel: 2005).

A well respected Malaysian judge said *"...it is axiomatic that judicial accountability includes the requirement that proceedings in courts should be open to the public so that justices is not only done but can be seen by those interested to have been done."* (Cyrus Das and K. Chandra(ed): 2003).

Stanely Z. Fisher (1969) a recognized jurist for interpreting the Ethiopian Criminal Procedure code and other countries criminal procedure laws, emphasizes the importance of public hearing by saying:

> *"...In the darkness of secrecy, sinister interests and evil in every shape have full swing. Only in preparation as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice. It keeps the judge himself while trying under trial. The security of securities is publicity..."*

Table 4. 9.1 Access to Public Hearing in the City Courts

Responses from Key Informants

Questions posed	Public Advocates				Attorneys				Supporting Staff				Litigants				Total no		Total %	
	Yes		No		Yes		No		Yes		No		Yes		No					
	no	%	No	%	No	%	no	%	No	%	no	%	no	%	no	%	yes	no	yes	no
1. Do the city Courts practice public hearing?	0		13	100	3	23.1	10	76.9	2	11.8	15	88.2	0		33	100	5	71	6.6	93.4
2. If your answer for question number 1 is '**no**' which one is the reason from the followings?																				
A) lack of proper hearing benches	13	100			13	100			15	88.2			30	90.9	0		71		93.4	
B) to handle and decide cases as they wish	0				0				2	11.8			3	9.1	0		5		6.6	
3. If the City Courts do not practice public hearing, do you think that it results a negative impact to litigants?	13	100	0		12	92.3	1	7.7	15	88.2	2	11.8	30	90.9	3	9.1	70	6	92.1	7.9
5. Do you believe that the Courts are convenient such as having resting places and so on for parties and other people who need services?	0		13		0		13		0		13		0		33		76	100		
6.Do you agree that the locations of the courts are accessible, especially for the poor?	0	0	13	100	0	0	13	100	5	6.6	12	92.4	5	5.6	28	5.6	66	10	13.6	86.4

Source: Computed from collected data as primary sources

The Municipal Courts establishment proclamation No 1/1990 E.C., which is written in Amharic version only, provides a provision that the courts shall exercise their trial through public hearing. However, if it is found necessary to safe guard public moral and security, the court may not practice public hearing.

Generally, when we see the intention of the above important discussion regarding the importance of public hearing, all the international conventions and scholars' works emphasized that public hearing is the most important means to push courts to exercise their judicial function in a manner accountable to the public. The most important point here is that though the A.A City Courts establishment proclamation gives emphasis to public hearing, the courts never practice public hearing in the past years of their history.

The implication is that the reform movement begun in 2003 did not give much attention to this problem like the other challenges of the courts. Had public hearing been practiced in the City Courts, their decisions would have been announced during public hearing. These would help to build public trust and the City residents would have benefited from the above discussed important fruits of public hearing.

4.9.2 Access to Justice in the City Courts in Respect to Legal Formalism, Cost for Attorneys and other Costs

The following table 4.9.2 presents information whether the A.A City Courts are accessible in terms of legal formalism, in terms of cost for attorneys and other costs.

As presented in the table 4.9.2 below, 84.2 percent or 64 out of the 76 sample informants responded that the legal language during hearing of cases is confusing for the non legal professional or the litigants. In addition, 65.8 percent or 50 out of the 76 respondents confirmed that because of the courts confusing legal jargons litigants will not win cases unless they hire attorneys. Only 34.2 percent or 16 of the respondents disagree with the question posed. On the other hand 86.4 percent or 66 out of the 76 informants disagreed that the locations of the courts are not accessible to litigants and to the poor in particular. More over, 84.4 percent or 66 out to the 76 informants believed that the laws and regulations of the City Government are not accessible in an organized manner.

"The administration of justice is distinguished by excessively formalistic and bureaucratic procedure that transforms justice into something exclusive, which only experts can understand. The legal language is so complex that even well educated people find it difficult to understand. This fact, not only excludes most citizens from the legal world, but also reinforces exiting inequalities in various ways, making it mandatory to pay for experienced lawyers. Clearly, within this formalistic context, a lawyer will perform better when he or she knows how to deal with theses complexities and how to exploit them to his or her advantage."
(Thomson, 2000, cited by Roberto Gargarella: 2003).

The data indicated in the table 4.9.2 below show that the A.A City Courts uses complex legal language during trials, which is difficult for litigants who are not lawyers to understand the procedural legal jargons. The data also pointed out that ordinary litigant can not win their cases. As a result, litigants or parties are forced to hire a lawyer, which costs them money. The depth of the problem of legal formalism should not be reduced to the matter of language. In this regard Thomson,(2000) cited by Roberto Gargarella (2003) argues that

"...the formalities of justice transcend legal rhetoric and extend to the way in which lawyers and justice dress or behave, even to the structure and architecture of the courts themselves, which are commonly known as "place of justice". Ultimately, all these formalities contribute to establishing barriers against the people and to enforcing the perception that justice is not far all"

The reality in A.A City Courts clearly indicates that the costs, such as costs to hire a lawyer and other costs are not affordable to litigant. The implication is that the A.A. City Courts are not accessible in terms of costs for litigation.

