

APAP'S EXPERIENCE ON SOCIAL COURT JUDGES TRAINING

**A paper presented on the workshop
that deliberates on capacity building
for Social Courts**

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Acronym

APAP: Action Professionals Association for The People

Keble: The lowest Administrative unit

Woreda: Administrative units higher than Kebeles and lower than Zone

Awraja: Administrative unit preceding the federal arrangement. Awraja consists of many Woredas. It is equivalent to Zones.

Zone: An administrative unit higher than Woredas. Zones make up regional state

Shimgilina: One of the traditional conflict resolution mechanisms

FDRE: Federal Democratic Republic of Ethiopia

Birr: Birr is an Ethiopian legal tender

RWI: Raoul Wallenberg Institute of human rights and humanitarian law

Kefitegna: Administrative structure introduced during the Military regime. Kefetegna is an administrative unit peculiar to towns/cities. It is equivalent to Woreda.

ToT: Training of Trainers

Tigray: One of the federal units of FDRE

I. Introduction

This discussion paper aims at sharing the experience of APAP gained while implementing the Social Court Judges Project in the Amhara Regional State. The paper, therefore, tries to briefly show the nature of social court, the capacity limitation in the area of knowledge and skills, the strategy for the intervention and the result achieved and problems encountered in the process. The paper concludes by giving a set of recommendations for promoting the functions of Social Courts.

II. Historical Evaluation of Social Courts

Social Courts are quasi-judicial organs having their roots in the traditional conflict resolution mechanism commonly known as "Shimgilina". The latter is an informal and traditional institution run by sage or venerable elderly men who arbitrate conflict arising between individuals within a community. The genesis and historical evolution of Social Courts goes back to the 1947 Ethiopian Revolution. One of the results of the 1974 Ethiopian revolution was " the establishment of urban dwellers association by proclamation No. 47/1975; subsequently proclamation No. 104/1976 was enacted to regulate their organizational structure. Consequently, the urban dwellers were organized at three levels, Kebele, Kefteгна, and central dwellers associations. Based on such organization judicial tribunals at three levels, separate from the ordinary courts were established. They were operating hierarchically from Kebele to Kefteгна and from Kefteгна to central dwellers association." P.111 (Social court in Tigray: Theory and practice, 2001)

"A similar situation was created for rural citizens by proclamation No. 8/1976 which organized the rural peasant associations. The peasant associations were also organized at three levels, Kebele, Woreda, and Awraja peasant association." P.111 (Social court in Tigray: Theory and practice, 2001)

"These institutions continued to discharge their judicial functions until the promulgation of proclamation No. 37/1989. It is at this time, under the socialist military regime the phraseology 'Social Courts' was introduced in the judicial history of Ethiopia." p.112 (Social court in Tigray: Theory and practice, 2001)

One of the objectives of social courts as stated in the preamble of proclamation 37/1989 is "promotion of the direct public participation in the administration of justice with a view to promote socialist legality".

Similarly, under the new federal arrangement too almost all federal units have established their own social courts that administer justice in urban and rural Kebeles.

III. Jurisdiction of Social Court in the Amhara Regional State

Social Courts are hybrids precisely because they are in between the judiciary and executive branches of government. As they are not courts in the proper sense of the term, they are not part and parcel of the court structures, which consists three layers i.e. Woreda, Zonal and Supreme Courts. Indeed, the Federal Democratic Republic of Ethiopia Constitution (FDRE) Art.78 (1) and (2) too has established only three layer courts (supreme, high and first instance courts) both at the Federal and State level. In other words the constitution does not recognize courts other than laid down in Article 78. This clearly indicates that Social Courts fall under the executive branch of government rather than being part of the judiciary.

On the other hand the proclamation No. 20/1997 promulgated for the establishment of Kebele Social Courts of the Amhara National Regional States seems to envisage separation of power at Kebele level and Social Courts as judicial organ. Article 8(1) of same proclamation states "Judges of the Social Courts being presented by the Executive Committee of the Kebele shall be appointed by the council of the same. Besides, same proclamation Article 10(1) confers power to the council to remove Social Court Judges any time" due to the failure to properly discharge his duties when found committing immoral act."

