

The interplay between traditional dispute resolution institutions and the formal justice system in Ethiopia: The case of the *Jaarsa Biyyaa*

*Derara Ansha Roba**

Abstract

Ethiopia has extensive experience with traditional dispute resolution practices that function parallel to the formal courts in various parts of the country. In pluralistic justice systems where state and non-state justice systems operate, how the state responds to the situation is significant. Through a study of cases prosecuted by the *Jaarsa Biyyaa* institution of the Arsi Oromo people, this article explores whether and how traditional dispute resolution institutions (TDRIs) interact with the formal courts and the impact of this interaction, if any, on the culture of the Arsi Oromo people. In line with that, the article analyses primary data gathered through two months of ethnographic fieldwork in Negele Arsi town in Ethiopia and from secondary sources of previous scholarly works. The findings show a shared interest in jurisdiction (predominantly over criminal matters) and competition between the *Jaarsa Biyyaa* and the formal courts. Moreover, there is also a practice of cooperation and complementarity between the *Jaarsa Biyyaa* and the formal justice system (FJS) where each recognises the other in practice. For the Arsi Oromo people, such mutual recognition is an opportunity to maintain the clanship organisation. More importantly, mutual recognition promotes conflict management in the community, which serves as a valuable lesson for the country. Other than the opportunities that arise, there are constraints such as the interruption of *Jaarsummaa* (elders reconciliation), broken social bonds and enmity.

Keywords: Traditional dispute resolution institutions, *Jaarsa Biyyaa*, legal pluralism, Arsi Oromo people, Ethiopia

* Derara Ansha Roba is a Lecturer of Law at Dilla University, Ethiopia.

1. Introduction

With its diverse ethnic groups, Ethiopia has extensive experience in traditional dispute resolution practices that operate throughout the country. Traditional dispute resolution institutions (TDRIs) operate on the basis of community values, norms and beliefs. TDRIs play a significant role in addressing disputes and maintaining cultural practices. Customary laws that are deeply rooted in society comprise intricate practices which govern daily life (Yntiso, 2014:41). However, according to Ghebretkle and Rammala (2018:325), African TDRIs encountered serious impact in two ways: “Cultural hegemony (as a result of colonialism) and legal transplantation (without adequate attention to traditional systems).”

Even though Ethiopia was never colonised by European countries, it did not spare TDRIs from enduring negative foreign impacts as the country transplanted Western laws. The modernisation process of the Ethiopian empire under the leadership of Emperor Haile Selassie (1930–1974) was a major move that excluded customary laws through the wholesale transplantation of Western laws. Within this project, the emperor had aimed to establish a comprehensive legal framework that governed any legal subject matter by excluding TDRIs (Pankhurst and Assefa, 2008:4). Following the transplantation of foreign laws, the customary institutions and practices were ousted officially.

The impact of exclusionary measures transcended the subsequent administration of the military-socialist government (1974–1991). Sirna (2012:2) stated that the wholesale legal transplantation from Western countries that began in the early twentieth century had a long-term impact on the underdevelopment of Ethiopia's customary legal system and traditional governance institutions. At the policy level, the exclusionary approach continued until the coming of the post-1991 regime. However, the advent of the 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution) recognised legal pluralism by allowing the existence of multiple justice systems. According to the constitutional framework, in addition to a formal justice system (FJS), both religious and customary informal justice systems can serve as dispute resolution mechanisms on matters related to personal and family disputes. The parties involved need only consent as provided under article 34(5). Moreover, as per article 78(5), the FDRE constitution asserts the possibility for recognition or establishment of religious and customary courts.

Although the legal framework of the country allows both formal courts and customary institutions for dispute settlement, jurisdictions of TDRIs are limited to disputes related to family and personal matters as per article 34(5). This means adjudicatory practices of TDRIs on other matters such as crime are not recognised. This reflects the monopolisation of criminal matters under the FJS, in the rubric of uniform application of criminal laws in the entire country.¹

Despite such legal limitations, however, local communities still bring cases (including criminal matters) to TDRIs (Epple and Assefa, 2020:11). This unveils the gap in the implementation of the state legal system that emerged from the relationship between the (foreign) laws and social realities on the ground, which trace back to the wholesale legal transplantation in the 1950s. Explaining this gap, Zeleke (2010:63) states that the state legal system ideology is primarily derived from Western legal philosophy. This philosophy is heavily influenced by an individualistic orientation and does not correspond to the strong social orientation on the ground where it is implemented. This is evident as the majority of the population primarily uses TDRIs to settle their disputes (Assefa, 2020: 43). This echoes the extent of the gap between the state legal system and the social realities. The constitutional limitation and practical constraints on TDRIs imply the continuation of early rhetoric towards customary laws and institutions in which foreign laws transplanted from Western countries have become a validity check for what the justice system means in terms of disregarding the deeply embedded multicultural realities.

There are previous scholarly works that have touched upon the notion of legal pluralism and customary dispute resolution institutions in the Oromia regional state.² However, they accorded emphasis to exploring the role of TDRI or wider recognition for TDRI. They did not give much emphasis to the interplay between TDRIs and FJS and the potential impact on the culture of the community. To fill the gap in the literature, this

¹ Despite the silence of the FDRE Constitution regarding the criminal mandate, recent legal measures have shown that the criminal justice system reconsiders the place of alternative mechanisms to settle criminal cases. The legal documents, namely The Criminal Justice Policy of 2011, The Proclamation for the Establishment and Recognition of Oromia Region Customary Courts No.240/2021 and The Draft Criminal Law Procedure and Evidence Code, have slightly opened space for TDRIs on criminal matters.

