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Factors Affecting Forum Shopping Process of *Jaarsa Biyyaa* Customary Dispute Settlement Institution among the Horroo Oromo of North Eastern Ethiopia

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Abstract:

This study deals with the factors push Horroo of Oromo society to customary dispute settlement institutions, specifically to Jaarsa Biyyaa (Elders' Council) institution. Even though numerous researches have been conducted on customary institutions of dispute settlement, there is an obvious gap of research conducted on the theme in the research area. Furthermore, the issue of forum shopping is a topic, which got less attention on researches conducted throughout the country. The study addressed the process of forum shopping and tried to understand the local accounts of what shapes the legal choice making process. To realize the intended objectives of the research, qualitative research approach has been adopted. Both primary and secondary sources of data and different data collection tools were used for the study. The secondary sources used have been clearly cited and acknowledged in the thesis.

Keywords: Conflict, Jaarsa Biyyaa, Oromo, Horroo

1. Introduction

Conflict is part and parcel of everyday human relations and it is as such described to be part and parcel of the human life. In the human history, hence dispute is an indivisible from social life and it happens due to different factors.

In Africa where the social bonds are described to be stronger unlike the western social context characterized with individualistic ways of the life, the customary dispute settlement institutions play a vital role in settlements of disagreement and enhancing the solidarity and cohesions of the society. There are various customary dispute settlement institutions playing a significant role in handling disputes of various nature and scale in Africa (Gulliver 1979). These institutions have attracted attentions of Anthropologists who were interested in understanding the different procedures used by the institutions in settling disputes of various natures (Bohannan 1967, Fallers 1969, Knutson 1967, Gluckman 1956, Gulliver 1965, Utne 2001). Like other African countries, in Ethiopia there are various customary dispute settlement institutions, which are vibrant in settling disputes between individuals and groups (Pankhurst and Getachew 2008, Tarekegn and Hannah 2008, Jetu (2011), Asefa (2008) and Haftom (2011), Kelemework (2011), Getachew and Shimelis (2008), Dereje (2008).

This research draws on a gap identified during the review of literature on dispute settlement on the Oromo of western Ethiopia in general and specifically the Oromo of Wollega society. Even though, the Horroo society is affluent in the customary disputes settlement institutions there is no prior study conducted on the theme. Thus, this research tries to fill this gap by examining the customary dispute settlement institution with emphasis on the *Jaarsa Biyyaa* among the Oromo of the Horroo in the North Eastern Wallaggaa. Furthermore, it addresses the forum shopping process and as a way of addressing the point of choice making the study focuses in understanding the reasons which shape the choice making process of the Horroo Oromo's who prefer to take their cases to the elder's council than the state court. The general objective of this research is to examine and study factors affecting forum shopping process of *Jaarsa Biyyaa (elders' council)* customary disputes settlement institution among the *Horroo* society.

The Horroo Guduru Wallaggaa is one of the zones Oromia regional state. It is located in western part of the country. Horroo District is one of the ten districts found in the zone. *Horroo* district is bordered by the *Guduru* and *Fincha'a* in the East, *Bila Sayo* and *Abe Dongoro* district in the West, *Jardaga Jarte* district in the North and Western Shewa zone in the South. *Shambu* is the capital town of both the Horroo district and the Horroo -Guduru Wallaggaa zone. Horroo district is located 310 km west of Addis Ababa (*Finfinnee*), the Oromiya regional and the federal capital. The total area of the district is 998.7 km². The Horroo district has twenty-two rural and three urban *Gandaa (kebele)*. Due to financial and shortage of the time, the research site limited to two research sites namely, *Odaa Bulluqi* and *Abbillee Igguu* peasant associations.

2. Materials and Methods

This research employed qualitative research methods. Both primarily and secondary sources of data were used for the study and hence different data collection tools were used as to be presented. The primary data are collected by observation, key informant interview, informal discussion, focus group discussion, and case study. Furthermore, this research referred to relevant academic literature on the customary dispute settlement institutions.

