



Individual Project on Afar customary dispute resolution mechanism (Mad'aa)

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Self Introduction

First of all I like to thank you for giving me opportunity to introduce myself.

My name is Finot Tsegaye, I am from Afar, Awash 7kilo. I am fifth year law student at university of Gondar. I was born in a small town called Awash 7 kilo. Awash is located about 210kilometers east of Addis Ababa, which is the capital city of Ethiopia. I spent my first 18 years of life in Awash before moving to Gondar on September 21, 2008. I started my class at university of Gondar, school of law. I focused on achieving my goals, participating in extra activities and doing well in all my classes. I studied hardly and effectively because I went to be a good lawyer because I have always been fascinated by justice, rule of law and truth. I have a good score that is 3.5 of cumulative GPA of the total of 10 semesters. The only thing I left in the university is to take exit exam, it prepares by the NEAEA but, now this is post pond due to the covid-19.

Lastly, when I get the degree enables me to achieve my goals and also give me an opportunity to make a difference in the community.

Introduction

Dispute happens to appear when individuals or groups have incompatible interests and / or goals. When one has become really an obstacle or shows tendency to become so far another to meet his /her needs, a dispute is, more likely to break out. The dispute could also be a result of human greed. For the reason that scarcity of any resource is always a fact of life, there would always be a persistent competition to have a greedy control over those resources. Dispute has a devastating effect, particularly when not resolved earlier. It is undeniable fact that violent dispute brings chaos, disorder, killing of amass of people arbitrarily and destruction of the society unless some adjustment mechanisms are there.

In any society, dispute is one of the major factors negatively affecting development. It diverts resources that could have otherwise been productively. Dispute is regarded as undesirable in many societies. In its violent form, it claims the lives of many people destroy property, and diverts human as well as financial resource away from development.

The customary dispute resolution mechanisms are traditional practices used to resolve conflict and maintain peace and stability in the community. Those traditional practices are deeply rooted in different ethnic groups of Ethiopia and arise from age- old practices that have regulated the relationships of the peoples in the community. They are associated with the cultural norms and beliefs of the peoples and gain their legitimacy from the community values instead of the state. In other words, the customary dispute resolution mechanisms of Ethiopian function on the basis of local customary practices or cultural norms. However, due to the multi ethnic composition of the country, the customary laws of Ethiopia are different from ethnic group to ethnic group and as the result; they do not have uniform application all over the country. Almost all societies, regardless of their location in time or space, have norms and regulations to handle disputes and achieving resolution of differences. Every society has its own mechanisms for handling dispute.

This paper is aimed at describing and discussing the types of customary dispute resolutions and the specific mechanisms adopted in the process of resolving conflict within the context of afar community. In Afar, they beliefs that all disputes with their ethnic group should be settled peacefully and according to the long –standing customary laws (Mad’aa). Mad’aa consists of guidelines and rules how to handle disputes.

CHAPTER ONE

1. General features of the Afar national regional state

The Afar national regional state is situated in the north eastern tip of Ethiopia and has an area of about 94,760 square kilometers. This area of the regional state accounts for 8.4% of the area of our country Ethiopia. The Afar national regional state is found in the Great Rift Valley system of northern part of Ethiopia. It shares borders with Eritrea in the north east, with Tigray national regional state in the north west, with Oromia in the south, with Somali regional state in the south east, with Amhara in the west, and the republic of Djibouti in the east.

The region is divided into five zones and 32 woredas. The region exhibits physical features that are mostly plain and an altitude of less than 1500 meters above sea level. The lowest point in the country, Dallol depression that is 126 meters below sea level is found in here.

The Afar regional state is the home land of the Afar people. Formerly known as region 2, its new capital is the recently constructed city of Semera. It has the lowest point in Ethiopia and one of the lowest in Africa. Afar is predominantly (89.96%) spoken in the region and the working language of the state. Other languages with significant number of speakers in the state include Amharic, Tigrigna, Argobba, Wolaytigna, and Oromifa. Afar people have traditionally practiced Islam.

The Afar people live in small shelters that can be easily disassembled and reassembled to fit their nomadic pastoralist life style. They are predominantly nomadic and the majority is still practicing transhumant pastoralism for subsistence. Afar society is segmentary organized according to extended families and clans that determine an individual's social relationships. Individuals are members of their fathers groups in a patrilineal system of filiations with a preferred cross cousin marriage (Absuma) and priority marriage with the father's sister's daughter. Such traditional marriage has the advantage of creating strong linkage between two clans over two generations.