² See Abdella and Amenew, 2008; Abera, 2020; Assefa, 2020; Degefa, 2020; Terfa, 2018; See Fita, 2021; Wourji, 2012; Sirna and Temesgen, 2020.

article approaches the issues from the context of the TDRI by focusing on the *Jaarsa Biyyaa* institution, to explore whether and how TDRI interact with FJS and the impact of this interaction, if any, on the culture of the Arsi Oromo people.

The study employed a qualitative research method (interviews, observation and a focus group discussion) to grasp the lived experience of the participants. Fourteen participants were interviewed, of which seven participants were key individuals who work in the *Jaarsa Biyyaa*, three individuals (disputants) brought their cases to the *Jaarsa Biyyaa*, two individuals worked at Negele Arsi Town Culture and Tourism Bureau and two legal professionals were from First Instance Court. Moreover, a focus group discussion (FGD) comprised a group of five key participants who have many years of experience in the *Jaarsummaa* and one legal practitioner. In addition, the article includes two cases observed during the fieldwork.

The second section of the article briefly discusses the theoretical framework that guides the study. The third section gives an overview of the Arsi Oromo people and the study area. Based on the data gathered from fieldwork and previous literature, sections four, five and six discuss the composition, mode of operation and objective of the *Jaarsa Biyyaa* institution, and its interplay with the FJS. Finally, the article concludes by suggesting the way forward based on the results of the study.

2. Theoretical framework: Legal pluralism

Theoretically, legal pluralism is understood as the co-existence of multiple legal systems in a particular set of social fields (Merry, 1988; Moore, 1986; Pospisil, 1981). Here, the notion of multiple legal systems includes already existing customs and traditions that have been regulating societal behaviours (Merry, 1988:870; Perrin, 2017:45). Griffiths (1986:3) comprehends legal pluralism as a concept that opposes the idea of legal centralism, which refers to an “ideology where the law is and should be the law of the state, uniform to all persons, exclusive of all other law, and administered by a single set of state institutions.” Legal pluralism can be perceived as a benchmark to reconsider the connection of law to society and vice versa (Merry, 1988:873). Affirming this, Degefa (2013:143) underlines that “legal pluralism is a mirror of a society which is ethnically, religiously, culturally and legally diverse.” Such a conceptual framework helps to explore the relationship between these two justice systems: formal

and informal practical realms. The existence of such a relationship may consist of various features.

One such feature is competition between the state and non-state justice systems. Non-state justice systems hold significant acceptance among the community, such as customary dispute resolution institutions found in Africa (Swenson, 2018:444–445, Tamanaha, 2008:400). The competitive feature is prevalent in that the non-state justice systems are rooted in shared customs, culture or religious beliefs (Swenson, 2018:444). The second feature is combative as both the state and non-state justice systems are antagonistic, and each undermines the other. This feature predominantly exists when the state intends to explicitly repress the non-state actors (Forsyth, 2007:73) and the non-state actors reject the foundational philosophy underlying the state legal system (Swenson, 2018:443).

The third feature is cooperativity where there is an atmosphere of cooperation towards the shared goal through the acknowledgement of the state's legitimacy (Swenson, 2018:445). The non-state justice actors retain their autonomy and authority over disputes but are willing to work together with the FJS. The fourth feature of the pluralistic justice system is complementarity. According to Swenson (2018:445), the complementarity feature exists when the state justice system allows alternative dispute resolutions (ADR), such as mediation or private arbitration. Swenson (2018:445) further asserts that it is through the state's permission that the complementarity feature exists and that non-state justice systems function under the umbrella of the state justice system.

A noteworthy point in line with the possible features of the pluralistic justice system is the state's response to the situation. The manners in which the state responds enables us to see the relationship between the two justice systems. Importantly, this plays a significant role when it comes to TDRIs as they mirror the culture of particular people. As Connolly (2005:242–243) articulates, state response to TDRIs should be underscored with respect for the norms of TDRIs and, essentially, the state must devise an explicit policy to address the desired social and cultural objectives of TDRIs. Nonetheless, it is important to recall that there are no uniform or clear approaches that a state develops or implements (Connolly, 2007:249, Forsyth, 2007:72).

3. Arsi Oromo people and the study area: An overview

Arsi Oromo is the branch of the Oromo people who settled in the Oromia region of Arsi, West Arsi and Bale Zones in Ethiopia. The Oromo belong to the Cushitic language-speaking peoples, who are known to have lived for thousands of years in what is today Ethiopia (Hassen, 1994:77). Afan Oromo is their language. Arsi Oromo people are organised according to kinship structure stranded from small units (families) to extended groups (clans). The kinship consists of *Mana* (house), *Warra* (family), *Aanaa* (household), *Balbala* (descent group) and *Gosa* (clan). Such an organisation serves two main functions or objectives: marriage and controlling mechanisms. Marriage is arranged based on the clan and marriage between members of the same clan is not allowed. Kinship serves as a controlling mechanism as each member of a clan is accountable to the other. In the Arsi Oromo community, an individual is known by his or her clan background among the public rather than his or her name. An individual is viewed within the totality of his or her clan and bears a responsibility to the clan members and vice versa.