Table 4.9.2 Access to Justice in the City Courts in Respect to Legal Formalism, Cost for Attorneys and other Costs

Responses from Key Informants

Questions posed	Public Advocates				Attorneys				Supporting Staff				Litigants				Total no		Total %	
	Yes		No		Yes		No		Yes		No		Yes		No					
	No	%	No	%	no	%	No	%	no	%	no	%	no	%	no	%	yes	no	yes	no
1. Do you believe that during hearing of cases, court terminologies are confusing for litigants' who are not legal Professionals?	8	61.5	5	38.5	11	86.4	2	14.4	12	70.6	5	29.4	31	93.9	2	6.1	64	12	84.2	15.6
2. If your answer for question number 1 is "**yes**" do you believe that parties will not win cases unless they hire legal professionals?	8	61.5	5	38.5	10	76.9	3	23.1	5	29.4	12	70.6	27	81.8	6	18.2	50	16	65.8	34.2
3. Are the laws and regulations of the City Government accessible for judges and other legal professionals as needed?	0	0	13	100	0	0	13	100	5	6.6	12	93.4	5	5.6	28	84.4	10	66	13.6	84.4

Source: Computed from collected data as primary sources

The data also show that the A.A City Courts are not located in areas accessible to litigant, which demands them transport cost and consuming their time. As discussed in chapter three of this paper, the municipal courts of the A.A City were located at one place. Even after the un-successful reform movement, in terms of courts, began in 2003, the courts were re-organized into the newly created Sub-Cities, though most of them were located out of the demarked areas of the Sub-Cities. For example, courts like *Bole* and *Akaki Kality, Yeka* and *Arada,* were located at the place known as *National Theater* and *Kebena Bridge* respectively until recent times. Having this fact, one can imagine the travel costs and time require from *Akaki Kality* to *National Theater*, particularly when it is to be paid repeatedly whenever the legal process requires. Even the trip to the courts is some times emotionally taxing.

The point is that the un-successful reform movement began in 2003; the initiation in re-organizing the FICs throughout the ten Sub-Cities was to make the City Courts' accessible to the Sub-Cities residents. However, it seems that the reform movement was made to show nominally that courts are created in every Sub-City. In fact, the Courts were neither accessible nor efficient in performing their function by that reorganizing process.

4.9.3 Access to Justice in the City Courts in Relation to Impartial Treatment and Corruption

The following table 4.9.3 shows whether the A.A City Courts are accessible in terms of impartiality and corruption or not.

As indicated in the table 4.9.3 below, 69.7 percent or 53 out of 76 of the key informants believed that the City Courts, in passing decisions, favor the City Government in cases when the City Government is a party to the lawsuit. Only 31.3 percent or 23 of the sample disagree with the question posed for them.

Table 4.9.3 Access to Justice in the City Courts in Relation to Impartial Treatment and Corruption

Responses from Key Informants

Questions posed	Public Advocates				Attorneys				Supporting Staff				Litigants				Total no		Total %	
	Yes		No		Yes		No		Yes		No		Yes		No					
	No	%	No	%	no	%	No	%	no	%	no	%	no	%	no	%	yes	no	yes	no
1. In cases, when the City Government is a party, do you believe that the City courts give decision in favor of the City Government?	10	76.9	3	23.1	10	76.9	3	23.1	10	58.8	7	41.2	23	69.7	10	21.3	53	23	69.7	31.3
2. Do you believe that the City Courts are suspected of impartiality and corruption?	9	69.2	4	30.8	10	76.9	3	23.1	12	70.6	5	29.4	30	90.9	3	9.1	61	15	80.3	19.7
3 If your answer for q. no. 4 is **yes,** do you believe that parties, who can afford enough money for such illegal activities, can win?	9	69.2	4	30.8	9	69.2	4	30.8	9	52.9	8	47.1	29	87.9	4	12.1	56	20	73.7	26.3
4. Do you believe that it is better being accused or respondent than being a plaintiff or accuser in the City Courts?	8	61.5	5	38.5	8	61.5	5	38.5	11	64.7	6	35.3	30	90.9	3	9.1	57	19	75	25

Source: Computed from collected data as primary sources

The issues of impracticality are directly linked to whether the courts are institutionally independents or not. The issues of independence of the A.A City Courts are discussed in the previous sections above. A judicial system which is not initially designed to perform its function independently is not expected to serve ordinary citizen equally with the executive who indirectly controls and influences the judicial system by controlling the process of selection and appointment of judges, controls the budget of the courts, as already discussed above in different sections of this study.

The point is that the A.A City Courts, since they are not independent from the influence of the City executive, are not expected to be accessible in terms of impartially treating individual litigants equally with the City executive bodies. Here, as the author's personal observation is concerned, it was a common practice that the presidents of the FIC and appellate courts were called by the City executive body to comment and evaluate the decisions which were given against the City administration bodies. As a result of these practices, a special bench was established to reverse the decision that passed against the City administration bodies and judges who dealt with decision against the City executive bodies were removed from the civil benches and transferred to petty offence benches, even some of them were accused for disciplinary ethical misconduct and frequently transferred to other Sub-City courts' that are far from their homes.

