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Author(s)	Hebo, Mamo
Citation	African study monographs. Supplementary issue (2005), 29: 125-135
Issue Date	2005-03
URL	https://doi.org/10.14989/68438
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Type	Departmental Bulletin Paper
Textversion	publisher

LAND DISPUTES SETTLEMENT IN A PLURAL 'INSTITUTIONAL' SETTING: THE CASE OF ARSII OROMO OF KOKOSSA DISTRICT, SOUTHERN ETHIOPIA

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ABSTRACT Land tenure policies are highly contentious political issues in Ethiopia. Most of the debates dwell on the public/state versus private land ownership options. At present, although 'public' land ownership is the only officially recognized one, people may also acquire land through inheritance in the framework of customary rules. One of the outcomes of co-existence (but without integration) of the state instituted land rights and the custom-backed ones is the proliferation of disputes over land. This paper attempts to focus on such land disputes and mechanisms of land disputes resolution, taking the case of Kokossa district of Oromia Regional State in Ethiopia.

Since 1991, disputes over land have been rampant in Kokossa district. These disputes appear before plural settings for the subsequent settlement. These plural settings can generally be categorized into two: formal, which refers to structures and associated rules that represent the state at various levels, and informal, that refers to institutions (with associated norms) that can be grouped under such generic terms as indigenous, customary or local.

In this paper, I briefly discuss the current state of land disputes in Kokossa district and answer the following questions: (1) How do people employ, and sometimes manipulate, the plural settings for disputes settlement? (2) How do these settings for dispute settlement interact? (3) What does the existence of these plural dispute settlement settings mean to the disputants and to the processes of dispute settlement?

Key Words: Land disputes; Dispute settlement; Formal settings; Informal settings; Plural institutional setting; Arsii Oromo.

INTRODUCTION

Land tenure and policies related to it are contentious political issues in Ethiopia. However, most of the debates dwell on public (or state) versus private land tenure policy options (Dessalegn, 1994; Haile, 1998; Pan African News Agency, 2000; Hussein, 2001). In these debates, the issues of customary land rights rarely appear, although these rights have been robustly operating side-by-side (and with wide-ranging consequences) with the state granted land rights. Furthermore, disputes over land among peasants, which usually occur as a result of a collision between contradictory and competing land rights, have rarely been given the attention they deserve. This paper focuses on land disputes and the subsequent processes, institutions and rules involved in land disputes settlement in Kokossa district.

Kokossa District is located in northwestern Bale zone in a triangular corridor between Arsii and Sidama zones. The district is inhabited by the Arsii Oromo

people who follow a patrilineal descent system and a patrilocal residence pattern. Among the Arsii Oromo in the research area, territorial clans (*gosa*) are the largest level of social organization. Marriage is exogamous, at least at clan (*gosa*) level. Livelihood strategies include livestock raising, enset (*Ensete ventricosum*) cultivation and cereal crops farming, in that order of importance.

I have been conducting fieldwork in this district on issues related to land tenure (changes and continuities), land disputes and mechanisms of land disputes resolutions since 1999. In the course of gathering information on these issues, I kept the use of questionnaires to less sensitive issues after I found out that people were very reluctant to provide information on land tenure and related issues or they just provided ambivalent responses. This is mainly because of the fact that land rights are very sensitive political issues in Ethiopia.

In order to understand the process of dispute settlement and the intense negotiations, I attended dispute settlement gatherings and followed every process involved. I recorded and analyzed what the disputants presented to the dispute settlers to vindicate and substantiate their claims and how dispute settlers reach decisions that can be acceptable to the disputants. Thus, most of the information included in this paper has been gathered mainly through ethnographic methods: observation and extensive case studies. This was substantially complemented by interviews of the key actors in land disputes, including the disputants, dispute settlers, leaders of peasant associations (PA) and district administrators.

THE CURRENT STATE OF LAND DISPUTES: ISSUES SINCE 1991

I. Extent of Land Disputes

Disputes over land are rife in Kokossa district. Local people's description of the situation of land disputes, particularly after the collapse of the Derg in 1991, depicts a sort of 'state of war of all against all'. My preliminary survey in 2000, almost 10 years after the collapse of the Derg, produced a picture that would suggest widespread disputes over land since 1991. Out of sixty household heads interviewed, over 52 percent had experienced land disputes since 1991. All informants knew someone who had experienced a land dispute in their locality and all rated land as the most frequent cause of dispute among peasants in the area (Mamo, 2001).