The group structure in terms of clan ignites the lesser space for individual existence. This underscores the prevalence of commonality in different facets of social life. In terms of geographical settings, most of the time members of the clan live in the same village. Within this belief, the Arsi Oromo people regulate individuals' actions by taking collective responsibility and maintaining their social as well as cultural existence.

The Arsi Oromo society has various TDRI for family and community issues, such as the *Jaarsa Biyyaa*, *Ilaaf Ilaame*, *Gumaa*, *Qaallu* and *Siinqee*. These institutions have been serving society for several years and still play a significant role in dispute settlements alongside state-based institutions (formal courts). This study focuses on the *Jaarsa Biyyaa* TDRI. It was selected because of its wider usage among the society and its function with regard to formal courts.

The study used the data gathered through fieldwork between July and August 2022 that was conducted in the key area of West Arsi Zone: Negele Arsi town. Negele Arsi town is among 11 *Woredas* (districts) in the West Arsi Zone of the Oromia Region in the southeastern part of Ethiopia. It borders Adami Tulu-Jido, Kombolcha *Woreda* in the north, Munesa *Woreda* in the east, Kofele *Woreda* in the south and south-east, Shashemene *Woreda* in the south-west and Siraro *Woreda* in the west. The town is about 231km south of Addis Ababa, the capital city of

Ethiopia. It is a crucial place where key participants are found, such as *Abba Gadaa*³, chief elders, *Hayyuu* (councillors), *Qora mataa* and *Qora Miilaa* (investigators/examiners), and *Abba Murtii* (judges), who are knowledgeable with *Seera* (laws) of Oromo and are experienced in the TDRI of *Jaarsa Biyyaa*.

4. The *Jaarsa Biyyaa* traditional dispute resolution institution⁴

Jaarsa Biyyaa or *Jaarsa Araaraa* are among the major TDRI of the Arsi Oromo people. *Jaarsa* refers to “elder” and *Biyya* refers to “country or community”, which together translates as community elder. This institution operates through the mechanism of *Jarsummaa* (elder’s conciliation). In the culture of the Arsi Oromo people, the status of being an elder is followed by a responsibility to intervene and resolve disagreements in situations of conflict or quarrel. The institution of the *Jaarsa Biyyaa* operates through the disputants’ voluntary decision to bring their case before it (Abdella and Amenew, 2008:170; Terfa, 2018:15). Elders may also initiate the reconciliation process if, for instance, one of the elders sees or hears about the case. Hence, through these two mechanisms, the *Jaarsa Biyyaa* institution commences the *Jaarsummaa* process.

The elders who mediate the disputants are selected on their personal qualities, such as honesty, truthfulness and knowledge of customary laws and values of the community (Abdella and Amenew, 2008:170). The selected elders play different roles; one is selected as *Abbaa Murtii* (judge) and two as *Qora lamaan* (investigators). The community brings several cases to the institution, ranging from civil matters to commercial and criminal matters, both at the collective and private levels (Terfa, 2018:16).

4.1 The philosophical underpinning of dispute in the Arsi Oromo people and the jurisdiction of *Jaarsa Biyyaa*

In the Arsi Oromo people, a dispute is understood as a disconnection of social bonds between individuals who used to live together and support each other, both in good and bad times (*Qora mataa*, 2022). The potential

³ *Abba Gadaa* is a head of *Gadaa* which is a traditional governance system of the Oromo people.

⁴ Quotes provided in this part are translated from the Afan-Oromo language and the translation is that of the author.

sources for disputes among Arsi Oromo include disputes over land, grazing lands, marital affairs and personal issues. The *qora mataa* explained that dispute is a contrary or vice act that fuels negative externalities, such as separation and revenge thoughts in the community. To settle a dispute, it is common to appeal to the *Jaarsa Biyyaa* to resolve the problem and restore peace. The community reacts to the dispute by saying “*Jaarsi Biyyaa hin jiruu*” (roughly translated, are there no community elders?). In an interview with the *hayyuu* regarding the role of *Jaarsa Biyyaa* in addressing disputes, he stated the following:

Jaarsa Biyyaa denotes knowledge; knowing how to solve problems without using force to find out the truth. It is a process whereby elders, without taking a side, handle the cases and carefully identify where the problem is to settle the issue. Hence, when disputants bring their cases before *Jaarsa Biyyaa*, it indicates that they are seeking peace (*Hayyuu*, 2022).

Elders also perceive their role as a means to maintain social bonds and sustain social cohesion, rather than litigating between two individuals. The reconciliation procedure in the *Jaarsa Biyyaa* institution lies on the principle of collective responsibility in which families and clan members of disputant parties are actively involved. The rationale behind collective responsibility, according to the *qora milaa*, is that issues arising among individuals echo the whole clan of members, which may cause serious consequences (*Qora milaa*, 2022). One of the elders summarised this in the following proverb of the Arsi Oromo people: “*Balaan baalaan ka’e biyya fixa*” (roughly translated, a fire sparked by a single leaf will burn the whole village).