Afar depression, Ertale active volcano, Awash national park, Yangudi rassa national park and Hadar are the major tourist attraction area of the region. The hot springs, Afar cultures and cultural games are other attraction areas. The Afar depression, aplate tectonic triple junction is found in the region. This geologic feature is one of earth's great active volcanic areas. Due to this volcanic activity the floor of the depression is composed of lava, mostly basalt. The continuous process of volcanism results in the occurrence of major minerals including potash, sulfur, salt and gypsum. In addition to those minerals, there are also promising geoterminal energy sources and hot springs in different area of the region.

Afar is home to peculiar wildlife, which notable include the African wild ass, wild fox, wild cat and ostrich. Those wild animals are found in the regions national parks. Because the regions tourism development is still in a poor state there are only two loges in awash national park

CHAPTER TWO

2. The Afar customary dispute resolution mechanisms and manner of their application.

2.1. The customary laws (Mad'aa)

Afar elders strongly underscore that all afar are governed by the same custom (Ada) irrespective of their clan affiliation, area of residence or changes in national politics. The Afar people have a strong sense of respect to the legendary traditional rules and guidelines that descended to them from their predecessor. When a breach of conduct or misbehavior is defected reference is quickly made to such unwritten customary laws the basis of which is the normative framework and values systems entrenched in their culture from time immemorial. One such fundamental norm is the fear and respect for elderly personalities in the respective villages. Elders are believed to have the wisdom and insightful thought accumulated over long period of time. They are considered instrumental for the transfer of traditional knowledge and custom to successive generations. Elders provide informal education and teach younger generation on preventing violent conflicts. The elderly are also believed to have spiritual link to super natural forces in the conviction that living longer on earth is a gift from God signifying some purpose.

The Afar believes that all disputes within their ethnic group should be settled peacefully and according to the long standing customary laws (Mad'aa). Mad'aa consists of specified guidelines and rules on how to handle dispute cases. Once a conflict case is the hands of elders, there can be very little room for an individual to further his interests by force. This seems to be the norm no matter how long it takes the elders to process the dispute and reach a settlement.

The Mad'aa covers every aspect of societal life which is applied as arbitration through the Maro courts at various levels and mediation through assembly (Mablo) or a mixture of both. Customary dispute resolution in Afar involves elders and clans leaders to solve minor disputes in the context of afar traditional laws (Mad'aa). An Islamic law (sheri'a) is secondary to traditional law. Muslim judges (Kadi) are consulted only for civil affairs like marriage and divorce.

2.2 The Maro institution

Maro is literally session held to resolve conflict under a tree when dispute arises. A Makaban (judge), the elders, the disputants, witness and observers sit in a circle from which the term Maro drives. The makaban is a clan leader who knows the custom. Depending on the gravity of the case the number of makaban may vary from one to ten. Besides the makaban may select elders who have a good reputation within the community to assist him. Although many of those elected as elders are aged people, a younger person who has a good integrity and wins respect of his people may be elected to give such service. Women are excluding from giving such serves as Makaban and elders. The makaban and elders are not required to have formal training. They give this service to their community without any remuneration.

The Afar uses the traditional dispute mechanisms to settle conflict that arises within the family, between neighbors, with a clan and between clans. The traditional institution of Maro has jurisdiction over every dispute, with the exception of disputes relating to marriage, divorce and inheritance that are left to the sheri'a court manly in urban area. The Afar use this institution to resolve criminal case that range from insult to homicide and every civil case without taking in to account the amount of money the case involves. The Afar uses the traditional system to resolve their disputes because it is accessible, cheap, provide justice within relatively short period of time. This system resolves minor cases like insult within a single day when the accused admit the charge. Although some complicated cases relating to homicide that result in conflict between

clans sometimes takes ten years, the average dispute within a clan usually does not take more than six months to resolve.

The makaban continues to serve as a judge indefinitely as long as he does not commit acts that erode the people's confidence in him. He is expected to be impartial, to have good knowledge customary law and precedence of traditional customary decision throughout his service.