3. Forum Shopping and Opting for the *Jaarsa Biyyaa* (Elders' Council)

Horro society as any other community in pluralistic legal settings often makes choice of legal settings (forum shopping) in the existing plural legal setting. The society prefers indigenous institution than formal legal institutions as the findings of the study attest. Different factors are raised by informants as factors accounting for making such a choice. Likewise, Meron (2010:75-76) evaluates that many people coming to the court of the sheikhs raise points which highlight their dissatisfaction with the state court's mechanisms for dealing with different cases, the expenses incurred, the long-time span to finalize a case, issues of corruption, and over-emphasis given to evidence. With this regard, Girma (2011:158) mentions that people often encounter many challenges when they bring their case to the bureaucratic system of the government. Due to this, many rural people of *Torban Kutaye* want their disputes settled at the customary system my data to be presented in the following sections totally confirms their ideas.

During my field works from the forty key informants interviewed on different occasions thirty-six of them (89%) of them preferred customary conflict settlement institution. Informants as to be pressed in the following sub-sections have raised many pulling factors to the institution. The Horro society favors indigenous institution due to unclear and biased works of formal settings. The following section discusses factors that make Horro society to opt for *Jaarsa Biyyaa* institution in plural legal settings.

3.1. Costs Incurred

Girma (2011:155) states that the customary settings are cost effective and time saving. Once the cases are initiated at the customary dispute settlement settings the disputants are reconciled with in a short time. According to accounts of key informants taking cases to the formal courts is very expensive than the cost to be incurred at customary institutions. If a person takes his/her cases to the court, he/she may expect to cover many expenses. The society is expected to pay the cost for transport, accommodation, meal and other expenses like cost to write cases by professionals and consulting experts.

Among the study area, disputant pay from two hundred to four hundred Ethiopian birr i.e. (10-20 US dollar) per one case, for having their cases written by professionals. Moreover, a person who is not familiar with law of country often employs a lawyer who presents the case to the court and who defends of the disputant in front of the judges in the court. The lawyer may take eight hundred to one thousand Ethiopian birr (30-40 US dollar) from disputant one forum.

However, if disputants take their cases to Elders' Council, they get verdicts without paying many expenses. The disputing parties get their verdicts at gates via people whom they are acquainted with. In formal case, a person is expected to report his/her case in written forms. But, in case of *Jaarsa Biyyaa* disputants' tale their cases to *Jaarsa Biyyaa* orally. In the later case litigants do not pay cost for professional fee, transport, accommodation, papers and pens. As a result, informants accent that in most instances thesis one of the factors that account for the preference of *Jaarsa Biyyaa* indigenous conflict resolution mechanisms.

The following story shows cost effectiveness of *Jaarsa Biyyaa* customary dispute settlement institution.

3.1.1. Case 1

Dabala was a 35 years old man who lives in the *Abbillee Igguu* peasant association. Mr Mijana (Dabalas' nephew) accused Dabala at the state court. Mijana grew up in his grandfathers' home. The father of Dabala died in 2011. After death of his grandfather, Mijana asked Dabala to share properties of his grandfather. But, Dabala did not want to share the properties. Mijana took the case to the court. They both paid cost for the transport. The transport from Mijanas' home to the district court is 22 birr (1 US dollar) for one trip. He came to the court five times and paid 150 birr (5US dollar) for transportation. Also, he paid 80 birr (4 US dollar) for meals in *Shambuu* town daily paying a total of about 440 birr (20 US dollar) for meals. He paid 300 birr (30 US dollar) for person who writes the case. Totally, he paid 1300 Ethiopian birr (60 US dollar) for five appointments at court and he did not get decisions from the court yet. He took appointment for other day. He mentioned that as he was busy commuting between his village and the district court and as he doesn't have any person who takes care of his farm on his absentia he missed to till his land on time. Later on, he decided to withdraw and bring the case to the court of the *Jaarsa Biyyaa*. Due to the cost effectiveness, he opted for *Jaarsa Biyyaa* customary dispute settlement institution. Source: (Interview with Mijana, at *Abbillee Igguu* area, August 12, 2016).