4.2 The mode of operation and objective of *Jaarsa Biyyaa*

4.2.1 Truth as a path to reconciliation

The *Jaarsa Biyyaa* institution of the Arsi Oromo people functions according to two pillars, namely *dhugaa* (truth) and *araara* (reconciliation). The procedures in the *Jaarsa Biyyaa* institution, called *Jaarsummaa* (elders’ reconciliation), begin with identifying the truth. Based on the truth, the reconciliation process follows. Both are interdependent and inseparable elements of the institution. In an interview with *qora mataa* regarding truth in the *Jaarsa Biyyaa* institution, he stated the following proverb: “*Fixxaan nama hin fixu, dharatu nama fixa*” (roughly translated, it is the lie that causes infliction not the

willingness to bear the responsibility). It speaks to the belief of the Arsi Oromo people about the consequences of lying during the dispute/conflict resolution process.

Truth is a significant element in reconciling disputing parties as it heals the hearts of the victims (Elder, 2022). Once the truth is found, reaching the reconciliation will be easy (*Qoraa milaa*, 2022). The institution has a process in which this significant element of truth is reflected during the *Jaarsummaa*. The first is through blessings that emphasise speaking the truth and denying the lie. Elders commence by blessing everyone taking part in the process. When the blessing begins, the rest of the attendants repeat the last word of the blessing, which conveys acceptance. Below are the words of blessings I have observed while attending the land dispute case:

Dhugaa si dubbisi (may God help you speak the truth): *dubbisi* (speak)

Dhara si jalaa kuffisi (may God keep away a lie from you): *kuffisi* (keep away)

Itti si buusi (may you fulfilled): *buusi* (fulfilled)

Irraa si hanbisi (may you endure): *hanbisi* (endure)

Wal-beekkumsa sii kenni (may God let you know each other): *kenni* (allow)

Oromo tokkicha godh (may God unite the Oromo): *godhi* (be it)

Waan biyyaa hin taane lafa godhi (may God destroy bad thoughts from the community): *godhi* (be it).

All the elders on the *Jaarsa Biyyaa* bench are the partakers of the blessing and it is only when they are done with the blessings that the hearing procedure commences. The belief behind opening the procedure with the blessing underlies the idea that God is the source of truth and that He helps everyone speak the truth (*Qora mataa*, 2022). Apart from the blessing session, anyone on the bench who speaks first swears an oath by saying the following: “*Waaqni dhugaa na haa dubbisu, dhara narraa haa fageessu*” (roughly translated, may God help me speak the truth and keep away a lie from me). According to an elder consulted, the other means of ascertaining the truth is by holding *Alangee* (a whip-like object made of leather), which is a symbol of truth and agreement.⁵

⁵ Speeches made holding *Alangee* refer to an agreement on ideas and decisions given are considered just decisions (*Hayyuu*, 2022).

4.2.2 The reconciliation function of the *Jaarsa Biyyaa*

During a conversation with the *hayyuu* regarding the main objective of the *Jaarsa Biyya* institution in deciding disputes, he said that the Arsi Oromo culture revolves around maintaining good neighbourliness through reconciliation. The ultimate end of the *Jaarsummaa* process is to reconcile the disputants. Exploring the practice of the *Jaarsa Biyyaa* as an indigenous conflict institution, Terfa (2018:16) states that the significance of the institution is for the harmony of the Oromo by maintaining social relations and obstructing the potential of envy and hatred. The *qora mataa* reiterates that the main task of the parties involved in the institution, be it the *Abbaa murti*, *qora mataa*, *qora miilaa* or *elders*, is to reconcile disputants. That is the objective of the institution. The judge, legal practitioner and official at the Negele Town Culture and Tourism office reiterated the reconciliation and restoration role of *Jaarsa Biyyaa* to maintain social relations, which includes cases that are already decided by the formal courts.

5. The interplay between the *Jaarsa Biyyaa* and formal court

5.1 Inconsistency in objective between the *Jaarsa Biyyaa* and the formal courts

The inconsistency in objective between the *Jaarsa Biyyaa* and the formal courts emanates from the notion of dispute, the parties involved in the dispute resolution mechanism and the ultimate end of settling the dispute. In the case of the *Jaarsa Biyyaa*, the notion of dispute surpasses the individual and embodies the largest social structure. The necessity to solve the problem and restore social life is the ground for the jurisdiction of the *Jaarsa Biyyaa*. Thus, any type of dispute, ranging from minor personal conflicts to serious criminal acts, is viewed as a problem against the Arsi Oromo people in general and calls for the *Jaarsa Biyyaa* to intervene.

The significant elements of dispute resolution processes in the *Jaarsa Biyyaa* institution of the Arsi Oromo people consist of peculiar attributes of TDRIs, such as truth and reconciliation to restore disputes between parties and their families (Abera, 2020; Enyew, 2013; Melton, 1995; Worku, 2020; Yntiso, 2020). Truth, which is manifested through oath, blessings and carrying *Alangee* (symbol of truth), serves to heal the hearts of disputants and is believed to lead to reconciliation and restoration. Partakers in the institutions are aware of the consequences of lying, which stems from their

traditional beliefs. For instance, the dangers of lying before dispute resolution are believed to cause infliction upon the offender.

