

A Note on the Interaction between Formal and Indigenous Institutions for Land Disputes Settlement: The Case of Arsii Oromo, Southern Ethiopia

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Abstract

Dispute over land is one of the major problems people in the study area are currently facing. In this note I will briefly discuss mechanisms of land dispute resolutions among the Arsii Oromo people of Kokossa district. When disputes over land occur, there are two settings for land dispute settlement. One is the formal (state) structure for dispute settlement while the other is the informal¹⁾ (indigenous) institution for dispute settlement. This note focuses on describing and analyzing these two settings for dispute settlement. First, I briefly discuss how the two settings for dispute settlement deal with land disputes. Then I make an attempt to illustrate how they interact and what the interaction means to the disputants. I also present a summary of an actual case of land dispute to illustrate how the two settings for dispute settlement work and interact. Finally, I discuss the practice of case 'borrowing,' which is one facet of their interaction.

I. Introduction

This short note is a part of my research that

focuses on three interrelated issues: land tenure (changes and continuities), land disputes and



Photo 1. Bokore village, the center of my fieldwork in the northern part of the district

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1) Throughout this note, informal institutions are interchangeably used with indigenous institutions.

mechanisms of land dispute resolution. I have been conducting fieldwork on these issues among the Arsii Oromo people in Kokossa district, southern Ethiopia, since 1999.

The Arsii Oromo follow a patrilineal descent system and a patrilocal settlement pattern. They practice mixed agriculture. The landscape of the district is dominated by grazing land dotted by enset (*Ensete ventricosum*) fields. But one can easily observe variations in the land use patterns between the southern and northern parts of the district. The southern part of the district predominantly relies on livestock raising and cultivation of enset plant with little involvement in the production of cereal and other crops. The northern part of the district, on the other hand, combines livestock raising and enset cultivation with significant production of crops such as barley, wheat, maize and potatoes. The difference in land use pattern has mainly emerged from

the differences in the agro-ecological settings by which the respective sections of the district have been influenced. The southern part of the district has been influenced by the enset cultivating Sidama ethnic group while the northern part is more influenced by the cereal crops producing Arsii Oromo communities.

The information employed in this note has been gathered mainly through ethnographic methods: informal interviews, participant observation and extensive case studies. I kept the use of formal interviews and 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 because of the fact that land rights are very contentious political issues in Ethiopia. As a result I have chosen to focus on informal interviews and studies of actual cases of land disputes. I have managed



Photo 2. Land use patterns in the district²⁾

2) Photo 2 above, shows land use patterns in Kokossa district. The photo on the left hand side shows land use pattern in the northern section of the district with enset crop on the top followed by maize field, then by intentionally enclosed strip of grazing land in the middle and a wheat/barely field at the bottom. The other photo (right) shows the typical land use pattern in the southern part of the district where enset is the main staple and grazing land marks the outskirts of enset field.

to establish a rapport with the local people employing the advantage of being a native speaker of the local language, Afaan Oromo (Oromo language).

II. Categories of Dispute³⁾ Settlement:

The Formal Structures and the Informal Institutions

First a few words on the term ‘dispute’ as it is being employed among Arsii Oromo. The term *waldhabbi*⁴⁾ is a combination of an adjective *wal* (each other) and a verb *dhabuu*, which means, to miss something, to be 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.’ I couldn’t find any word other than *waldhabbi* that could stand for the term ‘dispute’

in Afaan Oromo. Consequently, in the subsequent sections when I discuss disputes, I am dealing with what 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 dispute settlement institutions 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 structures⁵⁾ or the informal institutions for dispute settlement. These categories, however, are not mutually exclusive. Interaction, and sometimes overlaps, is visible between the two settings in the process of dispute settlement. Each of these dispute settlement settings again can be divided into

