6. The interplay of customary and formal legal systems among the Tulama Oromo
Cooperation and competition

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Introduction

Prior to their incorporation into the modern Ethiopian state in the 1870s and 1880s, the Oromo had their own customary institutions that dealt with disputes under the framework of the *gadaa* age and generation system. Following the conquest by Menelik II at the end of the 19th century, the state law and other normative orders were introduced into the Oromo land, which gave rise to plural legal settings for dispute settlement (Mamo 2006). The aim of this paper is to examine the interplay between customary and formal legal systems in dispute settlement at the district and *kebele* levels in Jidda district, North Shewa, Oromia Regional State.[1]

There exist numerous studies in Ethiopia on customary law and conflict resolution, and some also tackle the question of how customary and formal law interact in dispute settlement.[2] However, most of these works have focused on the posi-

1 This paper is based mainly on a total of 12 months of ethnographic fieldwork conducted from May 2014 to April 2016 for my PhD dissertation presented to the Department of Social Anthropology, Addis Ababa University, in December 2017. It was conducted in Jidda district of North Shewa Zone, Oromia Regional State. Data was collected through participant observation of customary dispute settlement and the formal law. Interviews and FGDs were also held with elders, women, youth, *kebele* officials and legal practitioners of the formal law. Besides, case studies were employed to reveal the cooperative and problematic aspects of the relationships between the two legal systems. Furthermore, statistical reports of dispute cases found in the formal courts and legal documents were consulted to augment primary methods of data collection. For ethical reasons, the privacy of informants was kept anonymous. I am thankful to my advisors, Prof. Gebre Yntiso and Dr. Assefa Tolera, for their helpful comments and advice during my PhD project. My thanks also go to Addis Ababa University, German Academic Exchange Service (DAAD) and Association of African Universities (AAU) for their financial support of the fieldwork.

2 See, for example, Girma (2009), Mamo (2006), Melaku (2009), Meron (2010), Negash (2013), Yihunbelay (2010), almost all chapter contributors in Gebre *et al.* (2011, 2012); cases studies in Pankhurst and Getachew (2008), and Tarekegn and Hannah (2008).

tive aspects of the relationships between the two legal systems while studies on the competitive and problematic aspects are scarcer, especially in Oromo studies. As such, the present study is in line with recommendations of previous scholars who suggested a further investigation on the subject and appeal for a careful study of an interface between the customary mechanisms of dispute resolution and the formal structure (Pankhurst and Getachew 2008:271, Gebre *et al.* 2011:471). The present paper, therefore, aims at filling this gap about the state of legal pluralism in Ethiopia, specifically in Oromia.

The focus is on the time since 1991 because it is only after the end of the Derg regime that legal pluralism was officially recognized both in the 1995 Ethiopian Constitution and in the 2001 Revised Constitution of Oromia.[3] Since then, disputants can choose whether to appeal to a customary or a formal court in matters of concerning family or personal law while other cases still have to be handled by the state law. The recognition of legal pluralism was further extended by the 2004 Revised Criminal Code of Ethiopia, which seems to leave the choice to the disputants (mainly to the victims) to take crimes upon complaint to the forum of their own choice. However, serious civil and criminal cases continue to be under the exclusive jurisdiction of the formal law. In practice, as will be illustrated in this paper, customary law settles disputes covering a wider range of issues in addition to those stipulated in the constitutions and the Criminal Code.

This paper is divided into five sections. This introductory section briefly provides issues that need further research and the time of the analysis. Section two discusses the Tulama Oromo and their socio-political organization with particular focus on Jidda district, the study area. On the basis of what has been discovered in the fieldwork, section three and four deal with, in detail, the interplay between customary and formal legal systems among the Tulama Oromo of the study area. Section three examines the cooperation between customary and formal legal systems in dispute settlement while section four looks at the problematic areas and competition between the two. Finally, the paper summarizes and concludes with suggestions to improve the working relationships between customary and formal legal systems.

3 As a result of the federal system of the government in place in Ethiopia since 1995, the regional governments established their own constitutions in line with Art. 52(2) of the 1995 Ethiopian Constitution. Based on this, the Oromia Regional State established its own constitution in 1995, which was later revised in 2001.

The Tulama Oromo

The Oromo people are one of the largest ethnic groups in Eastern Africa (Asmarom 1973), constituting nearly 34.5% (a little over 25 million) of the Ethiopian population in 2007 (CSA 2008). Most of them reside in the Oromia National Regional State. The Oromia region is one of the nine regional states constituting the Federal Democratic Republic of Ethiopia. It is bordered with all the regions except Tigray. It is also the largest of all the regions in Ethiopia in terms of population and land size. Currently, the region is divided into 20 administrative zones, with North Shewa being one of them. Jidda, the study area, is one of the thirteen districts in North Shewa zone (see figure 1 below).

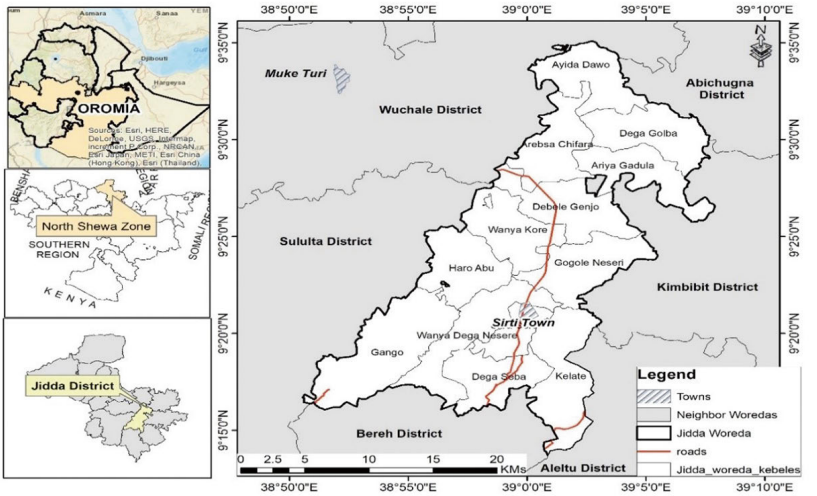
The Oromo are divided into two major groups: the Borana (senior) and the Barentu (junior) (Gada 1988:8). The descendants of these two main groups later formed major Oromo clans and sub-clans. The Borana section of the Oromo is divided into three main branches, namely the Southern Borana, the Guji and the Macha Tulama (Mohammed 1990:18). The settlement of the Tulama Oromo largely occupies the Shewan plateau extending over vast areas between Lake Zeway in the south and Wollo in the north, Macha lands in the west and the territory of Karayu in the east (Alemayehu *et al.* 2006:137–145). Thus, the Tulama Oromo who occupy the present day Jidda district are part of the Borana Oromo group.