Be that as it may, Social Courts exercise judicial powers. In terms of material jurisdiction they are entrusted with the power of deciding over rights and freedoms, pecuniary claims and other civil matters in the urban and rural Kebeles. Seen from this angle, Social Courts have the characteristics of the Judiciary and enjoy judicial powers.

Article 14(1.1) of proclamation No. 27/1998, a proclamation promulgated to amend proclamation No. 20/1997, bestowed Jurisdiction, to Social Courts, over "Any disputes involving pecuniary claims not exceeding Birr 1500 (one thousand five hundred) or

property claims having an estimated value not exceeding Birr 1500 (one thousand five hundred)."

Moreover, proclamation No. 20/97 Article 14 conferred Social Courts with Jurisdiction over other civil cases including (1.2)"Disputes involving claims of land possessions within the Rural Kebeles ", (1.3)"Disputes involving claims of houses, lands, rents and service charges within the region of the rural Kebele.",(1.4) "Disputes involving claims of rent and service charges not exceeding birr 500 (five hundred), renting to house and lands within the boundary of urban Kebele", and (1.5) "Claims besides on the civil code regarding branches and roots (Art 1219), installation of pipes (Art 1220), right of way (Art 1221), rain water (Art. 1245), and duties of land owners below (Art 1246) "

As far as material Jurisdiction of criminal cases is concerned, proclamation No. 20/97 Article 15(1) bestows powers to Social Courts to hear and decide, in first instance, on petty offences including, Refusal of Legal Tender (734) Failure to Report the Possession of Counterfeit Money (735), Use of Illicit Weights and Measures (736), Use of Expired or Falsified Transport Titles (737), Violation of Provisions on Price Control (745), Damage to Official Publications (757), Abuse of Right (760), Refusal to Lend Assistance to a Public Authority (761),Refusal to Obey an Injunction (762), Control of Arms and Ammunition (763), Carrying and use of Prohibited Arms (764), Alarming Announcements, News or Publications (768), False Alarm (769),Disturbance of Work or Rest of Others (770), Blasphemous or Scandalous Utterances or Attitudes (771),Observance of Official Holidays (772), Measures against Alcoholism (773), Causing Public Scandal While Drunk or Intoxicated (774),Supervision of Inns(775), Scandalous Treatment of Animals(777),Offences Against Other Persons' Safety (778),Failure to Exercise Proper Supervision (779), Control of Traffic At Night (780),Supervision of Buildings (781), Control of Streets and Public Places (782),Control of Fire, Explosive and Dangerous Substances (784), Control of Public Health and Salubrity (785), Regulation of Burials and Cremations (792), **(Principle, General Provision (793)**, Assault and Minor Acts of Violence (794), Concealment of a Corpse(795), Offences Against personal Liberty (796), Infringement of the Right to Private Secrecy (797), Slight Offences against Honor (798), Offences Against Decency and Morality(799),Immoral Soliciting and Debauchery (800),Advertising for Debauchery(801),Publicity Relating to Contraception and Abortion (802),Protection of the Historical, Artistic and Natural Riches (803),Protection of the Flora and Fauna (804),

Protection of Public and Private Property (805),Petty Theft(806), Pilfering and Gleaning (807),Unjustified Possession of Suspicious Articles(808),Failure to Notify the Competent Authority and Concealment of Another's Person's property (809), Defacement or Depreciation of Another Person's Property (810), Damage to Public Monuments (811), Malicious Injury to Another Person's Interests(812),Filching (813),Fraudulent Obtaining of Other Benefits(814),Quackery (815),Unauthorized Collection(816)

In addition, they hear (Art. 15.2) "Any offence under the code of petty offences when referred to it by the Woreda Justice Office." As per Article 16(1.4) of same proclamation Social Courts "Impose penalties for a period not exceeding 15 (fifteen) days, a sentence of compulsory labor which is related to the trade of the offender and useful to the community to be carried outside the regular working hour," or (1.5) "Impose a sentence of confinement not exceeding one month" or (1.6) "Order, when the offences has caused bodily harm and or damage to property, the payments of compensation not exceeding birr 500 (five hundred) when the injured party so claims"

The power vested in Social Courts is so enormous that they are indeed required to know and adhere to the substantive and procedural laws as well as the proclamations for the establishment of Social Courts to conduct fair trial.