But it should be noted that the above mentioned decision against the City executive might not necessarily be correct. The issue is not whether the decisions were correct or not. The point is that they should not be reversed by the influence of the executive body. There is a legal procedure to reexamine them through a court process, even by applying for cassation into the Federal courts than reversing them by directly forcing the court officials, which is not expected in a country that judicial independence is guaranteed constitutionally.

On the other hand, 80.3 percent or 61 out of 76 of the sample believed that the A.A City Courts are suspected of corruption. Only 19.7 percent or 15 of the sample disagreed with the question posed. In addition, 73.7 percent or 56 out of 76 of the sample believed that due to corruption in the courts, parties who afford enough money can win cases. Not only this, 75 percent or 57 out

of 76 of the respondents agreed that it is better to be accused or be a defendant than being an accuser or plaintiff in the A.A City Courts. Hence, the City Courts are not accessible in terms of impartially treating parties.

The data shown above implies that corruption was the other obstacle in accessing the City Courts, in the process of deserving justices. The fact is that the Courts were not accessible in terms of location as already discussed above, which is costly in terms of money and emotional distress, costs for attorneys, providing money for corruption, are the most unbearable obstacle in the process of accessing justice.

Regarding the issue of corruption in the A.A City Courts, the author strongly agrees with the responses of the key informants. The data collected is very worthy and reliable since the former president of the A.A FICs was accused of corruption and punished by imprisonment. There can never be any better evidence for the existence of corruption in the A.A City Courts during the past years.

Finally, the data indicated in the table 4. 9.3 show that to be accused or to be a defendant is better than be a plaintiff or accuser. This issue could be due to the lengthy and protracted case delay; it could be due to corruption and lack of impartial treatment of parties.

4.9.4 Access to Justice in the City Courts with regard to the Practices of ADR Mechanisms

ADR mechanism plays significant role in improving access to justice and judicial efficiency. Many researchers in the field suggest that most poor people are facing and will face problems when seeking justice. In this regard ADR mechanisms play an important role in creating competition among the exiting courts and expand options for settling disputes. It gives an alternative to the conventional means of dispute settlement by way of lawsuit.

The table 4.9.4 below presents information regarding the practice of ADR mechanisms in the City Courts, and its role and importance in enhancing access to justice and efficiency of the courts.

The table in the 4.9.4 presents the responses from the key informants to the issues raised in the questionnaire. Accordingly, 100 percent or 76 of the respondent answered that there is no practice of resolving disputes through ADR ways to reduce case load and delay of cases. In addition, 100 percent of them also responded that there are no ADR institutions that handle cases in relation to the jurisdiction of the City Courts. Not only this, 100 percent of them also believed that ADR mechanism should be practiced in A.A City Courts.

Regarding the practice of ADR mechanisms, the Ethiopia Civil Procedure Code provides both mediation and arbitration to be practiced. In practice, however, the use of mediation in civil cases is not frequently practiced. In family matters, it seems that mediation prior to filing lawsuits is more or less compulsory. Arbitration indeed exists and is used for the settlement of commercial disputes. It is organized by the international lawyers. In this regard, it is very costly that only large companies can afford it. Mediation is often referred as one of the possible solutions for the backlog in civil lawsuits. The main obstacles to practice mediation in Ethiopia are lack of trained mediators i.e. lawyers, judges or others, the problem which neither litigants nor the existing system can afford it (World Bank: 2004).

In this regard, it is worth mentioning that the social courts operating at the level of *kebeles* actually play a certain role of a mediation system. However, these social courts are not open for all cases since their jurisdiction is limited by amount of money (e.g. civil cases with less than 5000 Birr) and petty offences only. But the role of social courts in reducing the flow of cases in the regular courts is so indispensable. As already discussed in chapter two, we have seen the role of ADR mechanisms in Brazil and Peru, though practiced in the rural areas, in securing the poor to access to justice. Comparing these experiences to the reality in the A.A City Courts, the picture is totally different.

Table 4.9.4. The Practice of ADR Mechanisms in A.A City Courts

Responses from Key Informants

Questions posed	Public Advocates				Attorneys				Supporting Staff				Litigants				Total no		Total %	
	Yes		No		Yes		No		Yes		No		Yes		No					
	No	**%**	**No**	**%**	**No**	**%**	**no**	**%**	**no**	**%**	**no**	**%**	**no**	**%**	**no**	**%**	**yes**	**no**	**yes**	**no**
1. Is there a practice of handling cases through ADR mechanism to avoid case load and courts delays to enhance the efficiency of the City Courts?	0	0	13	100	0	0	13	100	0	0	17	100	0	0	33	100	0	76	0	100
2. Are there ADR institutions that are empowered to handle cases within the jurisdiction of the City Courts?	0		13	100	0	0	13	100	0	0	0	0	0	0	33	100	0	76	0	100
3. If your answer for question number 3 is "**No**" do you believe that the existence of ADR mechanism is crucial to the City Courts?	13	100	0		13	100	0	0	17	100	0	0	33	100	0	0	76	0	100	0

Source: Computed from data collected as primary sources

The data in table 4.9.4 indicates that in the same manner as the issues of ensuring judicial independence, practice of modern case flow management system, and regardless of other issues already discussed in the pervious section, the reform movement of 2003 in A.A City did nothing in establishing ADR institutions, training mediators and arbitrators to enhance efficiency and access to justice in the City Courts.