Jidda district, the study area, is far from the main highway road connecting Addis Ababa with Bahir Dar and Dessie towns. Its administrative seat, Sirti, is located at about 110 km from Addis Ababa and 70 km from Fiche, the administrative capital of North Shewa zone of Oromia Region. The town is where the formal legal institutions like the district police, public prosecutor and court are found. In 2007, the total population of Jidda district was 53,658 with the overwhelming majority of the inhabitants being the followers of Orthodox Christianity (CSA 2008).[4] Almost all inhabitants of the district are Oromo and speak *Afaan* Oromo as their first language. According to the Jidda Agriculture office, the district is located at a high altitude ranging from 2600–3500 meter above sea level. Topographically, it is largely plain with some plateaus, mountains, valleys and rugged terrains. The same office disclosed that Jidda from North Shewa is the leading district in animal population such as cattle, sheep, horses, donkeys, and mules. Because of its altitude

4 Although the central statistics show that the majority of the Oromo of the area claim to be followers of Orthodox Christianity, most of them actually mix it with their indigenous faith, *waaqeffannaa*. In their everyday social life, they make oaths in the name of their traditional belief systems, calling upon the *qaalluu* instead of Christian Orthodox saints and the Ark of the Covenant (*tabot*). When they face serious difficulties such as lack of rain and natural disaster, they often go to their indigenous ritual sites (rivers and hills) to slaughter a bull, pray and make a pleading (*isgoota*).

and climate, wheat, barley, *teff*, beans, peas, and lentils are important crops grown in Jidda.

Figure 1: Map of Jidda District (CSA 2008)



Social and political organization among the Tulama Oromo is structured and organized by their well-known age and generation system called *gadaa* (Blackhurst 1978, Knutsson 1967). Despite their inclusion into the Ethiopian nation-state, many Tulama groups have sustained the *gadaa* system, or at least elements of it, and activate it in religious, ritual social, economic and also legal contexts. In the study area (and among other Tulama groups), the *gadaa* system still survives though it is not strong as it was before. This paper confirms that the five class structure, the *gadaa* assembly, the ten *gadaa* grades and the eight-year *gadaa* period are features common to both the contemporary and the past systems of the Tulama. *Gadaa* symbols and some ritual practices such as the *foollee* institution (one of the stages in the *gadaa* grade) were recently reintroduced.

In the study area, there are two major customary legal institutions related to the *gadaa* system. The first is the *jaarsummaa*, which can be translated as the 'council of elders'. The most important task of the *jaarsummaa* is dispute settlement, besides other services.[5] The *jaarsummaa* is formed by males of different age groups, but it serves both sexes in the community. It is not a permanent council, but rather the

5 Elders play also important roles as go-betweens during marriage negotiations, and in times of drought, disease and other disasters.

elders meet on ad hoc basis whenever a certain dispute occurs. After achieving its mission of dispute settlement, the council is disbanded.

The *qaalluu*, often translated as 'ritual leader' as well as the religious institution, is another customary system involved in dispute settlement[6]. According to my observation, the *qaalluu* is divided into a court with three tiers. The first and the lowest level is the court run by the elders (*jaarsa*) of the institution. Most cases first appear before this court. Then, if disputants are not satisfied with the decision of this court, they can appeal to the second level court, which includes the elders and the *qaalluu* himself. If one of the disputed parties is not satisfied with the judgment of this court, he/she can appeal to the last and the highest level for ritual judgment. This third level court is sacred and run by the *qaalluu*, who is possessed by a spirit. The verdicts of the *qaalluu* are mostly accepted since he is believed to have the spiritual power to cause misfortune to the one that rejects his reconciliation. Compared to the *qaalluu* located in other districts of North Shewa, its role in dispute settlement is very limited in Jidda. Besides, its interaction and cooperation with the formal legal institutions within the context of dispute settlement are rather rare in the area.

Therefore, this study looks specifically at the council of elders (*jaarsummaa*), which is currently the main local forum in dealing with a variety of disputes ranging from civil to criminal matters. Besides, the council of elders frequently interacts with the formal legal system in the study area. The formal legal institutions[7] this study deals with include the district court,[8] the police and the public prosecutor that are located in Sirti town, the social courts[9] and the *kebele* administration councils[10] that exist in all villages (*kebeles*) of the study area. Thematically, the focus of

6 The *qaalluu* believes to be the intermediary between the people and supernatural power called *Waaqa*. He exercises considerable influence in the economic, political and social life of the Oromo people, as he is responsible for their spiritual well-being. The *qaalluu* institutions are centers of healing, worshipping and administration. They are also the place where children are given Oromo names.

7 District Administration, District Administration and Security, District Women and Children Affairs, District Land Administration and Environmental Protection are other offices that exist in Sirti town and that deal with disputes in the area.

8 The formal courts have original jurisdictions over civil cases (excluding issues related to the land boundary) which values exceed 1.500 ETB, as well as overall criminal cases and appeals coming from *kebele* social courts and *kebele* administration councils.

9 The social courts are run by the local judges, who are not legally trained and salaried but authorized by the Ethiopian law to provide justice to the local people free of charge. The court has jurisdiction over civil disputes relating to property claims and money, which values do not exceed 1.500 ETB (roughly 55.50 dollars) (see the 2001 Constitution of Oromia and 2007 Oromia Social Court Proclamation).