IV. Limitations of Social Courts

As already stated, Social Courts are grassroots organs operating both in urban and rural areas. They are run mostly by laypersons that have little or no knowledge about law in general, proclamations No. 20/1997 and No. 27/1998 in particular. In effect, more often than not, they fail to conduct fair trial. They confuse civil cases with criminal offences. They deny appeal rights.

In 1999, APAP jointly with the Amhara Supreme Court and Justice Bureau conducted an assessment in East Gojam and South Wolo. The findings of the assessment revealed that almost all informants of the study "had never had any previous legal training (let alone human rights training); they were not familiar with the regional and federal constitutions; nor did they have particular legal skills."(p.8) (Evaluation Report, 2002) Consequently, the findings of the assessment brought to light that Social Court Judges commit mistakes related to "hearing evidence, delaying decisions beyond 45 days set forth in the proclamation to adjudicate a case, failure to give copies of

decisions for the appellant, imposing sentence of imprisonment exceeding their jurisdiction, and denying the rights to cross examine witnesses”(p.8) (Evaluation Report, 2002) In a nutshell the problems seen among social court judges are: -

- Lack of knowledge of substantive and procedural laws;
- Lack of knowledge of Proclamations No. 20/97 and No. 27/98;
- Lack of awareness of human rights, the federal and regional constitutions, and
- Lack of skill of conducting trial, writing decision, and keeping proper records/files.

V. Consequences of the Limitations

Although Social Courts operate both in urban and rural areas, it is the rural population that benefits much from their service. Compared to the values of property owned by the rural Poor, the power accorded to Social Courts is enormous. Besides settling civil cases including disputes of land possession, they exercise jurisdiction over pecuniary claims worth 1,500 Birr and petty offences that may entail one month of prison sentences. The decisions of social courts thus have an impact on liberty and property of an individual. In line with this, Proclamation No.20/1997 Art.4 (1) has imposed on Social Courts the duty, inter alia, to “Realize the human and democratic rights and benefits specified under the constitutions of the Ethiopian Federal Democratic Republic and the Amhara Regional State.” Accordingly, they are duty bound to respect and protect the right of a person to be heard, the right to cross examine the witness against him, the right to be presumed innocent, the right to appeal...etc. In a word Social Courts are expected to conduct fair trial. This presupposes knowledge of substantive and procedural laws, the Constitutions and the Proclamation for the Establishment of Social Courts.

However, due to lack of the necessary knowledge and relevant skills, Social Court Judges commit mistakes of facts and laws in their decisions. This prompts either one of the adversaries or both to lodge appeal to the Woreda Court. Subsequently, farmers have to travel all the way to Woreda town to appeal for the reversal of decision. This, apart from disrupting their farm activities, expose them to unnecessary expenses that may aggravate their economic problem. As long as there is a wrong decision, lodging an appeal is inevitable. This, in turn, increases the backlog of pending cases of the Woreda Courts and creates not only burden on them but also hinders speedy trial.

As has been mentioned elsewhere in this writing, Social Courts mainly suffer from capacity limitations. Addressing/alleviating the shortcoming of Social Courts is not only in the interest of justice but also do away with the problems that obstruct farmers from economic activity. Moreover, it relieves them from draining their meager resource in an expensive court battle.

VI. Experience in Assessing & Building the Capacity of Social Courts In the Amhara Region

6.1. Conducting Needs Assessment

Obviously, APAP did not conduct a comprehensive needs assessment so as to identify core problems of Social Courts and determine the strategies for its intervention. This is because APAP was well aware that the Social Court Judges in the Amhara Region “had never had previous legal training (let alone human rights training); they were not familiar with the regional and federal constitutions; nor did they have particular legal skills.” Facts on the ground therefore, dictated APAP to abandon the idea of conducting comprehensive needs assessment. Rather APAP focused on the training needs of Social Courts so as to address the prevalent awareness problem. Training was, thus, found to be the most appropriate strategy. APAP and the Regional Agencies (Justice Bureau and Supreme Court) “jointly conducted field level assessment in selected Woredas of East Gojam and South Wolo Zones.” P.7 (Evaluation Report, 2002) only to identify the training needs of Social Court Judges and determine the course contents of the training. The needs assessment helped to:

- Identify the limitations of Social Court judges;
- Enrich the method of presentations;
- Identify real cases which were used to prepare exercise; and
- Have baseline information for evaluation and impact assessment exercise.

