


Sit Six

**Customary and Local Governance
Systems and Peace Making**

Introduction

- Customary law is the set a set of custom, practices and beliefs that are accepted as obligatory rules of conduct by indigenous peoples and local community. it is the mechanism of resolving dispute. There is a procedure to resolve disputes without the assistance of the institutionalized justice system. *Customary law is unwritten law and kept in the memory of people or elders.* Therefore, when a case or dispute arises, the interested party have to ask these people for a solution. Custom is defines as a tradition or a usual way to behave. Custom is to society what law is to the state.
- A legal system is defined as a synergy of legal rules, legal principles, legal standards, legal policies, legal structures, legal tradition, legal actors, legal extension and legal penetration operating in a given geographical area.

Indigenous and local governance

- Governance is about the processes by which **public policy decisions** are made and implemented. It is the result of interactions, relationships and networks between the different sectors (government, public sector, private sector and civil society) and involves decisions, negotiation, and different power relations between stakeholders to determine who gets what, when and how. The relationships between government and different sectors of society determine how things are done, and how services are provided. Governance is therefore much more than government or 'good government' and shapes the way a service or set of services are planned, managed and regulated within a set of political, social and economic systems.
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- Local government is the essential institutional building block for local governance, the wider governance sphere comprises a set of state and non-state institutions, mechanisms and processes, through which public goods and services are delivered to citizens and through which citizens can articulate their interests and needs, mediate their differences and exercise their rights and obligations.
- The concepts of *local governance and decentralization*, at times used interchangeably, are related but different concepts. **Decentralization** is primarily a national political, legislative, institutional and fiscal process. While **local governance** can be affected by decentralization processes for example, if local governments are expected to provide services formerly offered through national organizations - it may or may not be accompanied by decentralization, representative or participatory democratic processes, transparency, accountability or other defining characteristics of 'good' local governance.

The Oromo Gadaa

The Gada system is a time-honored age and generation-set system practiced among the Oromo people who regarded the system as their common heritage and as one of their major identity makers. The gada is crucial organizing structure among the Oromo people and its social, political, ritual and legal aspects provides the framework for order and meaning of life. Gada organizes society via councils (yaa'aa), laws and injunctions, outlining rights and duties of its members. The Oromo recognized the Gada System as part of their cultural heritage and as a contemporary system of governance that functions in concert with the modern state system.

- In the Gadaa system, political power is transferred from one generation set (Luuba) to another every eight years. Gaada officials such as the Abba Gaada and Abba Seera(father of law) serve for eight years and leave their position to the new generation of Gadaa officials. The Gaada system involves a continuous process of law making and revision. The law making process has rooms for wider participation of the people. Gumi gaayo, a law making assembly of the Borana Oromo, is a good example. Gumi gaayo is held every eight years to revising, adapting, making and publicizing the customary law (seera) and custom (aadaa) of the Oromo. The Waliso Oromo have a law making assembly known as yaa'ii haraa, an equivalent of gumi gaayo, held every eight years.
- The Gaada is an indigenous system of governance, conflict resolution, and peacemaking. The indigenous system of governance among the Oromo also include institutions of conflict resolution such as the Jaarsa Biyyaa (literally: elders of the soil/land) institution.

Gadaa classes

Grade 1: Daballe from age 1-8 Dabale is the first of all grades and it is always occupied by a class of people sharing a common identity by virtue of the fact that they are all the sons of the gadaa class who are in power as leaders of Borana society as a whole. The dabballe stand out in Borana society because of their striking hairstyle, known as “guduru”.

Grade 2: Junior gamme (gamme didiko) from age 8-16
The transition ceremony by which the sons pass from the dabballe into gamme grade. The dabballes’ shave their hair and given names. In the gamme hairstyle, the hair is shaved in the middle, and the rest is allowed to grow long and cure with a regular treatment with better.