Here it is worth mentioning the experience of other countries including USA in settling disputes through mediation. It is a carefully devised mechanism which involves proper court administration, effective case management, and amicable consensual dispute resolution. The essence of this concept is after the filing of the complaints and submission of the written statement, attempts would be made to resolve the dispute through various forms of ADR mechanisms by early judicial intervention. In short it is mandatory recourse to ADR and CDR (consensual Dispute resolution) by the trial judge's order in the pre-trial stages of a case. Court administration and case management are to prepare the ground for the success of ADR. For example in some states in US , such as California, 90 percent of the cases are resolved at the pretrial stage through ADR by early judicial intervention, and only the remaining 10 percent goes to the trial (World Bank, 2004). *www.http://ruchichowdhuandhary.tripod.com/ possible-way-out-of baclog-our-judiciary,htm,(* Accessed on March:2010).

Regarding the practice ADR mechanisms, let alone in the A.A City Government Courts, the picture is to the reverses in all the Federal Courts, despite the effectiveness of ADR mechanisms in enhancing court performance and ensuring access to justice.

To sum up, the above analytical discussions show that the proposition that judicial efficiency and full access to justice can not be realized without an independent and impartial judiciary. This is the main reason that the state of judicial independence of a country is considered as the major indicator of the position of rule of law. Judicial independence is not as simple as declaring courts to be free. It requires more legal and practical commitments. Both the institutional and decisional aspects of judicial independence are required to be fully observed by a government through sustainable reforms movements to ensure the independence, efficiency, and accessibility.

The FDRE constitution structurally detaches the judiciary from other organs of the government. The constitution, in adopting judicial independence, rule of law, and separation of powers has its objectives. These constitutional guarantees are steps ahead towards securing judicial independence. But the practice in the A.A City Government, in relation to the City Courts, indicates that there are many challenges with regard to the selection of judges, institutional and decisional independence of the courts, their budget administration and allocation of sufficient budget to the courts. These facts made the A.A City Courts inefficient and inaccessible to serve the demands of the public. For these reasons, the author arrives at the findings, conclusions, and recommendations that are presented in the next chapter.

CHAPTER V

Findings, Conclusion, and Recommendations

5.1 Findings

5.1.1 Theoretical and Policy Implications

This thesis sets out with the objective of analyzing the A.A. City Courts' independence from the perspective of theoretical and policy frameworks.

Theoretically, judicial independence gives emphasis that the judiciary should be politically insulated from the legislature and the executive powers. That is, courts should not be subjected to improper influence from other branches of government, or from private or partisan interests. Judicial independence includes institutional, decisional, and internal (individual judges) independence.

In line to these theoretical perspectives, independence of the judiciary is unequivocally declared in the FDRE constitution. The principles of judicial independence and the principles of separation of powers are constitutionally guaranteed to enhance the process of creating a democratic state governed by rule of law. With this theoretical frame work this thesis arrives at the following findings.

5.1.1.1 Selection and Appointments of Judges

The Ethiopian constitutional framework in this regard is so clear. In the regional sate level, the power to select nominees for judicial appointment at all levels of courts is given to the JAC of the states. The JAC is empowered to select nominees and directly submit to the respective state council for approval of appointment.

In the selection and appointment of judges, the clarity and transparency of the process is the most important stage in the efforts to create a judicial system characterized by professionals of integrity, capability, and internal or personnel independence to serve justice. In this regard, the issue of selection and appointment process of judges in the A.A City Government is quite

different. The judicial selection process is not transparent by itself. The JAC's power to select eligible candidates is technically influenced by the president of the City Appellate Court. The JAC is made to present the nominated candidates to the Mayor of A.A. the City Government. This contradicts with the constitutional framework in relation to powers and functions of JACs, which affects the A.A. City Courts. In addition, the practice in the process of selection of judges, more emphasis is given to their political attitude and interest than to their integrity, qualification, and ethics. This is contrary to the principles of universal declarations on the selection of judge and the provisions of the FDRE constitution.

5.1.1.2 Institutional and Decisional Independence

Interference of the A.A City executive body, as indicated above, is so clear in the process of selection and appointment of judges. The City executive also interferes in decision passed by the City Courts, particularly when its administrative organs are parties to the lawsuit. Though the principles of separation of powers and the FDRE constitution prohibit the interference of any organ of government in the functions of the courts, the A.A municipal courts establishment proclamation clearly obliges the courts to accept and consider the clarifications and opinions of the executive in their decision. These realities are completely against the above mentioned principles of separation of powers and independence of the judiciary provided in the FDRE Constitution.

5.1.1.3 Disciplinary Actions

To investigate disciplinary action against ethical misconduct is one of the functions of the JAC in the City. The JAC establishment proclamation No 4/2003 empowers the JAC to initiate any disciplinary ethical misconduct allegation and to investigate and imposes sanctions against judges of the City Courts. Not only this, there is no way to appeal against decisions passed by the JAC. In this regard the JAC is not independent and impartial since it investigates cases of ethical misconduct initiated by it, and the decisions of the JAC have no appeal. This is against the constitutional and universal principles on the rights of citizens to be judged by an impartial body and the right to appeal.