10 The *kebele* administration council together with elders has the original jurisdiction over land boundary disputes as stated in the 2007 Oromia Land Proclamation.

the analysis is both civil and criminal aspects of disputes, ranging from minor civil cases to homicide. In the following sections, the cooperative as well as the problematic and competitive aspects of the relationships between *jaarsummaa* and the formal legal system will be discussed.

Cooperation between customary and formal legal systems

This section will show the cooperative areas in the relationships between customary and formal legal systems including case transfer and notification of the decision of the transferred cases of settlement to one another's jurisdiction, joint dispute settlement, the elders' double role in both legal systems and collaboration in de-escalation of disputes and crime prevention. For this, court statistics and selected cases are used to illustrate the areas of the cooperation between the two legal systems.

Case transfer and notification of the transferred cases

One of the cooperative aspects between the two legal systems is case transfer and notification of the decision of the transferred cases to one another. Though in principle case transfer from one legal forum to the others happens in both directions, most often the formal institutions (court, police and public prosecutor) transfer cases to the *jaarsummaa*. This occurs in different contexts: when the disputed parties invited elders or when the elders convince the disputants to move the case from the formal legal system to the *jaarsummaa* and when the formal legal system lets the disputants settle their disputes outside the courtroom, or when the formal legal system itself transfers the case to the elders (see also Desalegn Amsalu, this volume). Table 1 presents a summary of the total number of criminal cases over five years reported to the prosecution office, those taken to the formal court by the office, those referred to elders, and those dismissed due to various reasons.

Table 1: Criminal cases reported to district public prosecutor from 2010/11 to 2014/15 (Jidda District Public Prosecutor's Office, 2016)

Years					
	2010/11[a]	2011/12[b]	2012/13[c]	2013/14[d]	2014/15[e]
Total cases	366	1685	903	713	809
Cases taken to court	223	231	210	221	250
Transferred cases to elders	92	271	293	67	115
Interrupted cases[f]	51	1183	400	425	444

a: [11], b: [12], c: [13], d: [14], e: [15], f: [16]

As can be seen from Table 1, a considerable number of criminal cases that were reported to public prosecutor's office were withdrawn. One factor for the withdrawal of the cases was case transfer by the prosecution office to the *jaarsummaa*. It should be noted that while Art. 212 of the 2004 Revised Criminal Code of Ethiopia seems to leave the choice for the disputants (mainly to the victims) to take crimes upon complaint to the forum of their own choice, there is no article in the criminal code that permits the court or prosecutors to transfer upon complaint crimes to the customary institutions including *jaarsummaa*. This means that public prosecutors transfer criminal cases informally to the *jaarsummaa*, but actually without any legal basis. The following example shows how a criminal case can be transferred from the public prosecutor to the local elders.

Case 1: Beating

The plaintiff, who was struck on his head with a big stick and bled on 12 September 2015, accused two individuals: father (the first defendant) and son (the second defendant) and took the case before the police, bypassing the customary institutions. The case appeared before the office of the public prosecutor on 9 November 2015. A public prosecutor and a policeman asked both defendants about the matter. The first defendant admitted having beaten the plaintiff as he had suspected

11 July 1, 2002 to June 30, 2003 E.C.
12 July 1, 2003 to June 30, 2004 E.C.
13 July 1, 2004 to June 30, 2005 E.C
14 July 1, 2005 to June 2006 E.C.
15 July 1, 2006 to June 30, 2007 E.C.
16 Cases were interrupted due to lack of supporting evidence, the disappearance of the defendants or time lapse.

him of having a sexual affair with his wife. The second defendant refused to accept the charge against him saying that he was not involved. The public prosecutor asked the disputants to choose between the court of law and the local elders to settle their dispute. The disputants agreed to settle their differences through customary procedures and selected six elders to look at the issue. Then, the office sent the disputants with a stamped letter and a list of elders to deal with the matter locally, urging elders to report the results of their endeavour back to the office. The first meeting of the elders on the matter was on 15 November 2015, a few days after the referral. The injured person refused to accept the reconciliation proposal of the elders and took back the case to the prosecution office. However, elders solicited by the first defendant intervened. The public prosecutor agreed to withdraw and return the case to the *jaarsummaa*. In their second meeting on 10 February 2016, the same elders settled the issue and the plaintiff was compensated with 2,000 ETB (125 dollars) for his injury. He was also restricted from getting close to the house of the defendants. It was further agreed that in case one or both of the parties violate the agreement (*waligalte*) and take back the case to the court, the violator would have to pay 500 ETB (roughly 31 dollars) as a fine for the government and another 500 ETB (31 dollars) to the local saving association (*iddir*). A written agreement was made and a copy of reconciliation was sent to the office of the public prosecutor.

Case transfer and notification of the decision of transferred cases of settlement to one another's jurisdiction is one aspect of the cooperative relationship between the two systems. The above-mentioned case and those statistics shown in Table 1 demonstrate that in Jidda people use both legal forums: taking their disputes from one forum to another. The interviews made with several people in the study area showed that people take their cases to the formal law in order to give weight to their cases before the elders. Subsequently, solicited elders approach the plaintiffs to take the case out of the court of law and to settle through customary law.

Joint dispute settlement

The other area of interaction observable between *jaarsummaa* and the formal legal institutions in the area is joint dispute settlement. In Oromia Land Proclamation No. 130/2007, joint dispute settlement is described: when land dispute case arises, disputants should first submit their application to the local *kebele* administration council. Officials of the *kebele* then urge the disputants to elect the arbitral elders. A chairman of the elders is elected by the disputing parties or by the arbitral elders. If they cannot agree, a local *kebele* administrator shall assign the chairperson. One representative from the *kebele* administration council will be involved in the elders' meeting to record the result of the reconciliation. Once the case has been resolved,

the result has to be documented and then given to the *kebele* administration by the elders for registration. The administration also gives a sealed copy to both disputed parties. Anyone dissatisfied with the result can submit his/her complaint to the district court (see Proclamation No. 130/2007, Art.16, No.1). This kind of joint dispute settlement exists also for other issues, not only for land disputes, as the following case of a dispute over water use illustrates.