Grade 3: Kuusaa, junior warriors age 16-24 The game to kusa transition rites takes place at the shrine of Dhaddacha Dhera in the vicinity of Arero. At this place the father will shave the hair of his son/s. The transition rite thus came to an end and the “Kusa” proceeded with the Lallaba ceremony, the grand event in which the “election results” were announced to the assembled representatives of all Borana clans.

Grade 4: Raabaa age 25-32 At this stage the raba's tend to learn art of governance and this time is when they get married. The raba grade has mostly defense responsibility.

Grade 5: Doorii age 33-40 This Dori Grade is where males expected to have sons and could start procreating so as to soon acquire the aspired and respected status of fatherhood; with crucial responsible household-head. The Doroma; when they were planning to take power in the next Gada period. The remarkable stage where the Dori's gained arts of leadership and philosophy.

Grade 6: Gada age 41-48. Gada Grade is the stage of full political maturity and became the ruling party for the following eight years. This is the peak of social and political career of Gada and the optimum age of having maturity skill and capacity of holding and practically showing societal responsibilities.

Grade 7: Yuba age 49 and above. The Gada retires and becomes a Yuba elders ; the most important responsibility of retired Gada class (Yuubaa) is to oversee the ceremonial activities of the luba in power. The Yuba still takes over advisory functions and act as mediator, ritual experts and peacemakers.

The Gedeo Baalle

- ▶ The Gedeo of southern Ethiopia have an indigenous system of governance called **Baalle**. The Baalle and the Gaada system of the Oromo have some similarities. For example, both have grading system and exercise periodic transfer of power (i.e., every eight years). The role of religion is high in the two indigenous systems of governance. Moreover, the customary law of the Gedeo is called **SEERA**. The Ya'a, the general assembly, is the highest body of the Gedeo indigenous system of governance. The Baalle is a complex system which has three administrative hierarchies: Abba Gada, Roga (traditional leader next the Abba Gada), and two levels of council of elders known as Hulla Hayyicha and Songo Hayyicha. The Abba Gada is the leader of the Baalle. The Baalle system has a body of laws called Seera. Conflicts are resolved by the Songo hayyicha at village level. When disputes are not settled at the village level, cases can be referred to first to the Hulla Hayyicha and finally to the Abba Gada. In general, the Gedeo system of governance has three major institutions: the ya'a (general assembly), the Seera (customary law), the Abba Gada, and council of elders.

Dere Woga of the Gamo

- ▶ The Gamo are among Omotic peoples of southern Ethiopia. Unlike their neighboring people such as Wolayta and Dawro, the Gamo did not have a centralized political system. The Gamo people were organized into several local administrations locally known as deres. According to anthropological findings, there were more than 40 deres across the Gamo highlands. Each dere had its own ka'o (king) and halaqa (elected leader). The indigenous system of governance embraces the dere woga (customary law) and the dubusha assemblies. The highest body of the indigenous governance is the dere dubusha, a general assembly that is responsible to make and revise customary laws, resolve major disputes that cannot be solved at the lower levels.

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- ▶ The dubushas assembly has three hierarchies: 1) the dere dubusha (at the top), sub-dere dubusha (at the middle), and guta/neighborhood dubusha (at the village level). Minor cases and disputes are resolved by the dere cima, council of elders. Like the Oromo Gada and the Gedeo Baalle, the indigenous governance of the Gamo is embedded in the Gamo belief system. It is believed that telling a lie and hiding the truth are considered as violation of taboo, which would lead to spiritual pollution and then misfortunes including lack of fertility, illness, and death of human beings and livestock.

Intra and inter-ethnic conflict resolution institutions


- ▶ There are different indigenous institutions of conflict resolution and peacemaking across regions and cultures in Ethiopia. The following are some of them: *customary dispute resolution mechanisms; traditional mechanisms of conflict resolution; grassroots justice systems; and customary justice institutions*. Indigenous justice institutions and mechanisms share several common aspects including the following:
- ▶ High involvement of elders at different stages of conflict resolution and peacemaking process.
- ▶ Preference and respect for elders known for their qualities including experience in dispute resolution; knowledge of customary laws, procedures, norms and values of the society; impartiality, respect for rules and people; the ability of listening and speaking politely; honesty and tolerance.
- ▶ Indigenous dispute resolution practices focus on restoring social relationships, harmony, and peaceful coexistence.