From above case, one can comprehend that one of the factors that shape the choice making process is the cost.

3.2. The *Jaarsa Biyyaa* Avoids Sense of Grudge and Revenge

According to Meron (2010:65), the state mechanism of punishment in most instances does not managed to eradicate the long-standing norm of revenge. Experiences from different parts of Ethiopia show that what people tend to do, after passing through the penalty at the state court, is to go to the customary institutions for reconciliation and in order to control acts of revenge. My data fully enables me to agree with these realities. The Elder's Council makes disputants to take oath that make the disputants not to think any kind of avenge. The cases of disputants settled at the formal institutions are often taken to *Jaarsa Biyyaa* for reconciliation. After disputants got decision at court, the *Jaarsa Biyyaa* reconciles disputants to repair the social harmony between the disputants.

Among the study area, often the victims' parties want to make vengeance up on offender. It is particularly realized if offenders have matured male children. There is one saying in society that confirms this idea "except, ape no one is passive to revenge". With this

regard, Meron (2010:73) discusses that manhood is the obligation to revenge and safeguard one's own or one's kin pride. Killing a member of one's kin means challenging the manhood of the whole group. One then wants to prove his manhood by doing the same. The judgments of *Jaarsa Biyyaa* reduce vengeance between disputing parties. This is because the verdicts of elders' council satisfy both disputants bringing win situation to both parties. The judgments of this customary dispute settlement institution build up positive spirits between individuals in the disagreement. Also, the decisions of elders do not offer right for one person at an expense of the other. The cultural practices (ritual of hand shaking and making disputants to enter each other's home) performed by elders avoids sense of revenge from the minds disputants.

The verdicts of elders' council do not spot one person as champion and other as loser unlike that of formal settings. *Jaarsa Biyyaa* makes disputants to make excuse for each other, without identifying disputing parties as a winner and loser. This helps the society to keep away from retribution between the disputants. Moreover, the elders make the disputants swear oath to avoid suspected revenge between the disputing parties after reconciliation in the study area. They give an oath for the disputants, if they suspect an occurrence of vengeance between the disputants. The oath solidifies the sense of *araara* (reconciliation).

But, the decisions of formal institutions including the penalty of imprisonment by itself do not satisfy disputants. It claims one of the disputant as criminal further aggravating the sense of grudge. With this regard, Nicolas (2007:15) asserts "the court gives decision to one person and penalized the other person for the crime he/she done. This develops the vengeance between the disputants that further affect the solidarity of the society".

3.3. The Proximity of the *Jaarsa Biyyaa*

The rural dwellers of Ethiopia go far distance to get the court. As a result, the society brings their case to customary dispute settlement institutions, where they get decisions at their gates in the attendance of their families, relatives and friends. The elders settle the disagreement in hamlet of the disputants. Elders who seat reconciliation are person who disputants know well and with whom they have been living for years.

According to Dejene (2002: 132), the distance from the court and lack of transportation discourage disputants among Waliso to take their case to government court. My data totally confirms his idea. Among the Horroo society, the court is far from the rural dwellers. This makes the rural peoples to go far distance walking two to three hours. In connection with this, Girma (2011:155) discusses that the customary dispute settlement institutions are accessible that is they are situated where the disputants can find them easily. The judges of the customary setting are prominent or ordinary elders of the community. The disputants initiate their cases at these settings without any fear and language barrier. The propinquity of customary institution to the local people makes them to opt for *Jaarsa Biyyaa* than the state institutions of dispute settlement.

The following story shows one of my informants' preferences of the *Jaarsa Biyyaa* institutions for such reason.