As mentioned earlier, the close kinship ties within the Arsi Oromo community lead to the active participation of families and clan members in resolving disputes. By collectively engaging in reconciliation, they successfully uphold social harmony and settle disagreements. These common attributes of TDRIs enable disputants and participants to actively participate in the reconciliation process, which reflects a sense of communal ownership of the institution (Conolly, 2005:243).

The formal court procedure, on the other hand, emphasises individual responsibility and involves only the disputing parties. It is based on an individualistic approach aimed at providing justice to the victim by punishing the wrongdoer. Unlike the *Jaarsa Biyyaa*, a procedure for collective responsibility is missing in the FJS and, as a result, the voices of families and clan members are not considered. The retributionist orientation of the FJS does not necessarily provide a way to promote reconciliation either during or after the trial stages. It therefore relies on a zero-sum principle rather than the win-win principle of the *Jaarsa Biyyaa*. In addition to the stringent procedure of the FJS, the FJS is also marred by delay and high cost. Altogether, the prevalence of litigation rather than reconciliation, retribution rather than restoration and a stringent trial procedure rather than a participatory procedure ignites the tension between the FJS and the *Jaarsa Biyyaa*. Such inconsistency in practices between the two justice systems indicates the competitive feature of legal pluralism as both systems promote retention of autonomy.

While there is inconsistency between the two justice systems, it is important to recognise that the drawback of one system is the strength of the other. Despite the shortcomings outlined above, the FJS is commended for its certainty, sanctions and efforts to uphold and advance human rights. TDRIs also have drawbacks that include discrimination against certain groups in society, such as children, women and minorities, as well as elders' tendency towards partiality within one's clan.

5.2 The practical implications of the inconsistency of objectives

One of the main concerns of the elders was the procedures of the formal courts that cause envy, revenge and competition to win cases and break family bonds. Their concern emanates from the significance of kinship

organisation for the identity of the Arsi Oromo people and its role as a fountain on how disputes should be comprehended and settled. According to the *Abba Gadaa*, the FJS, which was founded on a winning and rival mentality, has had a significant impact on the Arsi Oromo community. He added that individuals are rushing to legal counsellors for divorce or to win civil or criminal cases rather than seeking peace through the *Jaarsa Biyyaa*. When disputants were asked why they brought their cases to the *Jaarsa Biyyaa*, a common reason was to settle peace and restore the relationship. Recalling the effect of a formal court decision over the disputed land among her family, one of the participants stated that, “the restoring effect of *Jaarsa Biyyaa* is significant to mend the broken bond of disputed families.” (Disputant, 2022) Below is the summary of the case.

5.2.1 Case 1. Land dispute: Enmity among family members following the formal court’s decision vs. the reconciliation and restoration role of the *Jaarsa Biyyaa*

The issue began following a quarrel between cousins over a plot of land (900 km²) found in Negele Arsi town. Initially, the land was held by the father and his son. The father gave a portion of the land (240 km²) to one of his brothers and kept the remaining portion (660 km²). The father, who bequeathed his land to his brother, passed away after some time. Following his death, both the son of the deceased and his uncle continued holding their portion and there was no issue. However, the dispute over the land began following the death of his uncle who had received 240 km² from his father.

The case was initiated by the descendants of the deceased who alleged that their father’s portion was 900 km² rather than 240 km². They provided a document that proved a land holding from the land administration office of Negele Arsi town.⁶ Similarly, the son alleged that he had a document of proof of the land holding which had been prepared while his father was alive. He had been living and investing in 660 km² for several years. To this end, the son instituted a claim to the First Instance Court where the court, after several years, ruled in favour of the descendants of the deceased. Following the decision, serious conflict occurred between both families, to the extent that some of them were imprisoned for committing physical assault and burning properties, such as houses found on the land.⁷

⁶ They finally admitted that it was an inappropriate act intended to gain undue benefit from the land during the truth-finding process.

⁷ The descendants of the deceased took a serious physical measure when the counterpart

The appeal was lodged to the West Arsi Zone High Court, and it was pending while the *Jaarsummaa* was carried out. Although the case was initially brought by the families of the disputants, the disputants were not willing to attend the *Jaarsa Biyyaa* bench.

Following the refusal to attend the bench, the elders assigned three elders from the clan of the disputants to convince the parties to submit for the reconciliation process of the *Jaarsa Biyyaa* and report the feedback in one week. Unfortunately, the feedback was the same for the second time. After the second attempt, both parties agreed to settle their case through the *Jaarsa Biyyaa*. However, the disputants remained reluctant to cooperate with the elders and some of them left the bench during the third gathering. To this end, the elders discussed and passed the decision through the *Abbaa Murtii*.⁸ According to the decision, the reconciliation process would be conducted over the disputed land and each party should gather there where reconciliation was finally reached.

The above case illuminates the inconsistency between the two justice systems: the drawbacks that are prevalent in the FJS in terms of finding the truth and restoring peace among the disputants. It is also evident how disputing parties were involved in a further conflict that led to the destruction of property and physical assault. The case highlights how the shortcomings of the FJS affect the family and clan bond among the Arsi Oromo community when it comes to reconciliation and restoring clan bonds. It is noteworthy to underscore that in the legal pluralism context, the existence of the discrepancy fuels the clash between the two justice systems, which has an impact at both the individual and group levels (Tamanaha, 2008:401).