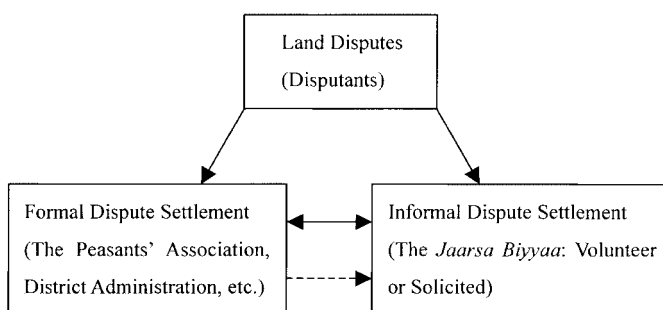


Fig. 1. Process of dispute settlement

3) Throughout this note, dispute is interchangeably used with land disputes, while mechanisms of dispute settlement is interchangeably used with mechanisms for land disputes settlement.

4) *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*.

5) Formal structures throughout this note mainly refer to the district administration and peasants’ association administration.

different levels.

Figure 1 depicts how disputes appear before different levels of dispute settlement institutions. Arrows that originate from the land dispute show that one of the disputants takes his/her case either to the formal structures or to the informal institutions. Cases may also go back and forth between the formal and informal structures as the double pointed arrow indicates. The arrow with broken line indicates instances of ‘case borrowing’ (which will be explained in detail later) by informal institutions from the formal ones.

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 (PA hereinafter) 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 figure 2. 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 administration. 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 Gandaa* 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 rights never appear before these conventional judicial structures.

Such a scenario begs for some attention. Why do disputes over land rights fail to appear before the PA social affairs court and the district

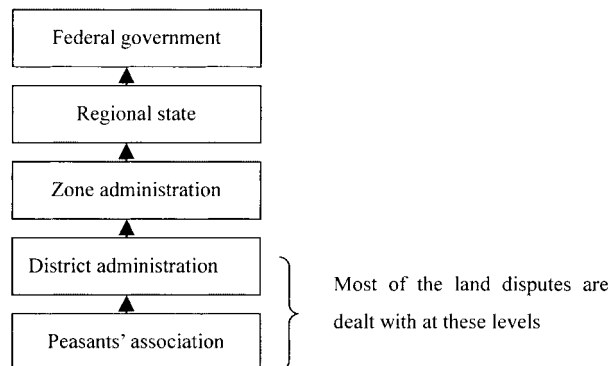


Fig. 2. Ethiopian administration structure

court? This has to do with the current status of land in Ethiopia. As stipulated initially in Ethiopia's land reform of 1975 and reaffirmed in the constitution of 1994 and then by the Federal Rural Land Administration Proclamation of 1997, land is public property (or state property). By extension, it is the state, not the actual users, the peasants, who have the ultimate legal ownership over the land. Thus, land disputes and issues related to land tenure are currently treated as administrative issues not as legal ones.

The Informal Dispute Settlement Settings

At informal level, land disputes can be dealt with by *jaarsa biyyaa*,⁶⁾ 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 also of two sorts. One category is what I would like to call volunteer *jaarsa*. This kind of *jaarsa biyyaa* 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 joins dispute settlement settings of the solicited *jaarsa*. And also solicited



Photo 3. A scene of indigenous dispute settlement

6) Local people use the term *jaarsa* and *jaarsa biyyaa* interchangeably. I also use these terms interchangeably throughout this note.

jaarsa may be invited to join dispute settlement settings already initiated by volunteer *jaarsa*. With the above brief overview of the formal and informal settings for land dispute settlements, now let's consider how these settings for land dispute settlements interact.

III. *Dubbii Nutti Kennaa*, 'Please Lend Us the Case': The Practice of Case 'Borrowing'⁷⁾

The *jaarsa biyyaa* (both volunteer and solicited) frequently 'borrow' land dispute cases from the formal structures for dispute settlement. This can be done under the following circumstances: (1) when a defendant solicits the *jaarsa biyyaa* to 'borrow' the case from a formal structure; (2) when 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) when a formal structure invites (solicits) the *jaarsa biyyaa* to 'borrow' the case and settle it outside the formal settings.