Moreover, the figures obtained from the district administration office reveal the extent of the problem. According to the 1994 census, Kokossa district had a population of over 86,000, while the total number of households were reported to be 16,961 (CSA, 1996). In the same year (1994), over 1931 disputes were reported to the Kokossa district administration office. When we consider the total number of land dispute cases brought to the attention of the district administration office for the past ten consecutive years (1992/93-2000/01), the argument that land disputes remain the major problems in Kokossa became

Table 1. Land Disputes vis-à-vis All Other Disputes in Kokossa District (1994/95-2000/01)

Category of disputes	Office handling the disputes	Number of cases	%
Civil cases	District court	740	5.0
Criminal cases	District court	793	5.4
Land dispute cases	District admin. Office	13,190	89.6
Total		14,723	100

Source: Kokossa district court and administration office

apparent (Table 1).⁽¹⁾ Between 1992/93 and 2000/01, over 16,902 disputes were brought before the district administration office. The disparity between land dispute cases versus all other cases (criminal and civil cases) is vividly apparent from figures presented in Table 1 above.

Two points deserve mention. First, land dispute cases that were brought before the district administration office for seven consecutive years (1994-2001) were almost ninety times more than all cases of civil and criminal origin brought before the district court for the same period of time. In fact, only a fraction of land dispute cases reach the district administration office, while a substantial number of them are dealt with at peasants' association level or by local dispute settlement institutions. Second, land disputes had been dealt with by a political office and treated as an administrative matter rather than as a legal case to be dealt with by the district court. This dissociation of land disputes from courts of law and their association with political or administrative structures is a clear indication of the link between land and politics. Thus, in their current forms, land tenure disputes are 'political disputes' that need political solution.

II. Types of Land Disputes

In the foregoing discussion, attempts have been made to establish the fact that land disputes were rife in the district. The following discussion is based on actual land dispute cases that have been collected and subsequently analyzed. The categorization of land disputes in Table 2 is based on what the disputants presented to the dispute settler as the origin of their dispute.

From Table 2, it is evident that 55 percent of the land dispute cases involved customary rights versus 'political rights.' 'Political rights' are acquired through the state structure, mainly the village administration or peasant association. Thus, the 'political' versus customary land conflicts were cases in which one of the disputants claimed customary rights over the land in the framework of patrilineal descent and the other 'political rights' in the framework of government rules or directives. Those who claimed 'political rights' over the land initially acquired it through land redistribution.

Disputed 'political rights' occurs when both disputants claim 'political' rights over a plot of land. In all of the five land dispute cases presented in Table 2, the disputants did not claim ancestral rights over the disputed lands. In fact,

Table 2. Categories of Land Dispute Cases according to their Origin

Category of disputes	Number of cases	%
Customary right claim vs 'political right' claim	35	55
Disputed 'political rights'	5	8
Inheritance	7	11
Land sale	3	5
Grazing right sale	6	9
Boundary of communal land claim	8	12
Total	64	100

Source: Own fieldwork, 2001 and 2002

the disputed lands were located in lineages (*balbbala*) or clans (*gosa*) territories other than that of the disputants. These types of land disputes emerge when the land allocated to a given individual by former members of the PA committee is re-allocated to another person by the current (new) PA committee. The former committee's decisions could not be proved since no registrations are made when plots are allotted to individuals. Nor are there any maps that show boundaries of the land a committee allotted to a given individual.

Other types of disputes in Table 2 are of 'traditional' types. Boundary claims and disputes that arise from inheritance of family lands are the common traditional land disputes. These kinds of disputes do exist, but seem infrequent though the number of cases here is not large enough to be conclusive.

Although small in number, land dispute cases arising from land sale and grazing rights' sale deserve attention. Disputes arising from land sale reveals the existence of the practice, which is illegal from the government's point of view. Grazing right sale is a new phenomenon which seems to be an adaptive strategy to deal with a number of constraints. Outright land sale is constrained by both state regulation and the custom of the people in the area. Thus, selling the grazing right for a limited season provides two advantages. First, it avoids outright land sale. Second, it serves as a livelihood strategy for those who have the land but lack either cattle to graze or labor to put the land under cultivation.