5.1.1.4 The JAC, it's Composition, Functions, and it's Independence

a) The JAC's Composition

Regarding the composition of the JAC, proclamation No. 4/2003 identifies seven members, among them only one judges is made to represent the judges of the FICs including the appellate court. In the composition of the JAC, other non voting participants, such as the Bar, and other professional associations that are important contributors to the process of transparency of the JAC's activities, are not included in the JAC.

b) The JAC's Functions

The JAC in the City Courts is expected to facilitate the Administration and management of the City Courts by controlling their day-to-day activities. However, the practice is to the reverse. This function of the JAC is replaced by the presidents of the A.A. City Courts. Members of the JAC are used to be called by the president of the court when there are urgent meetings only.

c) The JAC's Independence

As already mentioned above, the forty and above judges of the Courts are represented only by one judge, arguably of his personal independence. The other members from the City Council, obviously, are representing the interests of the executive, since they are carefully selected among the elected members of the Council. The president and vice president of the A.A City Courts, though nominally, are representing the courts, the way they come to power makes them to do what the City executive wishes to be done. Hence, the JAC, in the real terms, is technically influenced by the City executive, which might be the cause of all the mal management and inefficiency of the A.A City Courts.

5.1.1.5 The Courts' Budget Administration Autonomy

In principle, the judicial budget is to be prepared, presented to the parliament, and be administered by the courts themselves independently. The practice in Ethiopia, prior to the FDRE Constitution, was different from the mentioned theoretical principles. Judicial budget was determined and administered by the Ministry of Finance. The City charter, proclamation No 361/2003 says nothing regarding the administration of judicial budget of the A.A City Courts. And yet, the budget of the Courts is administered with out transparency by City

executive body which is contrary to the principles of separation of powers. This budget dependence of the judicial body of the A.A the City Courts has an adverse impact on their independence, efficiency, and their accessibility to justice.

5.1.1.6 Jurisdictional Gaps and Impacts of the Two Level Courts Structure

a) Jurisdictional Gaps

A.A., as a Chartered City with constitutional powers to self government, establishes the three branches of Government, including the judicial body. However, the judicial branch is not organized in the manner to exercises complex issues of civil and criminal cases. Initially, the courts were established to exercise very simple cases of civil and petty offences, simply to minimize, the Federal Courts case load. Even the jurisdictions that are clearly provided in the City Charter are interpreted by the Federal Supreme Court as if not given to the A.A City Courts. This fact creates public mistrust and inconveniency to citizens who deserve justice in their locality.

b) The Impacts of the Structures of the Courts

The FDRE constitution establishes three levels of courts structure, both in Federal and Regional States. This is the constitutional framework regarding structure of courts in the country. This constitutional framework is in line with principles of access to proper levels of courts. The point is that citizens have the right to get justice in courts rationally structured to absorb their rights.

The A.A City charter establishes only two levels of court structure in contrary to the constitutional framework, which badly affects citizens' rights to appeal. And yet, procedural remedy is established, neither in the City charter nor in the A.A Municipal Courts establishment proclamation regarding this gap.

5.1.1.7 Regarding Non- Judicial Personnel Administration Autonomy

The A.A City Courts are not autonomous to hire and fire the non judicial personnel who work under them. The placement, qualification and the number needed by the Courts are determined by the A.A City Civil Service Commission, which makes the City judicial body dependent in having skilled supporting staffs. This fact has its own impact on the management and efficiency of the courts. In regard to this, both the A.A City Charter and the A.A City Municipal Courts establishment proclamations have gaps. In such cases, the City executive is involving on the interests of the courts by determining their demand to recruit skilled man power. As a result the A.A City Courts are staffed with unskilled personnel.

5.1.1.8 Efficiency of the A.A. City Courts

Theoretically, case flow management system is the modern concept that should apply to improve the efficiency and performance of courts.

In the reform movement of 2003, which created a new City Government, the A.A City judicial system was not reformed to practice court cases flow management system. In terms of availability of IT equipment, the City Courts are not practicing audio recording equipment during hearing of trials to improve their efficiency. Not only these are what the courts lack but also ADR mechanisms, which are an alternative to the formal way of settling disputes, are not even mentioned in any of the legislations including the charter. As a result, the courts were not performing their function efficiently in the past years. Lack of sufficient salaries and other benefits for judges have also contributions too. On the other hand, the courts' performance lags from the role of courts in economic development. In principle, a sound judicial system is very essential in enhancing good governance and economic growth. However, the A.A City Courts were not organized and reformed towards their role in enhancing the City's good governance, and to efficiently serve the needs and economic interactions of the A.A City.

5.1.1.9 Access to Justice

The right to access to justice is the universal principle which has many obstacles to get it easily. Legal poverty is one of the most obstacles to access to justice. In the history of judicial reform, the rationales of reforming the judicial system is to make them accessible to citizens, particularly for the poor.

In this regard, with all its shortcomings, the effort in re-organizing the City Courts in to the newly created Sub-City Administrations was a progress to ensure geographical accessibility of the City Courts. However, the City Courts are not, in terms of location, yet accessible for the poor. Public hearing, during hearing of cases is not practiced in the City Courts. This is contrary to the Universal Conventions on the rights of people to public hearing. Moreover, Corruption, lack of legal information, and absence of organized legal materials, are also some the obstacles of access to justice in the A.A. City Government Courts.