Case 2: Dispute over water use
One of the few group disputes over resource I encountered during my field stay was associated with the usage of water from Aleltu River[17] for irrigation and watering of animals in February 2015. The dispute involved seven *kebeles* of Jidda district located along the river and thus a large group of people. The cause was over the share of the water as the flow of the river significantly decreases every year during the dry season in January, February, and March. At the same time, compared to the previous years, there was no rainfall during the season. Therefore, the peasants and *kebeles* living at the lower stream competed over the water with those living further upstream, accusing them of arresting the flow of the water.
First, the Jidda elders tried to settle the matter. But, when they did not succeed, the case was taken to the district court by a public prosecutor. The court was, however, also not able to settle the water issue since it involved many *kebeles* located along the river. When the dispute approached the level of physical fighting with clubs and rifles, the court transferred the case to the district administration and the security office, recommending it to be settled together with the elders.
Then, officials from the district administration and the security office together met with some respected elders and discussed the issue. I attended their final meeting held on the bank of the disputed river on 16 February 2015. After a long discussion, they were able to avoid the problem before it turned into violence. All parties in dispute agreed to equally share the water of the Aleltu River and elected a committee, which was assigned to supervise the activities and prevent future disagreements. The reconciliation result was positive. Since then, I did not hear any dispute related to the share of the water of the Aleltu River.

The major point we can draw from this case of joint dispute settlement is that officials from the state system involve local elders when they face serious problems to resolve a conflict, using them as an additional strategy to establish or keep peace. As such, joint dispute settlement is another example of positive interaction and cooperation between the local elders and the state system in the area.

17 Aleltu River is one of the tributaries of Abay (Blue Nile) that flows throughout the year. It originates from Mount Baraki located in Bereh district, south of Jidda.

The elders' double role

When a case is handled in *jaarsummaa* in the study area, many actors are involved, including elders, the disputants and their allies, guarantors, witnesses and community observers. Of all these, elders are the main actors. As will be shown in this subchapter, they may also take over important roles in the state systems.

Below the district level, there are three state-based institutions that deal with disputes at the *kebele*, the lowest administrative level in the area. These include the social court, community policing committee and the *kebele* administration council. Although the types of disputes, which found their way into these systems are not many, the role of elders is important here. The following case reveals how the elders can work in both systems in the capacity of dispute settlers.

Case 3: Dispute over grazing land

On Sunday, 24 January 2016, I attended a hearing of the social court at Siba Sirti *kebele*. It was related to civil disputes that fell under its mandate. One case was related to grazing land. An elderly couple, e.g. a husband of more than 70 years and his wife of around 65 years accused three men (one was a *kebele* official) whose cattle had destroyed their grazing land. In line with the 2007 Social Court Proclamation No. 128,[18] the judges of the court recommended the disputants to settle the matter through the *jaarsummaa*. All agreed and the parties in dispute selected five elders of their own choice who were in the *kebele* compound at the time of the hearing for their own matter. One of the judges of the social court himself became a member of the ad-hoc council of elders with the consent of the parties in dispute.

On the same day, the appointed elders met to discuss the matter. The meeting was held inside the compound of *kebele* administration council and began at 11 am. The first presenter of the case was the aggrieved couple. In her statement, the wife presented the case by accusing the three men of deliberately grazing their cattle on their land. The defendants responded to the case one after the other, all admitting that their cattle had accidentally entered the grazing land and asking for an apology. Following this, the elders fixed the amount of compensation to be paid by the defendants to the plaintiffs. Later on, however, they requested the couple not to accept it, saying, "For the sake of God (*Waqqaf jeedhi*), for the sake of earth (*lafaaf jeedhi*) and for the sake of elders (*jaarsaf jeedhi*), please not take the compensation!" The couple agreed to forgo the compensation, warning the defendants to not let their cattle enter the grazing field again, as otherwise, they would take the

18 Art. 24 and 34 of the proclamation say that the *kebele* court shall first push parties to solve their dispute through arbitration. If this is not possible, the court shall hear witnesses from both sides and decide the case accordingly. Otherwise, decisions that do not follow these procedures shall be null and void.

case back to the social court. With this, the meeting ended quickly with a mutual agreement at 12:30 pm.

In this case, one elder is acting in both systems in different capacities: being a judge at the social court and also became a member of the council of elders. It was he who had strongly pushed the disputing parties to settle their difference outside the social courtroom. As the member of the council of elders, his influence was also strong in convincing the disputants to come to the reconciliation. Playing such a double role in both legal systems is common in the area, as often local elders are chosen based on their experiences, age, knowledge, and impartiality to serve the two institutions at the same time. They work at the interface between the systems.

This case is also another example of case transfer from the social court to the elders. In this case, judges in the social court initiated the transfer and told the disputants to choose the elders. This practice, as discussed in the previous section, is common also in the area.

Cooperation in de-escalation of disputes and crime prevention

Both customary and state systems work in crime prevention and cooperate when crimes occur to avoid escalation, sometimes even in the context of serious crimes. The state law prescribes that elders report crimes in their locality to the community police centre or the police station, as such cases have to be dealt with in the court. The case of a girl's abduction, which led to her death demonstrates the cooperation between customary and formal legal systems.

Case 4: Abduction and related death

A young man with a disability was looking for a spouse. He had been without a partner while his age mates were already married. People suspect that he was annoyed that he had remained a bachelor for so long, probably due to his disability. One day, the boy observed a girl in a neighbouring village, while he was visiting his relatives. He decided to take her as his wife and told his relatives about his wish. His relatives tried to get the consent of the girl's family, but the latter rejected the marriage proposal. When his request was turned down, the boy resorted to abduction.