III. Land Disputed versus Land Use Types

The present study reveals the presence of correlation between land disputes and land use types. There are more disputes over grazing lands than agricultural lands. Lands which were not under actual cultivation of crops tended to be more disputed than those under effective cultivation of crops (Table. 3). A modest conclusion that can be drawn from these observations is that farm fields provide relatively better defined rights to the holders than grazing lands.

However, the fact that the land is under cultivation does not provide abso-

Table 3. Land Dispute Cases by the Types of Land Use

Land use type	Number of cases	%
Farm field	18	28
Grazing	33	52
Partly grazing and partly farm field	13	20
Total	64	100

Source: Own fieldwork, 2001 and 2002

lute guarantee of ownership that would prevent land disputes from occurring. It simply gives a relatively better power of negotiation over the land since the 'investment' the current user made on the land for instance, converting virgin land into *maasaa* (farm field) gives one more power of negotiation. This power of negotiation could even be more pronounced if the land is significantly improved, through manuring, for instance, to be locally classified as *maasaa bilchaataa*, literally the 'cooked farm field'. Dispute settlers usually find it difficult to 'uproot' someone from such 'cooked' farm fields. Studies of particular land dispute cases and the processes of dispute settlements suggest that the better one improves a plot of land the more power of negotiation one will have over such a plot. Thus, although the cases are not large enough to be conclusive, one modest argument that can be made is that the so-called tenure insecurity does not necessarily hinder land improvement or better land management.

SETTINGS FOR LAND DISPUTES SETTLEMENT

Among Arsii Oromo, the term *waldhabbi*⁽²⁾ (or *waldhaba*) is derived from an adjective *wal* (each other) and a verb *dhabuu* (to miss something, unable to find something after some attempts have been made to search for it). Thus, *waldhabbi* can literally be translated as 'to miss one another' or 'to misunderstand one another'. In this paper, the concept of dispute is analyzed in the context of what the Arsii Oromo farmers express as *waldhabbi* in general and *waldhabbi lafa* (land dispute) in particular. Thus, if *waldhabbi* stands for a dispute, the role of the dispute settlers is to clear up misunderstandings between the disputants or to let the disputants 'find one another'

When land disputes between individuals or groups of various sizes occur, it has to be resolved either by the formal structures or the informal institutions for dispute settlement. These categories, however, are not mutually exclusive. Interaction and sometimes overlap is visible between the two settings in the process of dispute settlement. Each of these dispute settlement settings again can be divided into different levels. Fig. 1 depicts the plural settings for land dispute settlement. Arrows that originate from the land dispute show that disputants may take their cases before plural settings for land dispute settlements. Cases may also go back and forth between these plural settings, which have been indicated as case borrowing, case giving, and joint dispute settlements.

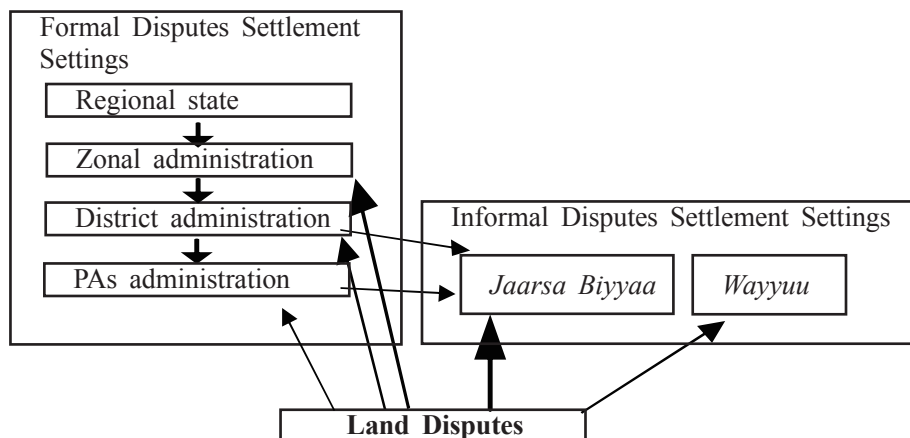


Fig. 1. Schematic Representation of Plural Levels for Land Dispute Settlements

I. The Formal Dispute Settlement Settings

To begin with the formal level, disputes over land rights can be dealt with either by the chairman of the peasants' association or go up to the office of the district administrator. In fact, land disputes can potentially climb up through all the administrative hierarchy shown in Fig. 1.⁽³⁾ However, land dispute cases rarely go above the district level, as it is costly to do so, both in terms of money and time. Even when land dispute cases reach the zonal administration or regional state levels, such cases are frequently sent back to the district administrations. Consequently, most of the land related disputes that reach the formal structures are dealt with at PA and the district administration levels in that order.