5.2 Conclusion

A.A is a Chartered City, constitutionally vested with self government. The City Charter establishes the three branches of government. Of the three, the judicial body in the City is organized to be the most powerless and dependent to the City executive, which is contrary to the FDRE Constitutional principles of separation of powers and principles of judicial independence. Initially, the City judiciary is not established to play a significant role in the complex economic interactions of the City. Rather, it was designed simply as a supporting body to the Federal Courts, exercising only simple issues of petty offences and civil cases.

For these reasons, the A.A. City Courts were considered as insignificant in serving the demands of citizens. The selection and appointment of judges is influenced by the City executive. In this regard, the JAC in the City Courts is not powerful and independent to resist the executive interference and to work towards the needs of the courts. To this extent, the City Charter says nothing regarding the independence of the City Courts in administrating their budget, and their institutional and decisional independence. As a result, the City courts were not funded with sufficient budget to perform their functions. Even the insignificant budget, which is determined by the executive body, is administered by the executive itself.

As result, the City Courts are inefficient and inaccessible, particularly for the poor. In addition, the City Courts are characterized by their poor court case management and administration. Not only this, the Courts are staffed with unqualified and the least paid supporting staffs. They are also characterized by corruption and nepotism. The administrative structural change and reform movement, began in 2003, with a lot of its strong sides regarding administrative reforms, it did not make any effort to improve the above mentioned critical problems of the City Courts, with the exception of reorganizing them in to the newly created Sub-Cities. Therefore, to change these challenges radically, the following recommendations are suggested.

5.3 Recommendations

5.3.1 Institutional and Decisional Independence

In a democratic society the existence of an impartial, stable and independent judiciary is crucial. Therefore, the judicial body in the City should be fundamentally reorganized to be impartial, institutionally independent, with no direct or indirect interference and influence of the city executive or other organs thereof in its functions and decisions.

5.3.2 Selection and Appointment of the Judges

In a democratic society, in which governmental power is conferred through democratic election, the existence judicial integrity and impartial judicial personnel, is so important in creating a stable judicial system. Therefore, the selection of judges should be based on merit, integrity, and qualification, not on political attitude or patronage. More over, the JAC should make the selection and present the nominees directly to the City Council for appointment. In this regard, the JAC establishing proclamation No. 4/2003 needs to be amended to address these issues.

5.3.3 Disciplinary Action in the City Courts

Regarding disciplinary action, the findings show that the JAC is empowered to initiate allegations against ethical misconduct of judges. At the same time it is empowered to investigate those cases by itself that makes the JAC un-impartial since it exercises both roles. Not only this, disciplinary sanctions passed by the JAC have no procedure to appeal. This

contradicts with the rights of judges who involve in ethical misconduct issues to be judged by an impartial body and the right to appeal against decisions of that body. Therefore, the JAC should not investigate cases of ethical misconduct initiate by it and its members. To solve these contradictions, first, there must be an impartial body to see allegations particularly initiated by the JAC itself. Second, there should be procedural mechanism to appeal on the decisions of the JAC within the City Courts and up to the Federal Supreme court in case of fundamental error of law. In this regard the JAC establishment proclamation No 4/2003 needs to be amended to solve these critical problems.

5.3.4 The JAC, its Composition, its Function, and its Independence

a) The JAC's Composition

The existence of active and independent JAC in the judicial body is important in judicial Administration matters. Therefore, in the City Courts' JAC composition, the number of judges of the City Courts should be proportionally represented to make the JAC active and independently administer the overall court system of the City. In this regard, the JAC establishing proclamation No 4/2003 needs to be amended to address the proportional representation of the City Courts Judges.

b) The Jack's Role in the Selection and Appointment of Judges

The selection of judicial personnel (Judges) for judicial appointment, the clarity and transparency of the process of judicial selection is the most important stage in the effort to create a judicial system characterized with professionals of integrity, capability, and internal or personal independence to serve justice. In this regard, the selection and the appointment process in the A.A City Courts is not transparent .The JAC's role to control the process of selection of judges is very limited. The power to present candidates for judicial appointment is given to the Mayor, who is the chief executive of the City Government. This hampers the courts independence in exercising their functions.

Hence, the JAC should be practically empowered, to be free from the influence of the executives in the process of selection and appointment of judges. The JAC should select the candidate judges and should directly present to the City Council for appointment. Therefore,

the JAC establishing proclamation should be amended to ensure the independence of the JAC in such issues.

5.3.5 The Courts' Budget Administration Autonomy

The City judicial body should determine its own budget and directly submit to the City Council for approval and it should be empowered legally to administer, and implement its own budget independently. In this regard the A.A City Charter should be amended to address the budget administration autonomy of the City judicial body.