- ▶ Indigenous justice systems also have differences in terms of hierarchies, procedures and level of complexities. For example,
- ▶ In some cultural settings, conflict resolution mechanisms involve several hierarchies and complicated procedures;
- ▶ The compositions and responsibilities of council of elders also vary from society to society. For example, different types of elders address different forms of disputes in some cultural settings; whereas the same body of elders deal with various types of disputes in other settings.
- ▶ Indigenous/customary justice institutions have been widely used across Ethiopian regions and cultures. With some exceptions, customary justice institutions include three major components. The three components are 1) **customary laws**, 2) **council of elders**, and 3) **customary courts or assemblies**.

- ▶ **Customary law:** it refers to a body of rules, norms, and a set of moral values that serve as a wider framework for human conduct and social interactions. The Sera of the Sidama, the dere woga of the Gamo, the Seera Addaa of the Oromo; Gordena Sera of Kestane Gurage are examples of customary laws. In most cases, customary laws are available orally. Some customary laws are published in recent years. For example, the Sebat Bet Gurage published their customary law named Kitcha: The Gurage Customary Law in 1998. Similarly, Kistane/Sodo Gurage have a written version of customary law known as Gordena Shengo.
- ▶ **Council of elders:** It is the second important institution of customary justice systems. The council of elders embraces highly respected and well-experienced community members who have a detail knowledge of the customary laws. Members of the elder's council are also known for their personal qualities such as truthfulness and experience in settling conflicts. Elders often serve their communities on voluntary basis without any payment. The number of the elders varies based on the nature of the case. The institution of council of elders has different names in various ethnic groups: Yehager Shimagile (Amhara), Jaarsaa Biyyaa (Oromo), Hayyicha (Gedeo), Guurtii (Somali), Dere Cima (Gamo), Deira Cimma (Wolayita), and Cimuma (Burji).

- ▶ *Customary courts* are public assemblies that serve two major purposes: (a) hearing, discussing and settling disputes, and (b) revising, adapting, and making laws.
- ▶ As noted above, in most cases, indigenous justice systems in Ethiopia embrace three major structures: customary laws, customary courts, and council of elders. Let us summarize the Gamo customary justice system to portray the three major structures. The customary justice system of the Gamo people of Southern Ethiopia has the following branches: 1) *Dere Woga*, customary laws, 2) *Dere Cima*, council of elders, and 3) *Dubusha*, customary courts or assemblies.

The three structures of Gamo customary justice system

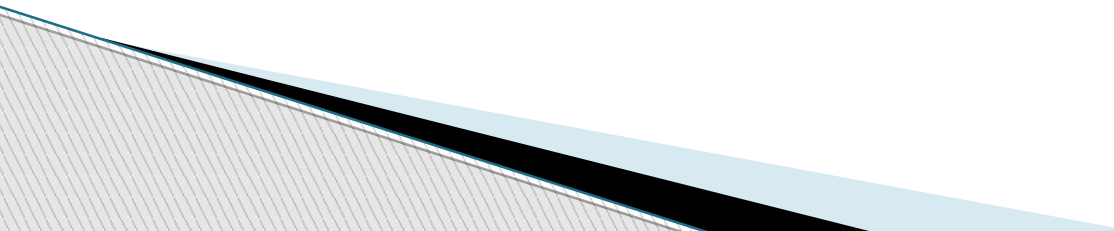
- ▶ **The Dere Woga:** It is a comprehensive body of rules and procedures that govern a wide range of issues including inheritance, property ownership, marriage and divorce, conflict resolution and gender division of labor.
 - ▶ **The Dere Cima:** Literally, dere cima means elders of the land/country. It includes notable and respected elders experienced in resolving disputes. Elders serving in dispute resolution are expected to have a sound knowledge of the customary laws, norms and values of the community.
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- ▶ **Dubusha:** it is customary courts. Dere dubusha, the biggest customary court in a given Gamo community, has two major functions: (a) hearing, discussing and resolving disputes, and (b) revising and making laws. In most Gamo communities, the structure of the customary courts has three levels: Guta dubusha, at the village level; sub-dere dubusha, at the kebele level; and dere dubusha at the higher level. Cases would be heard at the guta dubusha level, if not settled, referred to the second and third level of the structure. According to the indigenous belief, dere dubusha is a sacred place where supernatural power exists. It is a place where curses are uttered in its name; justice is delivered; and important assemblies are held. Dubushas are places where truth prevails. Misconducts such as telling a lie during dubusha assemblies are considered as transgression of taboos, which in turn would bring misfortunes to individuals and communities. Customary courts are easily accessible as each Gamo community has several customary courts