However, neither the PA nor the district administration are judicial structures. They are rather administration structures. The judicial institution at the district level is *Mana Murtii Aana'a* (the district court). At the PA level, it is the *Koree Hawaasummaa Seera Murtii* literally 'The Village (PA) Social Affairs Court' (it used to be called *fird shangoo* [tribunal council] under the Derg) that deals with civil cases. But disputes over land right never appear before these conventional judicial structures.

The association of land with politics and of land disputes with political/administrative structures has one major repercussion. Since the PA administrators frequently change, there is little, if any, continuity between what the former administration did and what the incoming one would do. It appears that decisions made by the PA administration would no more be binding once the office changes hands. Whenever there is a new administration, particularly at PA and district administration levels, disputes that were dealt with by former authorities could appear as new cases. Thus, one could argue that land disputes would never be definitively settled when handled by administrative offices. Indeed, that is what the result of case studies from the field suggests.

II. The Informal Dispute Settlement Settings

At informal level, land disputes can be dealt with by *jaarsa biyyaa*⁽⁴⁾, which literally means 'elders of the country'. The elders are not a fixed group of people, as they can be composed of any member of the community. Nor are they necessarily of old age. The term *jaarsa*, which literally means 'elderly', is used more as a symbol here. Among the Oromo, elderly members of the community are respected for their knowledge of customary laws and are perceived as symbols of wisdom, peace and reconciliation. It is because of this symbolic significance of the elderly that any person who is involved in dispute settlement and reconciliation process is called *jaarsa* regardless of his actual age.

The *jaarsa biyyaa* are of two types. One category is what I would like to call volunteer *jaarsa*. This kind of *jaarsa* settles disputes between individuals or groups through its own initiatives. It intervenes either on the spot when and where a dispute occurs or takes the matter up afterwards. The other category is what I call solicited *jaarsa*. As the name implies, this is *jaarsa biyyaa* that either of the disputants approaches and solicits to get help to settle the dispute. However, the two categories of *jaarsa biyyaa* are not mutually exclusive. Volunteer *jaarsa* frequently join dispute settlement settings of the solicited *jaarsa*. And also solicited *jaarsa* may be invited to join dispute settlement settings already initiated by volunteer *jaarsa*.

The *Wayyuu*, an expert of the traditional belief system (Gemetchu, 1996), is another informal setting for dispute settlement. *Wayyuu* settles disputes through ritual practices. In fact *Jaarsa* are part and parcel of *wayyuu's yaa'a* (assembly) and disputes are settled through discussions based on *seera ambbaa*.⁽⁵⁾ *Wayyuu* performs the rituals only if attempts at reconciliation fail because of the failure of either of the disputants to abide by *yaa'a wayyuu's* decisions. With the above brief overview of the formal and informal settings for land dispute settlements, let us now consider how these settings for land dispute settlements interact.

III. The Formal and the Informal Settings :Case Transfer and Other Areas of Interaction

The *jaarsa biyyaa* (both volunteer and solicited) frequently handle land dispute cases transferred to them from the formal structures for dispute settlement. This can be done when (1) a defendant solicits the *jaarsa biyyaa* to handle the case being handled by the formal structure; (2) the *jaarsa biyyaa* takes the initiative (without being invited by either of the disputants) to reconcile the disputants by taking the case back from a formal structure; and (3) a formal structure invites (solicits) the *jaarsa biyyaa* to take the case and settle it outside the formal settings.

Now let us look at each of these circumstances. First, why would a defendant solicit the *jaarsa* to take the case from the formal structure so that it could be settled through customary mechanisms? People usually seek the help

of *jaarsa* when they find themselves in an unfavorable position. A farmer, who was seeking the intervention of solicited *jaarsa* in a case already presented to a PA chairman, put the rationale for his action as follows.