5.3.6 Jurisdictional Gaps and Impacts of the Court Structure

Regarding Jurisdictions and structures of the courts, the City courts should be empowered to exercise complex criminal cases and any type of civil litigation in relation to the City Government powers. Concerning their structure, they should be reformed to have a proper court structure based on the FDRE constitutional framework. The reform can be implemented based on three alternatives. First, they should have a three levels of court structure; namely, First Instance, High Court, and Supreme Court. Second, they can have special benches within the City Appellate Court that entertain only appeals on the decision of the appellate court itself. Third, they may practice the experience of *Oromia* City Courts i.e. taking appeal to the Federal High Court that might serve as a solution for the existing City Court structural gap. In this regard, the A.A City charter should be amended to address these issues.

5.3.7 Non -judicial Personnel Administration Autonomy

To enhance the performance of the City courts the existence of skilled manpower is so essential. In this regard, the A.A. City Courts should be empowered to determine the qualification, salaries, allowances, promotion, and transfer of their supporting staffs, including recruiting and administering them. In this regard, the A.A City Charter should clearly include the City Courts non-judicial personnel administration autonomy.

5.3.8 Efficiency of the City Courts

One of the short comings of the A.A City Courts is lack of modern court case flow management system, and ADR mechanisms. To make them efficient: case flow management

system should be introduced; and institutions of ADR mechanisms should be legally recognized along with the judicial system in the City Court. The courts should be equipped with IT equipment like audio recording during trials to enhance their efficiency. Therefore, the A.A City charter needs to be amended to recognize the establishment of ADR institutions and mechanisms along with City Courts.

5.3.9 Access to Justice

a) Access to IT Equipment

To make the City Courts efficient and accessible, the A.A City Courts should be facilitated, and equipped with necessary capacities, particularly, with relevant IT equipment such as audio recording and buildings with benches that are proper for public hearing.

b) In terms of Locations of the Courts

The newly created Sub-Cities are so vast in area that a single court located in one place is not enough to serve the public at large, particularly to the poor. So, the Sub-City Courts should be reorganized and recreated in more than two locations in each Sub City to make them accessible.

5.4 Further Research

Finally, the author invites interested researchers and concerned legal professionals for further in-depth study on the issues raised in this thesis in relation to the implementation of BPR whether it is successful in terms of ensuring the independence of City Courts, enhancing their efficiency and accessibility and other aspects of BPR.

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APPENDICES

APENDIX 1

Check Lists for document review/ Interview and Questionnaire

1. Judicial Selection issues
   - Constitutional Framework and A.A city Court JAC Establishing proclamation
   - The extent of judicial independence I the selection process
2. Institutional and decisional impendence issues
   - Constitutional framework
   - The extent of executive interference in the decisions of the City Courts
3. Issues of Disciplinary ethical Misconduct
   - Extent of clarity of the rules and regulations
   - Issues of Impartiality of the JAC in investigating disciplinary ethical misconduct
   - Procedures how the cases of ethical misconduct are initiated and entertained
4. Budget Administrative autonomy issues
   - Constitutional framework and the charter of the city Government
   - The extent of the budget administration independence in the A.A. City Courts
5. The JAC of the City Courts, its composition, function, and independence
   - The extent of proportional representation in the JAC
   - Participation of other interested parties in activities of the JAC
   - The extent of executive influence in the JAC
6. Jurisdictional and structural gaps in the City Courts
   - Constitutional framework and charter of he A.A City Government
   - The extent of impact created by the Court structure in the City
   - Jurisdictional gaps and their impact on the right of litigants
7. Non-judicial personnel Autonomy
   - Constitutional framework and the City charter
   - How their qualification and recruitments are determined
   - How their disciplinary issues are governed
8. Issues of efficiency of the A.A City Courts
   - Factors that affect their efficiency

- How the lack of case flow management system affects their efficiency
- The extent of the practice ADR mechanisms

9. Access to justice in the City Courts
   - Theoretical framework
   - Accessibility of the Courts in terms of cost, time, and energy
   - Access to justice in terms of convenience of the Courts for transport and others
   - Accessibility in terms of impartiality and corruption
   - Access to justice with regard to availability of IT equipment and public hearing

APPENDIX II

Key Informant Questionnaire

Part I

The purpose of this questionnaire is to collect data for a research paper entitled **"Judicial Reform in Ethiopia: Challenges and Achievements, the Case Addis Ababa City Government Courts".**

This is an independent research being conducted for the partial fulfillment of the Masters Degree in Public Administration (MPA) by a prospective graduate student from AAU.

The researcher would like to assure that the information provided would be used for research purposes only and all responses will be treated in confidentiality.

Thank you in advance to all whom this questionnaire would appear.

Part II

Personal and Organizational Profiles

1. Age_____
2. Occupation
   -Judge ☐ FIC ☐ Appeal ☐
   -Attorney ☐
   -Public Legal Advocates ☐
   -Litigant ☐
   -Supporting Staff ☐
3. Level of education: Put it mark
   a) Certificate and others_____
   b) College Diploma
   c) LLB
4. Your field of Specialization_____
5. Years of Experience_____

VII. Non- Judicial Personnel Administration in the City Court

1. Do the City Courts have the power to determine and increase the number of supporting staff (non-judicial personnel) as needed? Yes ☐ No ☐

2. Do you believe that the City Courts have the power to exercise placement and promotion of on-judicial personnel (supporting staff), and the power to take disciplinary action against them? Yes ☐ No ☐

3. Do the City Courts have the power to fix salaries, allowance and types and number of posts to their on-judicial personnel (supporting staff non-supporting staff?
   Yes ☐ No ☐