The impact is seen in the manner in which the lack of restorative elements in the formal court procedure, for instance, affected the disputants' family relations over land. The outcome thereof challenged the *Jaarsummaa* process, which further clarified the impact. One can also recall how the disputant family members rushed to the *Jaarsa Biyyaa* due to the

refused them the path to the land (660 km²). As a retaliation, they burnt a house built over the land owned by the holder of the largest portion (the son). This resulted in a fresh criminal charge which led to imprisonment for five years of two of their members who were found guilty.

⁸ A few days before the reconciliation, the elders, along with selected representatives from each disputing party, communicated with the disputants on separate days to find the truth.

escalating enmity. In this regard, the *hayyuu* shared his experience in the *Jaarsummaa* and noted how challenging it was to conduct reconciliation while cases were pending or had been concluded in the formal courts. He added that this concerns the elders since the absence of reconciliation and restoration prompts further conflict among the members of the clan.

The *Abba Gadaa* also shared the same concern and emphasised how such a situation constrained the Arsi Oromo tradition of reconciliation and social cohesion. Needless to say, their concern was not against the state legal system as an attribute of competitive legal pluralism. In this type of legal pluralism, TDRIs do not necessarily disregard the authority of the state justice system, despite their position of retaining autonomy (Swenson, 2018:444). Hence, as long as the legal measures are manoeuvred and practically enforced, the co-existence of the justice system poses a constraint on the practice of the *Jaarsummaa* and social cohesion.

5.3 The shared interest over jurisdiction

The notion of dispute among the Arsi Oromo society justifies the mandate of elders to settle all types of disputes, regardless of their nature. The limitation of jurisdiction on criminal matters by the state legal system is practically unaccepted by the *Jaarsa Biyyaa*. Elders hold a strong position on the capability of the institution to handle any disputes. They argue that they have to maintain the traditional knowledge of addressing disputes and have to continue settling all types of cases, despite the limitations. However, this is not without challenges from the FJS, particularly on serious criminal matters such as homicide.

Under the Ethiopian legal system, crimes related to murder are exclusively entrusted to the formal courts. However, according to the Arsi Oromo culture, in cases of serious crimes such as murder, the murderer runs to the clan elders or *Awaata* (ritual representative) or to the *Abbaa Gadaa* to address what occurred with the intention of settling the issue through the *Jaarsa Biyyaa*. The murderer cries out to the elders saying, “*harki na xurayee jira*” (my hands are dirty). It is the obligation of the elders to respond, according to the Arsi Oromo culture. The strong social acceptance of the *Jaarsa Biyyaa*, on the one hand, and the formal court’s exclusive mandate over murder crimes, which excludes the *Jaarsa Biyyaa*, on the other, has created tension between the two justice systems in practice. Below is the summary of a homicide case to demonstrate this tension.

5.3.1 Case 2. Homicide: Conflict between the formal court and the *Jaarsa Biyyaa*

The incident took place at *Wendo*, one of the districts in the West Arsi Zone. The case began when an individual from the *Doodaa* clan killed an individual from the *Daawwee* clan. The deceased was alleged to have abducted the killer's sister for marriage without her parents' consent. Following the murder, the families and clan members of the killer appealed to the *Jaarsa Biyyaa* elders to settle the case through the traditional mechanism. Once the case had been forwarded to the elders, the elders went to the victims' families to beg them to settle their case through the *Jaarsa Biyyaa* institution. The families of the victim agreed to the elders' proposal and the *gumaa*⁹ procedures were set in motion. At the preliminary stage of *gumaa*, the elders questioned the defendant¹⁰ about whether he admitted or denied the commission of the act saying "*Amantu dhibbaan, waakkattu jilbaan*" (if you admit, bring one hundred cows; if you deny, bring your evidence). Since the defendant had already admitted to commission of the act, the *Abbaa murti* ordered his clan to pay one hundred and ten thousand birr¹¹ to the victim's family.

Based on the decision, the defendant's clan began to mobilise their members to contribute the money and paid part of the decided amount. While they were in this procedure, however, the police arrested the suspect and the public prosecutor filed a charge in the formal court. Following this action, families and clan members of the defendant instituted a complaint to the *Jaarsa Biyyaa* alleging that they had gone through extensive procedures to settle the issues and had discharged their responsibilities according to the tradition. Being concerned with the incident, the elders approached the police and the public prosecutor to beg them to release the defendant. They alleged that they had already decided on the case and on the process of restoring peace among both families. They did not succeed, despite frequent attempts, and the case remained pending in the formal court.

⁹ A traditional dispute resolution mechanism of Oromo people refers to compensation to the victim/s families or conducting rites to cleanse or purify a murderer following the homicide.

¹⁰ In homicide cases, the killer does not physically attend the *gumaa* process until the cleansing procedure is accomplished and reconciliation is conducted.

¹¹ Although the tradition is to provide one hundred cows or camels, currently, the payment may also be done in cash.