6.2. Designing and Preparation of Training Manuals

Based on the findings of the needs assessment a syllabus was prepared and subsequently a training manual was developed. The

manual was designed to cover the courses in five days. Some of the contents of the course were: human rights in general, the Constitutions of FDRE and the region's proclamation No. 20/97 (as amended) with special emphasis on the Jurisdiction of Social Courts, appeal, skills relevant to conducting trial, how to write decisions and keep records, constitutional rights of women and children and non-formal teaching method. In September 1999 a pre-test was conducted to evaluate the appropriateness of the content, the teaching methods and techniques incorporated in the training manual. Based on the feedbacks of the pre-test, the manual was revised

VII. Organizing Training of Trainers (TOT) Workshops

APAP organized two training of trainers' workshops (ToT). The first one was organized in September 1999 for 70 Woreda court Judges and Prosecutors drawn from East Gojjam and South Wollo at Debre Markos town for five days. Similarly, 61 judges and prosecutors selected from North Gondar Zone attended the five-day training program in Gondar town. Trainees were exposed to different participatory training techniques including small group discussion, case study, brainstorming, role play, debate, negotiation, plenary discussion, summary input (lecture). Besides, they were given the opportunity to practice how to run the training workshops for social court judges.

VIII. Organizing Training to Social Court Judges

The Woreda Court Judges and Prosecutors, who received the trainers' training, conducted the training workshops for a total of 1664 Social Court judges drawn from East Gojjam and South Wollo Zones in Dessie and Debre Markos towns from February 14-19,2000. Successive training workshops were also organized from November 2001 up until May 23, 2002 for 1769 Social Court Judges drawn from nearly all Woredas of North Gondar Zone. Between 2000-2002 a total of 3433 Social Court Judges benefited from the training in the region.

IX. Monitoring Activities

With the aim of ensuring the proper execution of the project, APAP, Regional Agencies and Raoul Wallenberg Institute (RAI)) involved in the monitoring activities throughout the project implementation

period. Attempts had been made to reach almost all training sites in order to assess whether or not trainers had used all the training techniques learned during the ToT workshops, and to identify problems seen during the progress of the training as well as to draw experience for future intervention. The findings of the monitoring visits revealed that, except minor irregularities, the workshops were generally successful. Most trainers did their best to employ the different techniques of the popular education methods, which indeed gave trainees opportunity to air their views, discuss their limitations and problematic issues facing them in their works. The monitoring visits conducted in 2000, 2001, and 2002 had crucial importance not only in ensuring the implementation of the project but also in identifying problems that affected the quality and impact of the training.

X. Achievements and Constraints

10.1 Achievements of the Project

- The needs assessment conducted to identify the limitations of Social Court judges helped APAP design need responsive/need-based courses that address the common problems seen among social court judges. The training was, thus, much more problem-oriented than being a theoretical discourse. As regards the relevance of the training, the consultants affirmed "The training of Kebele judges incorporates basic training in domestic laws and procedures. Given that participants were too little informed about the laws and the importance of the procedure for them to exercise their profession, the relevance of such contents is evident" p.19 (Evaluation Report, 2002)
- One of the achievements of the training is the number of appeals has significantly decreased. Consultants who appraised the project have testified this fact. According to them "the number of appeals to Woreda Courts has decreased in the areas where Kebele Judges have received training ... before Kebele Judges would overstep their jurisdiction." P.19 (Evaluation Report, 2002) Also trainees who were interviewed by the consultants during the training said that the training "would facilitate their duties as Social Court judges" and added, " they were aware of their jurisdiction." P.12 (Evaluation Report, 2002)
- The participatory method of teaching employed in the training workshops created an enabling environment for participants to reflect their own view. It transformed them from being passive observant to active participants in the workshops. Using the