These days, you can win any case if you go to government offices. But you need to have money. With money you can buy two things: the court favor or the *daanyaa* (bribe the judge) and/or the witness or the *abaayii* (those who give false testimony for money). When you consider this, it is cheaper to buy land than to go to litigation over land (Name withheld, Haroshifa PA, January 2003).

This interview and other similar cases from the field study demonstrate that pursuing a land dispute case through formal means is costly. This is due particularly to the widespread practice of *abaayii*, who may be called ‘*professional liars*’, and rampant bribery. In a setting for dispute settlement dominated by bribery and false testimony (*abaayii*), people could easily be punished for a wrong they never committed or could be deprived of their own property. As one elderly farmer in Bokore PA puts it, “As long as *abaayii* [false testimony] and *gubboo* [bribery] exist, truth will never prevail in offices.” That is why people tend to prefer indigenous institutions for dispute settlement to formal ones.

But why do some people take their cases to the formal structure for dispute settlement while others prefer to go to indigenous settings? First, let’s distinguish two ways through which land disputes could appear before the formal settings. A disputant may take the case directly to the formal setting (usually first to the PA and then to the district administration) or to *jaarsa biyyaa* and then to the formal setting.

Discussions with informants generally indicate that it is individuals with weak grounds for their cases that usually prefer formal settings for dispute settlement to the indigenous ones. These people tend, as one informant put it, to “buy truth with money”. As a result they directly present their case to the formal setting bypassing the informal ones. This implies the rampancy of *abaayii* and *gubboo* in the offices that deal with land disputes. Informants are also of the opinion that those individuals who acquired the disputed land through land distribution by formal state structure (usually conducted by PA administration) tend to take their case to the formal dispute settlement mechanisms. This implies also that when the disputants claim customary right over a plot of land, which in turn implies relatively comparable rights to the land, they tend to take their case to the customary dispute settlement setting. Thus, discrepancy in the means of land acquisition is also one of the factors that influences individuals’ decisions to take their case before either dispute settlement setting. The plurality of land acquisition mechanisms gave rise to the plurality of land dispute settlement.

Some individuals, however, take their cases directly to the formal structures with a different implicit objective, that is, to “give weight to the matter”, as one informant put it. Such individuals may expect that the case will be with-

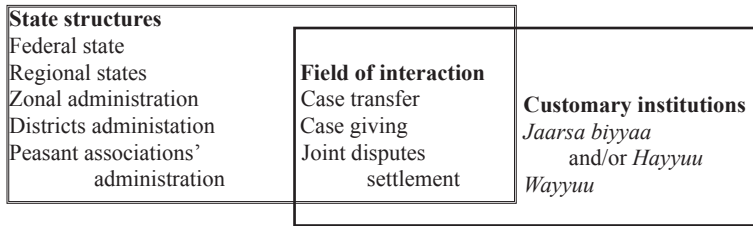


Fig. 2. Interaction between Formal and Informal Dispute Settlement Settings

drawn by the *jaarsa* for settlement outside the formal structure. The fact that the case has already been registered at the formal office means that the plaintiff could put pressure on the defendant. Thus, formal dispute settlement structures are implicitly used as sources of intimidation. The second procedure is to take a land dispute case first before the informal institutions, and if that attempt fails, then to the formal structures.

Indeed most disputes may be settled in a gray area which I call a field of interaction in Fig. 2. At the same time, what may appear amazing is the extent to which people use each upper level of state structure as an intimidating factor to the lower ones. People take their case to the district administration knowing that it will be referred back to the peasant association. They take it to the zonal administration office with full knowledge that they will eventually come back home not with an official from the zonal administration office but a piece of paper that refers the case back to the district. Even at local level, they take the case to the peasant association administration with the full knowledge that elders will take the case from the office or the office itself will transfer the case back to the *aradaa* (close kin or minimal lineages) to settle it.