This particular case is a remarkable case that triggered questions among the clan members and families of the defendant. First, they alleged that the incident violated the Arsi Oromo traditional dispute resolution principle known as “*gaalee lamaan ana hin qabin*” (do not tie me with two ropes). According to this traditional principle, it is inappropriate to punish someone twice for a single crime. Based on this claim, the defendant’s clan blamed both the victim’s family and the *Jaarsa Biyyaa* elders for failing to interrupt the formal court procedure. The *Jaarsa Biyyaa* elders blamed the families of the victim for cooperating with the formal court while knowing the case had already gone before the *Jaarsa Biyyaa*.

The issue of trust and respect for cultural values was a topic frequently mentioned on the bench. In the interview with one of the disputant parties (the father of the murderer), this scenario quashed his trust to bring cases to the *Jaarsa Biyyaa* and it also severed the relationship they had with the victim’s clan. He added that, as a clan, they had appealed to the *Jaarsa Biyyaa* because it was their culture that had functioned for generations. The clan members requested the *Jaarsa Biyyaa* elders to order the victim’s family to return what they had received and interrupt the reconciliation process.

In the formal system, the judge of the court stated that, practically, *gumaa* served to settle the civil matter by restoring peace among disputants. The individual punishment proceeds in the formal courts were of public interest. Furthermore, he asserted that practice indicated that *gumaa* lacked the deterring effect of future criminals. The majority of the elders, however, argued that *gumaa* was a punishment rather than a procedure to settle civil matters only. Moreover, they asserted that the justice sector was not willing to allow them to conduct *gumaa*. One of the elders asserted that it was through the determination of the elders that *gumaa* had been carried out, despite the resistance approach from the FJS being prevalent.

As can be observed from the *gumaa* case, the reconciliation process between both clans, which had been conveyed by healing the hearts of disputing parties, had relapsed to enmity due to the interruption of the FJS. This hampered the institutional objective (reconciliation and restoring social relations) of *Jaarsa Biyyaa* among the Arsi Oromo communities. This was evident in the consequence of interrupting the *gumaa* process following quarrels among the disputants’ family and clan members which led to enmity. The attempts to reconcile while the cases were pending before the FJS did not succeed fully due to the constraints.

Furthermore, as the defendant was under the custody of the FJS, this served as a factor for the denial to conduct *gumaa*. The key participants and the legal practitioner (2022) explained the consequences of not conducting *gumaa* while being under the custody of the prison administration results in further revenge, either on the families or the killer after his release.

Such parallel stands of both justice systems entail the core attributes of legal pluralism. Tamanaha (2008:375) has observed such dynamics in which the co-existence of the two justice systems consists of possibilities such as, among others, jeopardy over the individuals or groups and clash over jurisdiction. From the users' perspective, the prevalence of shared interest over jurisdiction may pose a constraint as it could result in double punishment (Abera, 2020:127, Tamanaha, 2008:375). In an interview with the author, the judge (2022) shared incidents of criminal cases in which individuals were served double punishment claiming that they had already settled the issue through *Jaarsummaa*. He further argued that maintaining the rule of law was the obligation of the court.

6. Practice of mutual recognition: Complementarity and transfer of cases

The commonly known practice regarding the pluralistic justice system predominantly revolves around the contradiction and conflicts between the formal courts and TDRIs. Despite the differences in their procedure and objective of addressing disputes, in practice each system recognises the role of the other as a gap that can be used to fill in some incidents.

6.1 Recognition of TDRIs by the formal court

Although the formal courts are expected to refer civil cases to alternative dispute resolution mechanisms, not much is said about the collaboration between the two justice systems. However, in practice, the police and public prosecutors invite elders to the examination stage to find the truth during serious criminal cases, such as homicide. This implies the collaboration of both systems in running the criminal justice system. Explaining the practice of cooperation, the *qora mataa* stated the following:

The formal justice personnel such as the public prosecutor and the police invite the elders to find the truth in serious criminal cases, namely homicide. He added that due to the elders' reverence among the Arsi Oromo community and the belief that disputants do not lie to

the elders, the formal justice system seeks their collaboration in the process of truth-finding (*Qora mataa*, 2022).

The involvement of elders plays a significant role in filling gaps frequently observed in the formal courts, such as false accusations and the potential for revenge. During the FGD, the *Abbaa Murtii* underlined the necessity of such practice in the community where clanship organisation is crucial to maintain social cohesion. Likewise, the judge (2022) mentioned experiences where the formal court opens the space for the elders to collaborate in the process of addressing serious criminal cases. Although the role of the elders is to find the truth, they also endeavour to reconcile the families and clans of the disputed parties. This practice entails the recognition of TDRIs in criminal matters in practice and indicates the complementarity between both justice systems. It can be argued that this is an efficient mechanism to address social reality: serving justice and maintaining social cohesion.

In short, the collaboration can be considered an opportunity for the community when it comes to securing the rule of law by punishing the wrongdoer, and simultaneously accommodating mechanisms for the reconciliation of disputing parties, which is central to hampering revenge killings and maintaining the social bond. However, there are situations where the collaborations are against the legal system of the country. According to the *hayyuu*, there were incidents where serious criminal cases were fully transferred to the *Jaarsa Biyyaa* after the truth-finding process. The homicide cases settled through reconciliation and payment of the *gumaa* process discontinued the pending criminal procedure before the FJS. Explaining the outcome of such a reconciliation process, the *hayyuu* stated the following:

We (elders) request the courts/police that we have already settled the issue through *Jaarsummaa* (disputed parties also request the court/police to discontinue the investigation/trial despite the varying responses). In some cases, the police consider our decision after carefully observing the case through meeting both with disputants and *Abbaa Gadaa* and elders. On the other hand, there were times when the police/courts rejected our request. (*Hayyuu*, 2022).

