

# Study Session 2

## Unit-II. Models of Justice: formal & Informal Justice system

### Study Session Outline

- I. Formal justice
- II. Informal justice system
- III. Aspects that influence Informal Justice System
- IV. Linkages between Formal and Informal Justice System
- V. Informal Justice System Country context (South Africa, Rwanda, Ethiopia, & Somalia)

**Study Session Duration**  
=2 hrs (formal study time).

### INTRODUCTION

You are welcome to your second unit of learning in this module. Under this unit, you will discuss about the distinction between formal and informal justice systems. Moreover, the interaction between the formal and informal justice systems are also covered under this unit. Finally, students are expected to discuss the informal justice systems by taking experiences of some African counties.

Enjoy attending the unit!

### Learning Outcomes of study unit two

Upon completion of this unit students will be able to

- Define and discuss models of justice
- Identify formal and informal justice systems
- Demonstrate linkages between formal and informal justice system

## UNIT 2 -MODELS OF JUSTICE, FORMAL & INFORMAL JUSTICE SYSTEM

Dear learners, we have seen the meaning and notion of justice in the previous unit. Under this unit we are going to see that justice can have different models, the formal and informal justice system. The two models of justice will be discussed under the following topics.

## 2.1 Formal justice

The authorities and power of the Formal mechanism is based on the laws, regulations and procedures often given by the law-making organ such as the parliament in some countries. They are treated as part of the government organs and function under the government structure. Formal justice systems are engaged from law interpretation, such as the courts to law enforcement such as the police and prison administration. (Ricken, 2012).

Courts are often referred as example of the formal justice organs. Different sectors such as the judges, prosecutors and attorneys and other staff that support the proper functioning of courts are also considered as court mandated services. Under the formal justice system, we may also find court alternative dispute adjudication mechanism such as Arbitration and other restorative justice machineries.

The formal justice sector needs continuous improvement by introducing modern and viable ways reforms. Unless there is rapid and continues reforms and improvements in the modus operandi of the formal justice sector, they may not perform as what is expected in serving the interest of justice.

*What type of reforms are required?*

- Equipping the justice sector with updated laws and procedures
- Improve the services of the sector to meet the demands of users
- Provide continues capacity enhancing trainings
- Expand Rights based educations and promotions
- Introducing regular evaluations and monitoring

## 2.2 Informal justice system

Informal justice system (IJS) is defined as justice systems where they derive their authorities from the custom/tradition of the society, and religious principles. The fact that they are informal, it doesn't mean that they are less legitimate. Informal justice systems are equally important with the

formal justice systems in terms of bringing justice, enhance human rights and democratization. Many communities in Africa settle their disputes based on the informal justice systems.

Many states also recognize the informal justice systems under their constitutions. For example, Ethiopia, under its constitution has recognized the religious and customary dispute adjudication mechanisms. Because, significant part of the society in Ethiopia believes that the informal justice system is more legitimate than the formal ones. For example, in *Oromiya* region, the '*Ghada*' systems is more dominant and legitimate. in Southern part of Tigray region, the *Sirat wajirat* adjudicates disputes that might arise among the community. Thus local, or community courts derive their legitimacy from the community and have significant roles in bringing justice, human rights and democracy. (Ricken, 2012).

### 2.3 Aspects that influence Informal Justice System

Reliance over the informal justice system is often motivated by several factors. Among which are the consent of parties. When we say consent, parties agree to go to informal justice because they opted to go to the informal justice organ believing they will get fair decisions.

The outcome of the informal justice system is also another factor that influences informal justice system. Often times the outcome of decisions in the informal justice system is win-win. This encourages and attracts parties to resort to informal justice system.

The other aspect that encourages parties to resort to informal justice system is the perception that formal justice systems are often corrupted compared to the informal justice system. The Economic/cost issues is also another aspect. That means informal justice systems are less costly than the formal justice systems.

Finally, the legitimacy that the community gives to the informal justice systems in some communities is more than the legitimacy given to formal justice systems. In many parts of Africa such as Ethiopia, Somalia, South Sudan and Sudan there are areas where informal justice systems are given more legitimacy than the formal ones. For example, Informal Justice systems has been in place for ages in Somalia, Ethiopia and Sudan. It is used to sort out land disputes, water, grazing land and marriages. It is, therefore, provides legal remedies for disputes between the parties through amicable way. For instance, in Somalia when two clans fight over water, land or camels,

and then the tension resulted in death or injury, things were resolved under the Somalia Xeer by paying material restitution, and moral satisfaction.

## 2.4 Interaction of informal and Formal justice systems

The fact that law and regulation is often provided in order to regulate both formal and informal justice systems can be considered among the points of interaction. In many countries the informal justice sectors are recognised under the respective constitutions. Moreover, some constitutions provide that customary practices and laws that contradict with the constitution are null and void. Such provisions show the interaction between formal and informal justice systems. (Ricken, 2012). In some instances, there are procedures of appeal that link both informal and formal justice systems. That means decisions given under the informal justice systems are referred/appealed to the formal courts and tribunals. In Ethiopia for example, there is a community-based court, known as the social court, from which decisions are appealed to the formal courts. (Awet H. 2006)

## 2.5 Informal Justice System Country context (South Africa, Rwanda, Ethiopia, & Somalia)

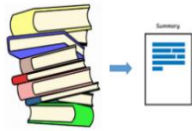
As discussed earlier, informal justice system is developed by the custom and tradition of the community in order to serve the justice demands of the community. All the procedures and substantive decisions are based on the regulatory frameworks that are adopted by the community. The community has expressly or by practice agreed to be bound by the rules and decisions of the informal justice system. In South Africa for example there is a traditional system known as '*Ubuntu*' which serves as traditional or informal justice system on which the community relies in order to resolve conflicts.

In Rwanda also there is a similar informal justice system known as '*Gacaca*'. This traditional dispute settlement mechanism is often conceived as informal justice system, where disputes are resolved at community level informally. In Ethiopia, there are several informal justice systems in different regional states of the nation. For example, in Oromiya region there is a traditional/informal justice system known as '*the Gada System*' This is a comprehensive system that also includes administrative, and political system in addition to the justice system. People in that region still show compliance to the '*Gada*' system in order to resolve their disputes and other administrative issues. In Somalia there is a traditional System known as the '*Xeer*' which has been used as a tool of conflict management and dispute settlement mechanist for ages.

*Dear learner*, can you discuss how informal justice systems function in your locality? And how they interact with the formal justice system?

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## Unit Summary

Dear learner, under this unit, we have discussed the different models of justice. Basically, we have seen the informal & formal justice systems. When we talk about formal justice systems, it is a set of rules and principles which are formally designed by the sovereign organ or entity authorized to give rules and order. Courts of law can be mentioned as government made justice organs which adjudicate disputes. Informal justice systems on the other hand are set of rules values which are developed by the practices of certain community with the aim that those set of customary norms will bind them and regulate their conducts. Informal justice system is common in many African nations including east African nations such as Ethiopia, Somalia, Sudan and South Sudan.

There are areas where the formal & informal justice systems intersect. In many nations informal justice systems are given recognition and validity under the formal legal system of that country. In some other cases, there are procedures by which decisions rendered by informal justice system are referred or appealed into the formal justice system. In both cases we can see the formal and informal justice systems are interlinked.

### Self-Review Questions

1. What does formal justice system mean?
2. How do you explain the notion of informal justice system?
3. Can you give examples of informal justice systems in Your countries? How do they relate with the regular justice system?
4. What is the point where informal and formal justice systems meet?