3.3.1. Case 2

I always prefer the *Jaarsa Biyyaa* on whichever types of disputes. The decisions of elders take place at our gates. The elders' council unlike the court, which is far distance from my home often, handles the case in best convenience to me. I get verdicts on elders' council session in our neighborhood within the presence of our families and relatives. The elders are often people whom I am familiar with. In case of *Jaarsa Biyyaa* decisions, I get judgments and return to my different activities on time it saves time and psychological tensions. The Elders' Council reconciles disputing parties rather than throwing the offender to jail like formal settings of dispute settlement institutions. If I enter to jail, I will waste my young ages, labor and money. Since, the place where one person is imprisoned is far from my home, my families will be busy proving food and visiting. Also, if one takes his /her case to formal courts of dispute settlement, he/she might be under pressure of spending many days and hours at the court. But, the *Jaarsa Biyyaa* reconcile the disputants in their environment. Due to this I prefer the institution of *Jaarsa Biyyaa*". Source: (*Namoomsa, at Abbillee Igguu* peasant association, June, 2016).

Many informants share Nemomsas' point and highlight the fact that the convenience of the Elders' Council institution relation to its proximity and accessibility are one of the major pull factors. This shows that the customary dispute settlement institution is near to the forum shoppers (disputants). This makes the individuals to opt for the *Jaarsa Biyyaa* institution to conclude their dis-agreement.

3.4. Absence of Corruption

Among the study area, there are higher scales of corruption at the state courts. The lawyers, judges and social court officials take bribery from one of disputants and favor him/her. Usually the rich person gives bribery and wins the case. Informants argued that in some instances people are thrown to jail for a crime which they have not committed. This is mainly due to the prevalence of corruption in the state institutions.

The ones who are economically rich can come up with false testimonies. If offender knows his/ her offense, the person gives bribery to someone who can be a witness. Since the formal institutions give verdicts based on report of spectators, the one with a witness has better chances of winning the case. With this regard, one of my informant said that "the rich can buy truth with his/her money". In relation with this, Girma (2011:156) argued that the activities of the state institution of dispute settlement are always arbitrary and they are highly corrupted.

However, the *Jaarsa Biyyaa* gives unbiased judgments without favoring the disputant in contrast to formal settings. One of my key informant said that 'elders' decisions is based on truth for the sakes of their home and children'. According to interview with some informants and observation during fieldwork, to keep away from practice of bribery elders and spectators take oaths on the beginning

meeting for reconciliation among the Horroo society. It helps for legitimatization of the power of the elders being free of bribery. Thus, absence of bribes makes Horroo society to opt for Elders' Council.

3.5. Time effectiveness of Jaarsa Biyyaa

The indigenous conflict resolution institutions reconcile the disputants within at most two appointments, approximately, which take three months to one year at the formal institutions. The customary dispute settlement institutions are within the society. The disputants did not waste their times traveling long distances since the institutions is within their environment (Girma, 2011). My data totally confirm his ideas.

According to my informants, the judgments of *Jaarsa Biyyaa* take place within short period. The elders' council reconciles in some instances within half a day. The *customary* institution concluded the case of disputants within three to four meetings, when the cases are serious. With the time effectiveness of Elders' Council, there is one saying in study area, "the decisions of elders can be concluded until cows are milked". This show Elders' council gives decisions for their clients with bout unlike that of formal settings, which takes extensive periods. Informants mention that as the state court tends to be time consuming of they often opt for *Jaarsa Biyyaa* institutions, which tends to be fast.

3.6. The Formal Setting of the State Court Stranger

The residents of the study area are mostly farmers. When farmers report their cases to formal settings, they contact the person who they do not know before. This makes disputants to face a different setting, which is characterized by formal proceedings. Such a different context makes the litigants to develop sense of fear and insecurity. They are often nervous about on how to respond to lawyers. For instance, if a person is aggressive on the debate, the lawyer might give bad decisions. Also, there is a time when disputant thrown to the jail saying disturb the hearing. With this regard, Meron (2010:80) witnesses that in the case of the state court the society fear with what they say and how they act. One of my informants shares the following story that "...even if I have truths I tend to be nervous to stand in front of the court and being questioned several questions. I always feel that incase I say the wrong thing just by mistake that might count as disturb the hearing and being thrown up to jail". Source: (Barsiisa, at Shambu, July, 2016).