Now let's look at each of these circumstances. First, why does a defendant solicit the *jaarsa* to 'borrow' 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 if the case is to be dealt

with by a formal structure. A farmer, who was seeking the intervention of solicited *jaarsa* in a case already presented to the PA's 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 one thing, that is, money. With money you can buy two things that you need to win a case. You either buy [bribe] the *daanyaa* [an officer or a judge] or you can buy [hire] *abaayii* [those who give false testimony in exchange 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).

The interview note above 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*, we may call them 'professional liars' and that of rampant bribery. In a setting for dispute settlement dominated by bribery and false testimony (*abaayii*), people could easily be punished for the 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

7) The word 'borrowing' here is not used in the strict sense of the term since cases taken from formal structures may not be returned back to the concerned office if the *jaarsa biyyaa* manages to settle them.

indigenous institutions for dispute settlement to formal ones.

But why do some people take their cases to 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 setting: (1) a disputant may take his/her case directly to the formal setting (usually first to the PA and then to the district administration); (2) a disputant may take his/her case first 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 puts 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 rights 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 settings. Thus, the discrepancy in the means of land acquisitions is

also one of the factors that influence individuals' decisions to take their case before either of the dispute settlement settings. That is, there exist plural means of land acquisition, which in turn naturally gives rise to the plurality in mechanisms for land dispute settlement.

Some individuals, however, take their cases directly before the formal structures with a different implicit objective, that is, to “give weight to the matter” as one informant put it. This sort of individual actually hopes that the case will be withdrawn by *jaarsa* to be settled outside the formal structure. But the fact that the case has already been registered at the formal office allows the plaintiff to 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. The land dispute that occurred on 23 October 2001 while I was in the study field provides important information in this regard. An informant (who was the plaintiff in this case) put the situation as follows.

I first presented my case to *jaarsa biyyaa* who were on the spot when the dispute took place. The *jaarsa* asked both of us [the disputants] to sit down and tell them our problem. I promptly agreed. My opponent [the defendant] was reluctant to positively communicate with *jaarsa*. He denied that he

sold the grass [grazing rights] on his land to me. Some of the *jaarsa* were angry since they already knew the source of our problem. In the meantime he [the defendant] walked away leaving all of us where we sat. I was angry and so were the *jaarsa* who were helping us settle the dispute. The *jaarsa* ‘blessed’ me for my patience and allowed me to pursue my case in any way I found appropriate [implying the go-ahead given to him to take his case to the formal structure]. On the same day, I presented my case to the PA’s chairman [Bokore PA]. Within hours he [the defendant] begged for the help of the same *jaarsa* whom he had embarrassed earlier in the day, so that they would take the case out of the PA’s administrative office. The *jaarsa* begged me to let them take the case from the chairman’s [of the PA] office [the *jaarsa* needs the consent of the plaintiff in order to be able to ‘borrow’ cases from formal structures]. I did not resist *jaarsa*’s request, since my intention from the beginning was not to pursue the case through formal structure but to force my opponent to accept *jaarsa*’s effort (Habtuu Worquu, informant, Bokore PA, 2001).

This case is especially important since it reveals several elements that usually manifest in the land dispute settlement processes. We see in this single case an instance of the involvement of both volunteer *jaarsa* and the solicited ones. Initially, the volunteer *jaarsa* attempted

to settle the dispute on the spot. The plaintiff instantly agreed to the request of *jaarsa*, since, he is by custom required to present his case first to the indigenous dispute settlement setting before approaching the formal structure. The defendant, however, made a mistake and failed to take advantage of getting the dispute settled through the informal institution. This happened because he had misjudged the move of the plaintiff in that he did not think that the plaintiff would take the case so soon to the formal setting. When that was not the case, the defendant rushed to beg the help of *jaarsa biyyaa*, this time the solicited *jaarsa*. We also observe the implicit objective of the plaintiff to present his case to the formal setting, that is, to scare the defendant and thereby to speed up the settlement of the case.