The teenage girl, by then 13 years old, was abducted on 11 April 2015 in Dega Golba *kebele*, some 30 km from Sirti town where the district police are located. The perpetrator chose a day when most local militias were in Sirti town for a training related to security issues. Taking the advantage of their absence, the boy secretly contacted five friends to help him. The men had the information that the girl had left home for the local mill. They waited for the girl to return home at 2 pm and when she came, they beat her with a stick, urging her to move when she resisted. The girl's family immediately heard about the abduction and reacted with anger.

> Together with relatives and neighbours, they followed the abductors who had taken refuge in one of their relative's houses. The girl's relatives surrounded the house, some threw stones and others shouted at the abductors. When the abductors noticed that they were being surrounded, they bolted the door from within, put a cloth in the mouth of the girl and sat on her head and face. Soon after, she died of suffocation.
>
> When the elders[19] who had also come to prevent an escalation of the dispute heard the rumour of the girl's death, they immediately called the police from Sirti town. Upon the arrival of the police and the local militia, together with the elders, they convinced the girl's relatives to leave, promising them to bring the abductors to the court of law. The parents learned about the death of their daughter only, after the police had taken the corpse and the criminals to Sirti town. People in Jidda and neighbouring districts were horrified by the girl's gruesome death.
>
> The following days, the police together with officials from the district administration, security and other offices visited Dega Golba, attended girl's funeral ceremony and held discussions with elders and relatives from the killers' and victim's families. Relatives of the killers also made cultural pleadings (*isgoota*)[20] to the family of the deceased on a nearby plateau. Their objective was to prevent revenge upon them by the deceased's sides and plead for peace talks. It was also aimed at future reconciliation upon the release of the criminals from the state prison. One year later, the abductor and his accomplices were formally prosecuted, found guilty and sentenced each to 14 years in jail by the High Court in Fiche for abduction and murder.

This case shows how the elders cooperate with the police when serious crimes occur. First, the elders reported the case to the police. They also prevented further escalation by closely working with the police and district officials to cool down the situation in the following days in order to prevent any revenge by the family of the victim on the relatives of the abductors. The interview with the police who investigated the case and FGD with the police revealed that had it not been for the elders' involvement, things would have gone in the wrong direction and further escalated.

19 Some of these elders are members of community policing committee.

20 When homicide happens deliberately or accidentally, the first step in Tulama Oromo culture is organizing the pleading ceremony by which the side of the killer plea for reconciliation. It lasts for several days until the family of the deceased shows a sign of their readiness for peace talks.

Problematic areas and competition

While the previous section showed various areas of cooperation, this section look at problems and competition between customary and formal legal systems and dispute settlement mechanisms focusing on five major areas though not exclusive ones: mutual undermining, confusion and dispute over jurisdiction, double jeopardy, lack of mutual trust and failure of both systems to settle certain disputes. Selected cases are used to illustrate the issue.

Mutual undermining

Despite their numerous areas of cooperation, the two legal systems also undermine each other in various ways and in both directions. The formal legal institutions hinder the activities of the *jaarsummaa* by disregarding the elders' decisions. Many cases have been reported in which disputants resorted to the state court after having been found guilty by the decisions of the elders. This was especially the case with disputants who allegedly did not have the truth on their side and hoped to win a case through corruption, as local informants told me. There were complaints by the elders who felt that dissatisfied parties could sometimes refuse to comply with their decisions. They also realized that at the end of the day it was the court, and not them, who make final and binding decisions (see also Desalegn Amsalu, this volume).

Complaints have been made especially in the context of land issues. As mentioned above, the Oromia Land Proclamation Art. 16, No.130/2007 gives an original jurisdiction for elders to deal with rural land disputes. Accordingly, elders selected by disputants should arbitrate the matter under the supervision of the *kebele* administration council. However, anyone dissatisfied with the results of the elder's decision can bring the case before the district court. During an interview with several elders, I was told that they were dissatisfied with the state court for repeatedly not taking their judgments into consideration, which affected their role in local dispute settlement. This was confirmed by an interview made with one of the judges of the district court, who stated that the decision of the elders had little or no value in the court's decision.

On the other hand, the customary court may also obstruct the activities of the formal court in many ways. As indicated above, many criminal cases reported to the police or court actually ends up in withdrawal. Elders use different techniques to intimidate disputants to withdraw their complaints before or even after investigations or prosecutions have started. The local people and elders know that for cases like rape and abduction, a wrongdoer would be sentenced to several years of imprisonment. As interviews with police officers and public prosecutors revealed, a considerable number of such cases are withdrawn or never reported after the

family members of a victim reportedly have faced pressure from elders and the families of the perpetrators.

I was told and also observed situations in which the community made it difficult for the police and public prosecutors to collect evidence. When the formal institutions (police, public prosecutor and court) refuse to accept the withdrawal, elders may resort to other measures, such as pushing the parties in dispute to drop pursuing the case in the court, advising witnesses not to testify in the court, and stopping any support to the formal law enforcement agencies. This, as police officers and prosecutors told me, can occur at all stages of a court proceeding. Elders are also sometimes reluctant to handover serious criminal cases such as domestic violence against women and girls to the formal legal system, despite the clear obligation by law. The following case illustrates how the actions of elders undermine the activities of the police and public prosecutor to bring criminals before the state court.

> Case 5: Beating and injury
> A man lost one of his front teeth when a neighbour beat him with a club. After the victim reported the case to the police officer assigned to their area, the prosecution office opened a file against the offender. The victim also already brought a charge against the perpetrator. However, the elders intervened and forced the victim to withdraw the case. Thus, the process was interrupted without the consent of the public prosecutor, and the matter was settled locally in March 2015. After the reconciliation, the victim told me that he had been pressured several times by the elders to withdraw the case and to settle it locally, arguing that he would gain nothing by accusing the defendant before the court of law and making him get arrested. Finally, he agreed to withdraw the case from the prosecution.