SUMMARY AND CONCLUSION

Land disputes have been proliferating in Kokossa district particularly since 1991. Most of the disputes resulted from the collision of contradictory rights (the state versus local) to land that operate simultaneously but without integration. When they occur, disputes over land can be settled either through formal (state structure) or informal (indigenous institutions). The existence of two settings for land dispute resolution reveals not only the phenomenon of 'legal pluralism' but also the plurality of the means of land acquisition. Land dispute cases can also go back-and-forth between the formal and informal settings. More interestingly, many of the disputes that happen to reach the formal dispute settlement levels come back to the indigenous dispute settlement institutions through the practice of 'case transfer' or joint dispute settlement by the formal and informal dispute settlement settings.

In customary dispute settlement settings, the conventional procedure involves three steps: *dubbii dubachuu* (to talk or discuss about the matter), *dubbii fixuu* (to settle the dispute/matter) and *araarsuu* (to reconcile the disputants). The

third component of this procedure is the most important aspect of indigenous settings for dispute settlements. It is one of the major merits of customary dispute settlement settings over the formal ones. But this important component of indigenous setting for dispute settlement is totally missing in the formal ones. This renders land disputes settled by formal structures incomplete. When reconciliation of the disputants is not a component of the dispute settlement process, land disputes are only partially settled. Indeed, several of the case studies suggest that the winner only wins the 'battle' not the 'war'.

The two settings for dispute settlements interact, sometimes positively, at other times negatively. Positive interaction occurs when each seeks the help of the other in order to settle disputes, while negative interaction is visible when a dispute settled by one setting is reversed by the other, which is particularly the case in the formal structure. This negative interaction not only undermines the role of indigenous institutions for dispute settlements, but also duplicates the dispute settlement process. Thus, it would be advantageous both to the formal structures (which are usually too stretched to deal with all their areas of responsibility) and to the disputants, if the decisions related to land disputes by the indigenous institutions are fully recognized and respected. Recognizing and strengthening the power of indigenous institutions for dispute settlement would also help alleviate the problems of bribery and false testimony that currently characterize the formal settings for dispute settlement.

NOTES

- (1) Figures in Table 1 were obtained from the office of Kokossa district administrator and the district court. In the case of the district administration there were no ready-made numerical figures on land disputes. Rather, we counted all the applications submitted to the administration office by year and by peasant association to compile the figures. The district court, on the other hand, had registered numerical data being categorized as criminal and civil cases and by year.
- (2) *Waldhabbi* should be distinguished from a rather related term *wal-loluu*, which literally means to fight with each other. *Wal-loluu* is a combination of *wal* (each other) and *loluu* (to fight). Its noun form is *lola*, which means fight or war. While *wal-loluu* implies physical violence, *waldhabbi* does not necessarily imply so. In short, all *wal-loluu* are consequences of *waldhabbi* but not all *waldhabbi* lead to *wal-loluu*.
- (3) The thickness of the arrows that radiate from the 'land dispute' indicates the proportion of land disputes that most likely appear before different settings for land dispute settlement. Broken arrows that run from district and PAs administrations to *jaarsa biyyaa* indicate that some of the disputes that appear before formal dispute settlements settings may come back to the informal settings through case borrowing by the informal settings to the informal ones or joint dispute settlement by the formal and informal settings. Arrows that connect each level of formal structure from above show that disputes that appear before formal structures at each higher level may be referred back to the immediate lower level of state structures.
- (4) Local people use the terms *jaarsa*, *jaarsa biyyaa* and *jaarsa araaraa* interchangeably. I also use these terms interchangeably throughout this paper.
- (5) In *afaan Oromo*, *seera* refers to a law, be it Oromo law, state law or other people's law.

But the word *amba* is somewhat confusing unless understood contextually. It can be employed in a number of different ways. *Amba* means non-kin or non-relative when used in the context of *amba-fira* or *amba-aanaa* dichotomy (see Takilee, 2003). In other circumstances it can be used in *amba-diina* (Oromo-enemies) dichotomy. Again *ambaa*-Amhara/Sidama can be used to distinguish Oromo from non-Oromos. The term *amba* also refers to 'nation' (Tilhaun, 1989); in our case to the Oromo nation. Thus *seera ambaa* is used in this context to distinguish Oromo laws from non-Oromo ones. Arsii frequently make references to and make distinction between *seera ambaa* versus *seera mootummaa* (people's law versus state laws). I use *seera ambaa* in this paper as "people's law" (as distinguish from state law) or Oromo nation's customary law of which Arsii Oromo customary law is a part.

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