However, in case of *Jaarsa Biyyaa* institution, judges are not odd for the disputants. On meeting elders who give verdicts are peoples whom disputants know, eat together, and people with whom they share different voluntary social associations. As a result, disputants report and react to elders' council without fear and sense of uncertainty that may misbalance their decisions at state courts.

3.7. Lack of Evidence Being a Pull Factor

Girma (2011:156) argues that there are mostly no false witnesses in the customary settings in sharp contrast with the governmental system. It is usually difficult to win the case because of the false evidences. The *Jaarsa Biyyaa* makes offender to admit the reality and trust his/ her offense through cultural mechanisms such as swearing oath of invokes and through curses.

If the criminal does not admit his/her offense, the elders on session make the disputants to take an oath of innocence. The society believes that swearing a false oath might result in negative consequences among the Horroo society. The misfortune is believed to harm the oath taker and his/her family. The harm is believed to end up to seven generations, as a result, the elders easily makes offender to trust his/her offense. The elders make the witness to swear oath on the assembly. It helps to circumvent the suspected false witness on the session. Such an act of swearing an oath by witness is a similar procedure at the state court. However, the state court often does not do anything in absence of evidences. This is because the court delivers decisions to disputants based on the witness, who observes when the crime happens. Also, the criminal may buy the false eyewitness in case of the state courts and win the debate in fronts of the formal institutions. This makes the society to prefer *Jaarsa Biyyaa* in cases of difficulties in verification and finding evidences nonappearance.

The following story of my informant confirms as the society choice *Jaarsa Biyyaa* customary setting in the absence of witness.

3.7.1. Case 3

Tolera is a farmer living in *Odaa Bulluqi* peasant association, Ethiopia. He is a rich man having many cattle. One day Tolera and his wife went to other place to visit their relatives who lived in *Jaardaga Jaartee* district. They asked their neighbors to watch their home and cattle until they return. The neighbors took the responsibility to kept their home and property. After they left one of their oxen was stolen. Up on their return home after three days, the neighbors informed them about the missing oxen. Tolera reported the case to the police station. The police asked him to inform the suspected persons. Tolera gave five suspected persons to the policemen from the neighborhood. The police questioned the suspected person. Tolera had no eyewitness. Since, there was no eye witness on the suspected individuals the police released them. After that, Tolera took the suspected persons to elders for oath and curse. The elders talked to the suspected persons. The elder said 'do not bring harm and misfortune to your children and home; inform us, what you have heard and what you have seen regarding the case'. The Elders' Council brings the materials, which used for oath like the cow's waste product, knife, gun and mirror. After elders bring materials, one person from the suspected person stands and informed to elders, that he stole an ox. He informed to elders, Tolera insulted him one night at local beer home saying "you poor man". As a result, he stole an ox of Tolera. He also informed to the *Jaarsa Biyyaa*, that the ox is alive. He promised to return the ox to Tolera. After that, the elders panelized him and made him to pay three hundred birr. The cash given for the Tolera. Tolera was penalized for insulting the person. Tolera penalized by 50 birr. The elders used the money for refreshment. After that, *Jaarsa Biyyaa* reconciled the disputants. The elders gave an oath to disputants to keep the case secret as such case of theft is beyond their mandate and should have been handed by the state court. Source: (Adugna, Odaa Bulluqi, August 10, 2015).

4. Conclusion

Dispute is inseparable from the life of human beings. In spite of indissolubility of dispute in daily life human beings, different society builds up diverse dispute settlement mechanisms to deal with it. Gulliver (1979:2) asserted that dispute settlement institutions are divided in to two: violent and peaceful. The peaceful dispute settlement includes negotiation, mediation, arbitration, adjudication, avoidance and burying the dispute. On the other hand, the author mentions duel and self-help as the violent means. The peaceful dispute settlement procedure is common among the Horroo of Wallaggaa society. These peaceful mechanisms include negotiation which is locally called it 'ila'a fi ilaamee', mediation that is performed through *Jaarsa Biyyaa* (elder's council) and avoidance locally called 'wal-ooduu'.