This case reveals clearly how the elders involved in criminal matters, which are not under their jurisdiction by interfering with the formal legal system to exercise its mandate. During an interview with elders who participated in the reconciliation, they expressed their belief that if the case had been seen at the court, the result would have been different: the offenders would have been sent to prison.

Confusion and dispute over jurisdiction

There exist cases that neither the formal nor the customary legal system wish to deal with, as they are considered as trivial. As locals told me, plaintiffs have complained to the court that the police and public prosecutors do not accept cases that they consider unimportant, such as verbal insult, personal quarrels, minor assault, petty theft and petty damage to property. Instead of taking the plaintiffs' statements, they usually send them back to the community to have the case resolved by elders. The elders, however, are also sometimes reluctant to deal with such minor cases.

Disputes between spouses provide another kind of cases that both systems do not like to deal with. When, for example, women reported that they were insulted or harassed by their husbands or close relatives without being able to provide strong evidence, the offices of prosecution and women's affairs sometimes sends them to the elders, whom they consider better suited to settle private disputes. Elders, however, are sometimes reluctant to deal with marital and domestic disputes. One elderly informant told me that elders prefer to deal with homicide case rather than dispute that arises between husband and wife. He argued that husband and wife are sometimes unwilling to accept the decisions of the elders if they are not in his/her favour and then take their case to the formal court.

Another confusion is caused by the fact that aspects of the civil law fall into the sphere of personal and family law. The 1995 FDRE Constitution and the 2001 Constitution of Oromia have allowed customary laws to deal with personal and family matters, with the consent of the parties in dispute. They left particulars to be determined by law, but this issue has so far not been addressed by the concerned bodies. Thus, there is some uncertainty and confusion on the side of elders to clearly identify matters that fall within their jurisdiction.

Similarly, in the case of homicide, the handling is not clear. While such cases are usually handled in the state court and the killer is imprisoned, in order to avoid revenge, the family and close relatives of the killer additionally conduct a customary settling of the issue. Accordingly, the elders set certain rules to be respected by the families of the killer and the victim until blood price (*gumaa*) has been paid upon the release of the killer. One of the rules is preventing direct contact between the two families until the payment of *gumaa*. The prohibitions include avoiding drinking from the same bar, fetching water from the same spring and eating together in order to avoid any possible further hostilities between the two parties. The police and public prosecutors criticize the rule of avoidance, claiming that it is in conflict with the country's law. Elders, on the other hand, argue that the rule of avoidance prevents further disputes until customary reconciliation is held upon the release of the killer. Thus, they do not feel comfortable with the officials intervening in their affairs under the pretext of ensuring the observance of laws.

Double jeopardy

In the case of serious crimes (homicide, bodily injury, rape, and abduction), double jeopardy can be observed even though Art. 23 of the 1995 Ethiopian Constitution and the 2001 Revised Constitution of Oromia state that no one will be subjected to double jeopardy for the same offense if found guilty. At the same time, the Ethiopian law gives an exclusive jurisdiction over such criminal cases to the formal law. In response to this, elders deal with such cases after they have undergone through the formal law.

The findings of this study show that 'double jeopardy' is particularly common in homicide and serious physical injury when a victim has lost part of his body (teeth, eye or hand). Because of the exclusive jurisdiction of the court of law over homicide, the Tulama Oromo created their own way of dealing with such issues. The following homicide case reveals how a defendant was punished twice for the same crime: first by the court of law and then by the customary law (see also Aberra Degefa, this volume).

Case 6: Homicide

In 2003, a man killed his neighbour. The cause of their original dispute was associated with the land lease. The neighbour rented a plot of land belonging to the man's father. The man objected the land rent, which later led to the death of the lessee. When the killer was put in prison, his relatives and neighbours started a plea to the family of the deceased. However, the process of pleading was interrupted without any further negotiation when the killer told others to stop, arguing that the case had already been brought before the court of law. Sometime after his imprisonment, his wife left home, leaving her three children with her husband's father and mother.

The killer was released in 2009 after serving six years in prison. He then lived in town and visited his children and parents only occasionally. After his release, he was reluctant to agree to the elders' plea to reconcile with the family of the deceased, arguing that he had already been punished by the state system. When in 2013, his mother died, his wife returned home to take care of their common children and the children's grandfather though her relationship with her father-in-law was not good. On 12 December 2014, the killer's aged father was found dead in his home. When it came out that he died after he had been beaten on his head by a stick, she was suspected of having killed the man and was arrested, since no one else had been at home on that day. Jidda district police and public prosecutor who had investigated the case told me that the suspect later admitted the crime and was sent to the High Court at Fiche where found guilty and sentenced to 12 years in prison.

The local people argued that the death of the killer's mother, father and the imprisonment of his wife were signs of misfortune that occurred due to the killer's refusal to settle the matter according to the local culture. It is widely believed among the locals that receiving and paying blood compensation (*gumaa*) is mandatory in Oromo law and failure to do so may result in misfortune, as evidenced in what happened to this family. Fearing further future calamities, close and distant relatives of the first killer urged him to contact respected elders of Jidda. Then, the man asked the elders to reconcile him and his family with the family of the deceased. As a result, the process of pleading, which had been interrupted for 12 years, resumed.

> The local elders started the negotiation process. The elders later called an expert of customary law (*caffee ta'icha*)[21] to their meeting without whom they cannot handle serious crimes like this. A date and place for the reconciliation were fixed for 13 June 2015 in Gango *kebele*, at which both the killer's family and the family of the victim met after a long time. Various rituals were conducted on this day, including the slaughtering of a sheep, ritual hand holding in the sheep's stomach of the slayer and the deceased's relatives to symbolize reconciliation and a washing of hands between the slayer and the deceased families. Then, a pot was thrown to the ground by the killer, spilling the remaining water. Next, both sides took an oath under the leadership of the *caffee ta'icha*. The blood price was also given on this day. Lastly, the participants in attendance consumed food and drink prepared at the homes of the deceased and killer.