4. Do the City courts have the power to placement, transfer, and training over their supporting staff? Yes ☐ No ☐

5. Are the non-judicial personnel or supporting staff provided with trainings to up grade their efficiency? Yes ☐ No ☐

VIII Efficiency of the A.A City Courts

VIII.I Performance the Courts in the City

1. Do the Courts resolve cases qualitatively and timely? Yes ☐ No ☐

2. If your answer for q.no.1 is "**No**", which of the followings are the causes?

   A) Mismatch of judges and number cases ☐
   B) Judges' lack of interest ☐

3. If your answer for question number 2 is "**B**" which of the followings are the causes for?

A) Judges are busy for private business ☐
B) Judge's insufficient compensation ☐

VIII.II. the Courts Performance and its Impact in the Economic Activities of the City

1. Do you agree that courts' inefficient performance have an impact on economic activities of the country? Yes ☐ No ☐

2. If your answer for question number **1** is "**yes**", do you believe that the City Courts are efficient enough to absorb equally with the complex economic interaction of A.A City?

Yes ☐ No ☐

3. If your answer for question number **2** is "**No**", do you believe that the city Courts have to take fundamental changes to respond the existing situation?

Yes ☐ No ☐

VIII.III. The Practice of Case Flow Management in the City Courts

1. Do the City Courts have a court case flow management system to enhance their efficiency and performance? Yes ☐ No ☐

2. If your answer for question number **1** is "**No**" it causes court delay and do you believe that such system is crucial to enhance the efficiency and access to justice in the city courts?

Yes ☐ No ☐

3. Do the city courts have a time schedule for cases from initiation to disposition?

Yes ☐ No ☐

VIII.IV. The availability of IT equipment and its impact on the Performance of the City Courts

1. Do the City Courts use IT equipment to facilitate their function, such as recording during trials and hearing of cases? Yes ☐ No ☐

2. If your answer for question number **1** is "**No**", do you believe that the absence of such equipment causes fatigue for judges, and the decisions of the courts are mistrusted by parties? Yes ☐ No ☐

3. If your answer for question number **2** is "**yes**", to which of the followings does the impact it has?

A) During hearing of cases the judge may not properly record the important arguments of the parties ☐

B) It will be too difficult for judges to record all arguments of the parties by hand writing ☐

C) All ☐

IX. Access to Justice in the City Courts

IX.I Access to Public Hearing in the City Courts

1. Do the city Courts practice public hearing? **Yes** ☐ **No** ☐

2. If your answer for question number 1 is '**no**' which one is the reason from the followings?
   A) lack of proper hearing benches ☐
   B) to handle and decide cases as they wish ☐

3. If the City Courts do not practice public hearing, do you think that it results a negative impact to litigants? Yes ☐ No ☐

4. Do you believe that the Courts are convenient such as having rest room, resting places and so on for parties and other people who need services? Yes ☐ No ☐

5. Do you agree that the locations of the courts are accessible, especially for the poor?
   Yes ☐ No ☐

IX.II Access to Justice in the City Courts with Respect to Legal Formalism, Cost for Attorneys and other Costs

1. Do you believe that during hearing of cases, court terminologies are confusing for litigants' who are not legal Professionals? ☐Yes No ☐

2. If your answer for question number 1 is "**yes**" do you believe that parties will not win cases unless they hire legal professionals? Yes ☐ No ☐

3. Are the laws and regulations of the City Government accessible for judges and other legal professionals as needed? Yes ☐ No ☐

IX.III. Access to Justice in the City Courts in Relation to impartial treatment and Corruption

1. In cases, when the City Government is a party, do you believe that the City courts give decision in favor of the City Government? Yes ☐ No ☐

2. Do you believe that the City Courts are suspected of impartiality and corruption?
   Yes ☐ No ☐

3. If your answer for q. no. 4 is **yes,** do you believe that parties, who can afford enough money for such illegal activities, can win? Yes ☐ No ☐

4. Do you believe that it is better being accused or respondent than being a plaintiff or accuser in the City Courts? Yes ☐ No ☐

IX. IV. Access to Justice in the City courts with regard to the Practices of ADR Mechanisms

1. Is there a practice of handling cases through ADR mechanism to avoid case load and courts delays to enhance the efficiency of the City Courts? Yes ☐ No ☐
2. Are there ADR institutions that are empowered to handle cases within the jurisdiction of the City Courts? Yes ☐ No ☐

3. If your answer for question number 3 is "**No**" do you believe that the existence of ADR mechanism is crucial to the City Courts? Yes ☐ No ☐

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1. Are the City Courts well equipped with IT, such as audio recording equipments that serve during hearing of cases, if not why?
2. Do you have any comments regarding to the overall judicial reform of the City Government Courts?

APPENDIX IV

Declaration by the Candidate

I, the undersigned, declare that this thesis is my original work and has not been presented for a degree to any other university and that all sources of materials used for thesis have been duly acknowledged.

Declared by:

Name: Hailu Tadesse Bellete

Date: 7 July 2010

Signature: _____

Confirmed by:

Name: Dr. Meheret Ayenew

Date: 7 July 2010

Signature: _____

Addis Ababa, Ethiopia

2010