- opportunity, “participants were apparently eager to discuss short comings and problematic issues in their works” (p.11) (Evaluation Report, 2002) As the Raul Wallenberg Institute Supervisor remarked, “The participatory training technique used were appreciated and the trainees were praised for their commitment and training skills” (p.11) (Evaluation Report, 2002)
- The other achievement is that the training attempted to address women’s human rights. “Special account was taken of the fact that women suffer from harmful traditional practice in particular in a rural area.” p.20 (Evaluation Report, 2002) As women are the most vulnerable group and victims of the biased decisions of Social Courts, the gender reflection in the training will play significant role in improving women’s situation in the rural area.
 - By organizing ToT program and preparing Social Courts training manual, an attempt has been made to ensure sustainability of the programs. The availability of the training manual and the skilled trainers drawn from the Woreda courts and prosecution offices laid the basis for sustainability of the program. Any time, Regional Agencies can mobilize 131 well-experienced trainers to conduct Social Court judges Training. The consultants too commented that Woreda Court judges and prosecutors “are given a degree of ownership of the process and made to feel responsible for the implementation of the rights taught. The downward multiplier effects of the training process (from Woreda ToT to Kebele training) and the training manuals have a more long lasting orientation.” p.21 (Evaluation Report, 2002)

10.2. Constraints

Some of the drawbacks of the training are: -

- Some of the Social Court judges are illiterate. They neither read nor write. This forced trainers to explain issues orally than using visual teaching aids technique. Apart from this, during the training sessions only those who read and write report back the results of group discussions. This is contrary to the participatory teaching method, which upholds the principle of ensuring the involvement of all trainees.
- Most of the training workshops were conducted in remote Woredas where the necessary facilities to run a workshop are virtually absent. Poor facilities affected the quality and the effectiveness of the training. Most of the training workshops were held in classrooms, offices, and courtrooms. Some of the rooms were furnished with benches. Others were not. In some

- places trainees were forced to sit on the ground during small group discussions. Thus, absence of an auditorium, seats, and blackboards are some of the hindrances that affected the quality of the training.
- During the implementation of the project in February 2002 “the exceptional and unanticipated long traveling to Dessie (South Wollo Zone) from far away villages, reduced the training only to three days.”(P.9) (Evaluation Report, 2002) As a result, in order to cover the course, trainers tended to use lecture method than the participatory adult education techniques
 - The dismissals of trained social court judges from bench by local (Kebele) administration in East Gojam and South Wollo adversely affected the efforts underway to build the capacity of social courts. This, apart from squandering scarce resources, it will affect the subsequent impact assessment.
 - Under representation of women is the major set back of the project. The number of women representatives who attended the Social Court training is insignificant. Out of 3443 participants only 22 women benefited from the training. Like wise, the number of women trainers was below 20. The under representation of women in decision making power, particularly, in Social Courts nurture the perpetuation of gender inequality in the rural area.
 - Obviously social court judges render voluntary service and most of them earn their livelihood by engaging themselves in different trades. Since there is nothing that binds them to stay in office, they could resign anytime.

XI. Measures to be taken to improve Social Courts

Social Courts are grassroots level structures where the bulk of disputes arising among the rural population are lodged. Addressing the capacity limitations of these grassroots structures is in the interest of justice. The following measures are recommended to improve Social Courts.

- Training should be organized to those who have not yet benefited from social court training;
- Refresher/up-grading course should be organized to those who have already received training to create experience sharing fora among Social Court Judges;
- Measures should be taken to stop the arbitrary dismissal of Social Court Judges and ensure their tenure in office;

- In order to overcome the problem of resignation of Social Court judges from office, due attention should be given in the selection and placement of judges. Mechanisms should be put in place that bind social court judges to stay in office up until their term in office expires;
- A policy should be devised and implemented that ensures fair representation of women in Social Courts to tackle the existing deep rooted gender bias in the tradition and address women's problem in rural area;
- Social court training should incorporate course on gender to make judges gender sensitive in their decisions; and
- There should be cooperation among donors and implementing organizations (like APAP) to effectively use resources, avoid duplication of efforts and share experience.

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