This homicide case illustrates that the formal and customary legal systems deal with different aspects of the same case. While the state court sentences the offenders to some years in prison with the intention of punishing him, the local community believes that true justice is only achieved through customary reconciliation with the aim of re-establishing social justice. The formal law focuses on the killer while the family of the victim is marginalized and the community is neglected. On the other hand, the Tulama customary law is more inclusive by involving many stakeholders including the family of the victim and the community at large.

The above case (as other similar cases) demonstrates that the criminal was subjected to double jeopardy for the same crime he had committed. The court sentenced him to six years in prison. After his release, he was punished locally again, underwent various ritual procedures and paid the necessary blood price necessary to reconcile with the family of the deceased before being fully accepted back to the society.

Lack of mutual trust

Mistrust is another aspect of the conflicting relationship between elders and the state officials. This mistrust is on both sides: actors in the formal legal system do not trust local elders because of the latter's involvement in disputes that do not

21 Caffee taa'icha, also called jaarsa caffee, is an Oromo judge and expert of customary law. He is from the ruling gadaa class. One can acquire this position after having participated in the Tulama caffee assembly at Odaa Nabee, East Shewa, which is held every eight years, where he acquires the necessary knowledge to judge over cases of homicide, serious injury and disputes between groups or lineages after listening to the caffee assembly meeting. His term of office lasts gadaa period that is eight years.

fall within their jurisdiction.[22] Similarly, the elders expressed disappointment that actors of the formal legal system violated the promises they made to them to the disputes they settled in a customary manner already.

During my fieldwork, I came across many instances when actors within the two legal systems were blaming each other and expressing their mistrust. The following case illustrates how the police arrested a criminal after his case had been settled by *jaarsummaa*, breaking their promise to let the case be resolved by the elders.

> Case 7: Theft
> Twenty years ago, a man had stolen a weight balance of another man from a mill house. The case had initially been brought before the police by the complainant. A suspect was arrested and brought before the court of law, but he denied having stolen the balance. The efforts of the police to further investigate failed since the crime had happened at night and there were no witnesses.
> When the elders approached the police to let them settle it locally, the suspect was released from police custody. Initially, the accused person denied the deed before the elders, but when they threatened they would make him an oath of innocence, the suspect admitted his guilt. They promised to keep him safe from any arrest related to this case and the stolen weight was returned to the owner. After he asked for forgiveness and paid compensation to the victim, the elders blessed him. When the elders reported to the police that the case had been settled, the police arrested the man again.

I was told about this case by the elders. One of them expressed his disappointment by the broken promise of the police. When the man was prosecuted, found guilty by the court and sent to prison, this angered the elders who had handled the case and who felt that they had been betrayed. The case further shows that the elders play an important role in investigating cases that are difficult for the police to handle for lack of evidence: had it not been for them, the truth may not have been revealed. Yet, their judgment was ignored by the court and actually led to double punishment for the same crime: first by the elders and then by the state court.

Failure of both systems to settle certain disputes

Nowadays, disagreements over land are one among the most significant sources of disputes in the area. They are often also the most contested and lengthy cases, as people neither accept decisions of the elders nor the lower state court if decisions are not in their favour. Rather, they take their cases through appeal to the next level court. While I was in the fieldwork, I gathered many cases in the context of

22 There are cases of elders who were criticized and even brought before the court of law for dealing with cases that were not under their jurisdiction.

land disputes. The following example shows a case both systems failed to settle and which has therefore been pending for decades.

Case 8: Borderland dispute between two *kebeles*

This dispute initially emerged during the final years of Emperor Haile Selassie's rule. During this time, the disputed land was under the control of the government. It was locally called the land of Empress Menen (*lafa etege*), the wife of the emperor, who had large tracts of her personal estate land in the area where a large number of imperial cattle used to graze.[23] However, two local notables claimed the land arguing that they had ancestral rights over it. The two notables not only disputed between themselves but also against the imperial government.

Following the fall of the imperial regime, the cattle were confiscated by the newly formed local administration and distributed to the local population. When the *kebele* administration was established by the Derg, the disputed cattle grazing land was left undivided because of the claim over the land by residents of the then two neighbouring *kebeles:* Qore Agabani and Abu Doye. The two individuals with their close associates who were already in dispute over the land continued their litigation before the state system. Later, other peasants who own adjacent land to the disputed land joined the litigation. Because of this, the boundary between the two *kebeles* along the disputed border was not demarcated.

The administrations of the two *kebeles* made several attempts to settle the matter and demarcate their boundaries. Jidda district administration, the responsible organ regarding land disputes at the time, also visited the area several times but their attempts did not end the dispute. The data I consulted from the district court shows that a committee was formed, representing officials from the district administration and agriculture office and the two *kebeles*. Finally, the committee gave the land to Abu Doye. That was on 10 February 1979. However, their decision was never implemented because of the resistance from the other *kebele*. Jidda senior elders also met several times to bring an end to the border dispute between the two *kebeles*.

After the fall of the Derg in 1991, two or more *kebeles* were merged for administrative purpose in Jidda. Accordingly, Qore Agabani was merged with other *kebeles* and called Wanya Qore, and Abu Doye was united with the neighbouring *kebeles* and took the present name Horo Abu. Since then, the disputed land became a boundary dispute between the two newly emerged *kebeles*: Horo Abu and Wanya Qore (see figure 1 above). When the land registration and certification started in 2005, many farmers from both *kebeles* included the disputed land into their certificates. This has contributed to further complication in the settlement of the

23 This cattle grazing land was allocated for the purpose of keeping dairy cows and beef cattle for the palace. The area was selected for its good climate, availability of sufficient fodder and geographical proximity to Addis Ababa.

dispute. Totally, over 70 people had claimed over the land and sometimes the disputed land is called the land of 70 people (*lafa abba torbbaatama*).