Now let us look at the situations under which the formal structures solicit the informal institutions to take the land dispute case from the formal setting and settle it outside the formal structures. This happens particularly when the formal structures have neither the means to solve the dispute nor the capacity to enforce their decision. This in turn arises from the nature of some land disputes. Sometimes a dispute ceases to be a matter between a few individuals but develops into a dispute between groups.

Good examples are two land disputes cases I witnessed. One was the dispute between two lineages that took place in July 2001 in the then Tulu Gaduuda PA (currently Hebano PA). The other was the land dispute between two “big

men” in February 2003 in Haroshifa PA, which later on culminated in a dispute between a large number of people on each side. Under such circumstances there was a multitude of ‘plaintiffs’ and ‘defendants.’ When this is the case, the help of local dispute settlers is indispensable. Thus, in both cases mentioned above, the *jaarsa biyyaa* from neutral *gosa* (clans) were invited to help in solving the problem, which they did.

Conclusion/Summary

Land disputes can be settled either through formal (state) structures or through informal (indigenous) institutions. 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 borrowing.’ The fact that there are two settings for land dispute resolution could tell us not only the phenomenon of ‘legal pluralism’ but also plurality of the means of land acquisition.

The decision on the part of disputants to present their cases to either of the settings for dispute settlement could be based on the advantages or disadvantages they anticipate. But the indigenous institutions seem to counter the unfair advantage that the people who prefer to take their case to the state structures foresee. They do this in two ways: (1) by custom it is

wrong for an Arsii Oromo to take his case to a government office before first presenting his case to *jaarsa biyyaa*. The indigenous dispute settlers thus make the first attempt to settle the dispute. (2) The indigenous dispute settlement institutions can also take the land dispute cases back from the formal settings through the practice of ‘case borrowing.’

In customary dispute settlement settings, the conventional procedure is (1) *dubbii dubachuu* (to talk [discuss] about the matter), (2) *dubbii fixuu* (to settle the dispute/matter) and (3) *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 informal dispute settlement settings over the formal ones. But this important component of indigenous settings 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 can only be partially settled. Indeed, several of my case studies suggest that when a land dispute is settled by the formal structures, the loser of the case considers that he just lost a ‘battle’ not the ‘war’. Such dispute will soon be activated when the ‘right days’ come, as local people say.

The two settings for dispute settlement 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 the 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 characterize the formal settings.

クリスマスのフィリピンで宗教を考える

山口 潔子*

2002年9月から、神言修道会が運営するサン・カルロス大学に籍をおき、セブ（ビサヤ地方、フィリピン）における20世紀前半の住宅建築を研究している。本稿では、クリスマス前のセブ市の様子を、宗教行事を観点にして報告したい。記述は2002年末の経験に基づいている。

12月1日から、町中に「セブのクリスマス Pasko sa Sugbo」という垂れ幕や、クリスマス装飾が増えはじめた。セブの電気代は高いのだが、スクオッター（不法居住者）の貧しい家々も一晩中ネオンをつけている。一方、大通りの立派な商店やレストランは、菓

パヤシの屋根をかけている。市の主催する聖家族像コンテストのためだ。確かにイエスは貧しい馬小屋で生まれたのだから、枯木や空き瓶で聖夜を再現してもいいだろう。

しかし、目鼻のない像は藁人形を思わせ、教会前の聖家族像に比べると、見劣りすることは否めない。この23年、ビサヤ諸島で教会の聖像泥棒が増えていることを反映しているのだろうか。木でできた聖像の体や衣服を残し、象牙の顔や腕だけがもぎ取られた写真が、頻繁に新聞に載っている。泥棒組織が地元の少年たちに盗みを働かせ、海外の骨董品市場に密輸するのだ。だが、泥棒も信徒のはず。まさに神をも恐れぬ行動である。ともか

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