The outcome of the reconciliation, thus, is not predictable and depends on the responses of the FJS personnel.

6.2 The practice of transferring cases to the formal courts

The most common practice of transferring cases is mainly one route where the formal court transfers civil and minor cases to the TDRIs or interrupts the procedure. However, there is also experience of transferring cases to the formal court in practice. Describing the instances where the *Jaarsa Biyyaa* transferred cases to the formal courts, the *qora milaa* stated the following:

Although the *Jaarsa Biyyaa* has the mandate to settle every type of case, there is an evolving trend where elders are transferring cases to the formal court. If the case is a land conflict conveyed by violent inter-clan conflict, we notify the police to handle the case even though the disputants consented to bring the case to us (elders) (*Qora milaa*, 2022).

Moreover, during the FGD, the *hayyuu* said:

The *Jaarsa Biyyaa* institution has no police force to arrest or take measures to stop those who engage in violent conflicts over land disputes. Moreover, there are the ones who frequently commit the same wrongful act despite the reconciliation ... even in the case of homicide, we have witnessed those who committed further murder crimes after the *gumaa*. It is inevitable to see the intervention of formal courts in such incidents (FGD, 2022).

Those who are not willing to submit for reconciliation and choose violence or repeat the wrongful act shall bear further responsibility from the FJS. Moreover, *Abbaa murtii*, while explaining the challenges in the implementation of decisions, indicated that these types of disputants are dishonest to the culture and values of Arsi Oromo and intended to spoil the social relation.

7. Conclusion and the way forward

With its traditional attributes and mode of operations, the *Jaarsa Biyyaa* coexists with the formal courts. There is a discrepancy in terms of the notion of dispute, the objective of dispute settlement, the mode of the dispute settlement procedure and the participants involved in the dispute settlement procedure. The acceptance and significant role of the *Jaarsa Biyyaa* among the Arsi Oromo community, on the one hand, and the legal limitation, on the other hand, contribute to practical challenges. Such hindrance is magnified when it comes to the traditional perception of

settling disputes: maintaining social cohesion. The procedures of the formal courts that fuel rivalry, competition to win the case, envy, revenge-seeking and breaking the existing social bond are the prevalent constraints that concern the elders. Both the land dispute and homicide cases discussed in this article are practical examples that depict the constraint.

The co-existence of the *Jaarsa Biyyaa* and formal court comprises various features, such as competition over serious criminal cases. It has caused the interruption of *Jaarsummaa* by the formal justice actors, such as the police and public prosecutor. Such practice is accompanied by conflicts between the two justice systems. The co-existence also consists of complementarity, such as the practice of formal courts working with the elders in the investigation of serious criminal cases. In addition, there is a practice of transferring certain cases from the *Jaarsa Biyyaa* to the formal court. Even though the formal courts are expected to priorly refer civil cases to alternative dispute mechanisms, in practice, the reconciling elders transfer cases to the formal court.

The complementarity and cooperative practices are opportunities for the Arsi Oromo community and their traditional practice. The practice of mutual recognition in which both justice systems acknowledge their gaps and seek to cooperate, or complement is a positive action. It promotes the traditional practice of the *Jaarsa Biyyaa* institution and enhances the link between the two justice systems. Although the *Jaarsa Biyyaa* plays a significant role in addressing disputes through the culture and norms of Arsi Oromo, this article does not argue that there is no defect in the institution. Even though constraints are borne from the formal justice mechanisms, the *Jaarsummaa* also has limitations in terms of lack of serious measures to deter future crime, inability to control violent disputes, lack of gender inclusiveness and lack of enforcement mechanisms.

Based on the findings of the study, certain points need further consideration. The first is the need to underscore the cultural perspective while recognising and working in cooperation with TDRIs. TDRIs are not a mere complement to formal courts for the sharing of caseloads. Thus, any existing or future legislative measures that recognise or establish TDRIs should consider the cultural autonomy of the institutions and close supervision by the FJS. Second, it is important to ensure that formal justice personnel, such as police, public prosecutors, judges and legal practitioners, as well as the elders, are aware of the need to cooperate.

The awareness creation of the need for cooperation plays a significant role in minimising the practice of conflict and disregard of legitimacy on both sides. Finally, apart from transferring cases from formal courts to TDRIs, adopting laws that enable TDRIs to transfer cases to the formal courts could create a smooth relationship. A lesson can be learned from the cooperation of the *Jaarsa Biyyaa* in transferring cases to the formal court. The collaboration between the formal courts and the *Jaarsa Biyyaa* has significance in filling the gaps on each side. The findings of the study demonstrate that collaboration enhances conflict management within the community. Most importantly, the role of the *Jaarsa Biyyaa* in mitigating conflicts highlights the significant contributions of TDRIs in Ethiopia to addressing justice and maintaining peace. ❖

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