On 11 May 2015, a directive letter was written from the District Court to Jidda District Land Administration and Environmental Protection to search for a final solution. After visiting the area, the office replied to the court that it was beyond its capacity to deal with the matter alone and recommended the court to establish a special committee composed of different sectors. The court wrote letters to various offices to work with district land administration over the matter. Officials from the land administration and environmental protection together with other staffs representing district administration, district police, and district security offices visited the site where the disputed land was located. These officials together with representatives from local *kebele* administrations and local militia of Horo Abu and Wanya Qore as well as elders representing the two *kebeles* made a visit to the field and arranged several meetings. Totally, the committee was composed of 15 persons (nine government officials and six elders).

Finally, the office for Land Administration and Environmental Protection reported the decision of the committee by file No.1390/07 to the district court on July 3, 2015. In the letter, the office wrote that the boundary between the two *kebeles* (Wanya Qore and Horo Abu) was not known. It also reported that the dispute over the land started during the last years of Emperor Haile Selassie's rule. Besides, what many people included the disputed land into their certificate in 2005 and the investigated reality on the ground by the committee are contradictory.

Relying mainly on the report of the committee, the district court decided by file No.15399/07, contrary to the expectation of the parties in dispute, that the disputed land should be shared between the two *kebeles* and subsequently given to the landless youth. But, those people who have been claiming the land appealed and took the case to the high court. A final solution to the old disputed land has not yet given by the concerned bodies.

This particular case (and other many examples from my file of cases) illustrates the inherent weaknesses of customary and formal legal systems to settle land disputes, which involve a large group of people. The findings show that both systems tried to settle the case on a number of occasions, but each time the disputants refused to accept the proposed settlement. The case also demonstrates the failure of joint dispute settlement by representatives from customary and formal legal systems to find a satisfactory way of resolving it. Although this problem is not widespread, it, however, shows there is a need for the two systems to work closely.

Summary and conclusion

The paper showed that both customary and state laws and legal institutions have weaknesses and in some ways complement, in others contradict each other. The relationship between customary and formal legal systems in the research area has cooperative, competitive and problematic aspects.

The cooperative aspects include case transfer and notification of the decision of the transferred case of settlement to one another's jurisdiction, case transfer from the formal legal system to the customary one being more frequent. As could be shown, the two systems sometimes settle cases jointly such as when government officials face serious problems in resolving disputes in their own and seek support from local elders. Cooperation also occurs in the de-escalation of dispute and crime prevention. Elders can play double roles when serving as judges in state-based institutions at the village levels and at the same time serve as the main actors in *jaarsummaa*.

On the other hand, there are various competitive and problematic aspects. The first one is mutual undermining, e.g. when the activities of the customary legal system are undermined by the actors of the formal one and vice versa. The second problem is the unclear and incomplete jurisdiction, which causes among elders who fail to clearly identify matters of family or personal law that fall within their jurisdiction on one hand, and an unwillingness of the actors in both systems to deal with certain marital and minor crimes. In cases of homicide, even if handled in the court and the killer sent to prison, elders apply certain customary practices to make sure peace between the two parties is re-established, such as setting certain rules what the disputed families should and should not do until blood price (*gumaa*) is paid upon the release of the killer. Though the intent is to restore social harmony in the community, legal actors in the state system criticize elders for interfering in such cases, which leads to ambiguity and uncertainty on the side of the users of the systems. Third, in cases of homicide and some others, one can also observe double jeopardy, e.g. that the same case is dealt with in both systems and a perpetrator is punished twice for the same crime. Fourth, there exists mutual mistrust, e.g. elders and government officials do not trust each other, as when elders feel that police is violating the promise they had made to them. Finally, both legal systems fail to settle certain disputes and hence pending for years.

To minimize contradiction and confrontation and to productively make use of complementary aspects, the following suggestions are made:

1) Both Constitutions of Ethiopia and Oromia region in their Art. 34(5) did not provide the details of personal and family matters that fall within the remit of customary laws and left those particulars to be determined by law. To date, however, the House of People's Representatives and Oromia Regional State Council have not yet addressed these matters. Consequently, this has contributed to dispute and

confusion over jurisdiction between customary and formal legal systems in the area. This paper suggests that the legislatures should specify by law detailed lists of personal and family matters that fall under the customary legal system.

2) The current FDRE Constitution and the Constitution of Oromia give exclusive jurisdiction for the formal legal system in criminal cases and other aspects of the civil law that do not fall within the sphere of personal and family laws. However, the 2004 Revised Criminal Code of Ethiopia states the types of crimes that are prosecutable upon complaint and seems to leave the choice of the forum to the disputants. As discussed above, the police, public prosecutors, and judges in the study area informally transfer a considerable number of cases involving upon complaint crimes to the *jaarsummaa*. However, the Ethiopian law does not clearly give any legal basis for the formal legal system to do so. Therefore, a new law should be enacted by the House of People's Representatives and State Council of Oromia, which clearly governs the level of the working relationship between customary and formal legal systems over these crimes punishable upon complaint.

3) Under Ethiopian law, customary institutions have not yet been given official legal recognition to deal with serious criminal cases. Such cases continue to be under the exclusive jurisdiction of the formal legal system since the state regards them as offenses against the public interest. The Tulama Oromo of the study area wanted to deal by themselves with most serious criminal issues. They also felt that customary legal system should be legally allowed to be involved in such cases. For this reason, there is commonly a customary reconciliation after the cases have passed through the process of the state system in the area. This means the perpetrator is subjected to double punishment in reality since each system deals with different aspects of the same case. Thus, the paper suggests that Ethiopian legal system should officially recognize customary laws to deal with these customary matters, such as homicide, bodily injury (loss of body parts like eye, tooth, leg, hand, etc.) and arson as far as they are not in conflict with the country's constitution and international human right standards. For this, there should be clear guidelines on the operation of customary reconciliation ceremonies after cases have been dealt with by the formal court system. This paper further proposes that the formal court should take the future customary reconciliation into account while punishing the criminals. In other words, the court should pass a lesser sentence on the criminals. This view is supported by many elderly informants and discussants in focus groups who argued that the amount of punishment (including the prison sentence) by the court should be reduced considerably.

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