Strengths and limitations of customary justice systems/institutions

- ▶ Study findings indicate that indigenous institutions of dispute resolution have strengths and limitations. Some of their strengths and limitations are outlined below.
- ▶ ***Strengths of customary justice institutions***
- ▶ Incur limited cost in terms of time and resources/money; elders do not request payment for their services; fines and compensation are relatively small;
- ▶ Conflict resolution process are held in public spaces in the community; different parties (victims, offenders and community members) participate in the process; decisions are communicated in public;
- ▶ Decisions are easily enforced through community-based sanctions including social exclusion; compliance ensured through blessings and the threat of curses;
- ▶ Customary systems aimed at restoring community cohesion, social relations, collective spirit and social solidarity
- ▶ Rely on respect for elders, the tradition of forgiveness, transferring compensations embedded in indigenous beliefs

Limitations of customary justice institutions

- ▶ Limitations related to protecting and safeguarding women's rights. Indigenous justice institutions are dominated by men. For example, the council of elders are not open to elderly women. Women are excluded from participation at customary courts and assemblies with a few exceptions.
 - ▶ Indigenous institutions of dispute resolution and peacemaking are effective to resolve dispute and restore peace within the same ethnic group. Their potential in resolving inter-ethnic conflicts and restoring long-lasting peace is very limited.
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Inter-ethnic conflict resolution

- ▶ Abbo Gereb is one of the indigenous institutions that address inter-ethnic conflicts. It is a dispute resolution institution in Rayya and Wajirat district, Southern Tigray. Abbo Gereb, literally means the father of the river Gerewo. Abbo Gereb serves to settle disputes between individuals or groups from highland Tigray and lowland Afar. Conflict between the two groups often arise because of dispute over grazing land or water resources, particularly in dry season. When conflict arises between parties from two ethnic groups, notable elders from Tigray and Afar come together to resolve the dispute and restore peaceful relations. Most of the elders involved in inter-ethnic conflict resolutions are bilingual: speaking Tigrigna and Afar.
- ▶ Ethnographic findings also reveal the existence of inter-ethnic conflict resolution mechanisms when conflicts arise between Afar, Issa, Tigrayans and Argobba. The mechanisms of inter-ethnic disputes have different names. It is called Xinto among the Afar, Edible among the Issa, Gereb among the Tigrayans, and Aboroge among the Amhara

Women's role in conflict resolution and peacemaking

▶ Women's peacemaking sticks

- ▶ Sidama women have two instruments of power: the *Yakka* and the *Siqqo*. The **Yakka** is women's association or unity group. The *Siqqo* is a **stick** that symbolizes peace and women honor. The *Siqqo* and the *Yakka* are closely associated. Mobilizing the *Yakka* and holding the *Siqqo*, Sidama women stand for their customary rights. They do this, for example, when a woman is beaten up by her husband or a pregnant woman is mistreated. For example, if a man prohibits his wife from *Yakka* participation, the women group impose a fine on him. The fine could be an ox. If a woman is ill-treated by her husband, the *Yakka* leader (known as *Qaritte*) mobilizes the *Yakka* and leads them to the house of the man. The husband would not have a choice when he is surrounded by the *Yakka* holding their *Siqqo* shouting and singing. If he is found guilty, the man would be forced to slaughter a sheep and give part of it to the *Yakka*. Sidama women also use their *Siqqo* to make peace between quarrelling parties. Oromo women also have a peace stick called *Sinqee*. *Sinqee* serves the purpose of protecting women's rights and making peace. Quarrelling men stop fighting when a woman stands between them holding her *Sinqee*.