This study has focused on discussing the *Jaarsa Biyyaa* customary institution of dispute settlement among the Horroo Oromo of western Ethiopia. The study has aimed to understand the forum shopping process this study set out to recognize the rationale behind why people prefer to take their dispute to the elders' council than the state legal institution.

The *Jaarsa Biyyaa* institution of dispute settlement among the Horroo is often preferred as the main customary institution of dispute settlement. The elders meeting takes place often on ad-hoc bases in Ethiopia. The ethnographic material presented above confirms Radcliffe-Browns (1970) point that elders are selected as in elder council of dispute settlement based on their social recognition, their personal qualities of being influential, wise and having authority over others, having experience, and in some instances having mystical power and ritual knowledge.

The elders' council handles all forms of disputes ranging from simple insult to homicide cases. This is in contrast to the mandate offered to customary institutions in 1995 by Ethiopian constitution. According to Ethiopian constitution article 34(5) of the customary dispute settlement institutions are only limited to settle personal and family matters. However, the elders' council handles criminal cases by going beyond personal and family cases.

Among the Oromo society; disputants, the disputants' family or relatives and the state legal institutions are the different actors who make the forum shopping. The selected elders come early morning to the place where the reconciliation takes place. The theoretical framework of forum shopping is used in the study to address the legal choice making process. According to Koremenos *et al* (2001) forum shopping is described as an act of strategically choosing among different and overlapping institutions based on its proximity, assets, liability and time effectiveness. Forum shopping theory argued that in plural legal settings litigants strategically choose among competing jurisdictions. My ethnographic data confirms this assumption. The data obtained from offices and the informants, showed that Horroo society prefer *Jaarsa Biyyaa* (Elders' Council) than state institutions of dispute settlement. One of the main issues addressed in discussions of forum shopping is addressing the different reasons given by disputants to opt for a given institution over the other. This study has found out several reasons raised by informants as shaping their legal choice making process.

The Horroo society present different factors as shaping their legal choice making process. Among the different reasons mentioned cost and time effectiveness are described to be part of the reasons. The elders provide verdicts within short period. Furthermore, accessibility is described to be another factor. The elders' council gives decisions on the gates of disputants without having extra expenses for transportation, accommodation, food, and fee for lawyers. Moreover, the practice of bribery at the state courts is another push factor from taking dispute cases to the state institutions of dispute settlement. The existence of bribery and false allegation in the state courts is described to be another factor that enhances the legal choice making process to elders' council.

Apart from the above ideas, the restorative capacity of *Jaarsa Biyyaa* setting makes the society to prefer this institution. The *Jaarsa Biyyaa* reconciles disputing parties without identifying the winner and loser. The other factor that shapes the forum shopping process as per the finding of the study is the fact that the elders focus on recognition and building social harmony. Also, *Jaarsa Biyyaa* makes disputants to shake and kiss the hand of each other and make disputants to go into the home of one another at end of each meeting. It plays critical roles in the rebuilding harmony between the disputing parties.

The other instance that makes the legal choice making process is the situation in which the dispute settlement institutions motivate disputing parties to take their cases to *Jaarsa Biyyaa*. In the study area, the *Jaarsa Biyyaa* and formal settings of dispute settlement institutions, cooperatively work to handle disputes. Besides, there are cases referred to *Jaarsa Biyyaa* customary dispute settlement institution from formal dispute settlement institution. In some instances, *Jaarsa Biyyaa* referred the cases to state court. This helps the two institutions to handle dispute jointly to improve the solidarity and harmony of the society.

The other pull factor to the *Jaarsa Biyyaa* institution is an instance of absence of evidences. On such occasions when there are not evidences for allegation people often tend to prefer the *Jaarsa Biyyaa* which uses different mechanism for verification. The use of oath and curse play a significant role in the sense that false allegation and false testimony is believed to result in afflictions to the wrong doer and his or her family. The misfortunes are believed to last up to seven generation. Furthermore, the informality and felicity of the *Jaarsa Biyyaa* is considered to be another factor that affects the forum shopping process. To sum up, the researcher proposes that further researches need to be conducted on this vibrant customary institution of dispute settlement among the Horroo Oromo.

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