

Dispute Resolution in the Promotion of Economic Development

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The Basic Premises

- The Legal and judicial framework affects pace of Development , economic agents consider
 - Rule of law
 - The legal regime on property rights
 - The Legal regime on contracts
 - The process and outcome for enforcement of rights

The legal framework

- Constitutional
- Statutory (procedural as well as substantive)
- International conventions

The Scenario in Ethiopia

- A. Constitutional scheme
 - The preamble creates a link between rule of law and economic development
 - Protection of property rights is of constitutional significance
 - Access to justice is a fundamental right

Substantive laws

- Codes were adopted in the 1960s and recently
- Absence of sufficiently trained manpower when the laws were enacted (The first law school started in 1963)
- The change of government in 1974 upset many of the assumptions of the Codes
 - Nationalized private property, Private initiative was discouraged, Foreign investment was not allowed
- Institutional basis for the operation of the laws is missing
- Absence of sufficiently developed administration of justice
- Some laws have not been functional

B. Procedural laws (civil)

- Allows different tracks for different disputes
- Allows summary and accelerated procedures for business disputes
- Gives the judge power to implement CFM
- Envisages ADR, conciliation and mediation
- Envisages strict adjournment policies and gives the judges the power to control the unfolding of the litigation process

Pluralism in Dispute Resolution

- Legal pluralism (deep) is the mark of the legal system
- Formal dispute resolution
 - regular courts (Federal and State Courts)
 - administrative tribunals (Labour, tax, land etc)
- Alternative Dispute Resolution
 - Traditional/customary and Religious
 - Formal ADR
 - institutional
 - ad-hoc

Makeup of the Ethiopian judiciary

- Trial courts
- Appellate structure (High and Supreme courts)
- The cassation division

Expectations from the formal court system

- Timely disposition of cases (in terms of duration time, clearance rate, congestion rate, number of adjournments etc)
- Accessibility (addressing the barriers; cost, delay, etc
- Independence and accountability(third party umpire; avoiding the two against one scenario, having competent judges etc)
- Effective administration of justice(ability to arrive at the Truth (not the truth) predictability, adequacy of remedies etc

Problems faced and solutions sought

- Real (past) and perceived Delay
- In/disincentive in the formal justice system; cost, loser may not bear cost)
- Mind set of judges and lawyers; that any thing that comes to court should be decided by judges
- Judicialization of the other dispute resolution alternatives

Data from the Federal High Court

(first instance civil cases)

year	opened	disposed	duration	No. of adj.
07-08	621	688	12.3mo	5.9
06-07	584	806	22.06	9.13
05-06	426	600	23.87	7.83
04-05	414	342	18.02	5.31

Cases pending today 435 72% less than one year,
43% less than 4 months
347 cases involve companies
88 are between companies

NO BACKLOG ON SUCH CASES

Appellate division of the SC

- 303 cases pending today, value 394,584,790
- Average duration for these cases is 7 months
- 165 (54.4%) involve companies, 53 are between companies
- 237 cases(78%) are less than one year
- Average duration for all cases in the federal supreme court is 4 months

Educational level of Judges

Level of Education	1991	2005-06 (for Federal Court Only)
Phd	0.1%	0%
LLM	0.4%	6.48%
LLB	7.3%	74.07%
Diploma	7.9%	19.44%
Certificate	5.7%	0%
1-6th grade	14.4%	0%
7-12th grade	17.2%	0.9%
No formal education	47%	0%

Problems in ADR

- Formal institutional ADR does not seem to be working
- Once in court parties do not usually opt for ADR
- ADR (formal) is more expensive, at least for the defendant
- The mindset and financial incentive of counsel
- The cost structure in the ordinary courts (the cost bearer left to the discretion of the court) going on appeal is also cheap, with high prospect of injunction
- Perception of delay in trial and appellate stages becomes an incentive for those whose probability of winning is lower

Measuring efficiency on commercial disputes

- Duration time
- Clearance rate
- Backlog index

Judicial Reform

- Four Main components
 - Efficiency
 - Accessibility
 - Independence and accountability
 - Effectiveness