Don Kachel: Agnuak women peacemaking institution

- ▶ Women in many regions of Ethiopia play an important role in peacemaking. Agnuak women have a peacemaking institution known as Don Kachel. Literally, DonKachel means '*let us all live in peace*'. It involves a peace-making movement initiated by Jaye, a group of wise and elderly Agnuak women. The Jaye start a peace-making movement based on information gathered through women's networking. The Jaye gather information about potential conflicts from different sources, including gossips spread in the community. The Jaye quickly act upon receiving information about, for example, a heated argument that could lead to conflict and fighting. The Jaye call the disputing parties for a meeting to settle the dispute. A few neutral observers will also be invited to monitor the process of the meeting. After examining the arguments of the two parties, the Jaye give their verdict. The party that caused the conflict request for forgiveness in public and pay some compensation. A sheep or goat is slaughtered after the conflict resolved; the meat is cooked and shared by participants of the meeting. Finally the Jaye would announce the meeting is over, the problem resolved, using these words '*Now let us all live in peace together!*' The practice of Don Kachel is currently being adopted by other ethnic groups including the Nuer, Mejenger, Opo, and Komo.

Women's institution of reconciliation: Raya-Azebo, Tigray

► Elderly and highly respected women in a village in Raya-Azebo, Tigray established a reconciliation institution called the Debarte. The Debarte plays an important role in avoiding harms associated with the culture of revenge. A man may kill another man in a fight. The incident would trigger the feeling of revenge among male relatives of the murdered man. In such a tense situation, the wife of the killer requests for the Debarte intervention. The Debarte quickly start their intervention to stop the act of revenge. The Debarte instruct the murderer's wife to gathering her female relatives together. The wife and her female relatives get ready wearing their netela upside down and covering their hair with black cloths to show their grief and regret. After these preparations, the Debarte lead the female relatives of the killer to the home of the murdered man. The women cry loudly while walking to their destination. As they come near to the home of the killed person, they utter the following words: 'Abyetye ezgio! Abyetye ezgio!' 'Oh God help us! God help us! Upon their arrival at the compound of the victim, the Debarte kneel down and cover their heads with the dust of the compound. They beg the relatives/family of the murdered man to give up revenge and consider forgiveness. Initially, the relatives may not respond to the request; however, they will change their mind and open the door to show their consent for reconciliation. After persuading the victim's relatives to give up revenge, the Debarte give the way for elders who start the peace-making process.

Legal pluralism: interrelations between customary, religious and state legal systems

- ▶ Legal pluralism is an important concept in disciplines that study legal issues. It refers to the *existence of two or more legal or justice systems* in a given society or country. Legal pluralism indicates the co-existence of multiple legal systems working side-by-side in the same society. Legal pluralism is evident in the Ethiopian context. Multiple legal institutions, including customary laws and courts, state laws and courts, and religious laws and courts (e.g., the Sharia Law) work side-by-side in most parts of the country. The FDRE Constitution provides ample space for religious and customary laws and courts to address personal and family cases. The following two Articles show this reality.
- ❖ In accordance with provisions to be specified by law, a law giving recognition to marriage concluded under systems of religious or customary laws may be enacted (Article 34(4)).
- ❖ Religious and customary courts that had state recognition and functioning prior to the adoption of the Constitution shall be organized on the basis of recognition accorded to them by the Constitution. (Article 78(5))
- ▶ Legal pluralism is a pervasive phenomenon in Ethiopia. This is because a single legal system does not have a capability to address all legal cases and maintaining peace and order.