2.3. Procedures dealing with dispute

Disputes that occur between members of a clan usually arise from minor conflicts such as insult, quarrels that may result in bodily injury. Conflict over grazing land and homicide rarely occur between members of the same clan in member of a clan who comes across conflict between two or more individuals has the moral obligation to try to reconcile the dispute. If they do not accept the proposal of reconciliation or the committed crime is grave, the injured party or anyone who witnessed the occurrence of the dispute can bring the case to the keda aba of the sub clans or makaban of a clan depending on the gravity of the case. The makaban, to whom the disputant brings their case, selects elders who help in deciding the case fix the place and date hearing in the Maro. After the elders, disputants, witness, if any and observers are gathered under a tree the makaban start the proceeding by requesting the disputant to bring a Habi, who guarantees the good behavior and acceptance of the decision by the makaban. The Habi may be a member of a family or sub clan chiefs of the disputants.

After the disputants nominate their Habis the makaban gives the first chance to the plaintiff to explain his case. The plaintiff may personally explain his case or select a representative usually a chief of his clan to speak in his name. Unless he admits the allegation the defendant or his representative is given the chance to explain their version of the case after the plaintiff complete his presentation. After hearing both parties, the makaban may give the second chance for both parties to rebut, if possible, what their opponents say. If there are witnesses named by the plaintiff the makaban ask them to explain what they know about the dispute. If the witness not present in the maro, the makaban orally order his appearance and are adjourn the case for the other time. The witnesses appear in the maro by respecting the order of the makaban. The people of Afar take as their religious obligation to give testimony on what they witnessed and never hesitate to accomplish this duty. The defendant has the right to cross examine the testimony of the plaintiff's witness. If the defendant has witnesses, he has the right to present them. The

plaintiff has the right to cross examine the testimony of defendant's witnesses. When there is no one who witnessed the dispute issue brought before the makaban ask the defendant to take an oath. The defendant usually makes an oath by putting his hand on the Quran. Before the defendant make an oath the makaban adjourns the case for another day to give a chance to family members and clan chiefs to convince the defendant to admit the allegation, if he did commit the offense. They may go to the extent of promising to make a contribution for the compensation paid the injured party if the defendant is convicted by admitting the alleged fact. If the defendant insists that he is not guilty he takes an oath and is set free from the allegation. If the defendant admits the allegation or after the oral evidence presented by the plaintiff or both parties are heard the makaban gives the chance to any volunteer who attended the proceeding summarize what said. After summarizing the proceedings and the testimony of witnesses, they may give their opinion about the allegation. After all the above procedures, the makabans and the elders discuss among themselves and agree on a decision, taking in to consideration the manner in which the offence was committed, notably whether it was intentional, unintentional or negligent.

Finally, the makabans pronounce the decision orally in public and the maro is declared closed by the blessing made by an elder. All the proceedings in maro are made in public without regard to the nature of the dispute and age of parties. This practice is one of the features that differentiate maro from procedures applicable in a formal court that, only in exceptional cases may prohibit a public hearing and conduct sessions in camera to protect private lives and public morality.

2.4 Remedies available under the maro

The customary mada'a passes from generation to generation orally. The makaban and elders who are elected to resolved disputes are expected to know the mada'a and how they are applied. The mada'a, it contains vengeance and compensation as mode of remedies/ penalties for offences committed. Disputes are resolved without reference to written rules and relying on their memories of previous decisions (precedence) and knowledge of afar mada'a. Remedies available under the mada'a are vengeance and different amounts of compensation depending on the nature of the dispute. Vengeance is ordered in rare cases when a person who commits a murder disappears and the case is heard in his absence. In this exceptional situation the makaban may take a decision that allows members of clans of the deceased to take revenge but only against the murderer. Although the unofficial collection of the mada'a uses goat kids as standard measures

of compensation, which may be convertible to money or other livestock. The maximum amount of compensation is 100 camels for intentional murder of a man. If this murdered person is a woman 50 camels are awarded as compensation. The amount of compensation payable in case of bodily injury is fixed after examining parts of bodies of the injured. The fine and compensation payment related to bodily injury depending on which part of the body was harmed. In finger injuries, for example, the Afar considers damage caused to the little finger, pointing finger, and ring finger as serious. This is because the first is considered the most peaceful, the second viewed as important for indicating location, and third regarded essential for marriage. After fixing the amount of compensation the Makaban may reduce such amount up to 10% to give a chance of reconciliation between the disputants. Then the members of the clan will contribute money and live stock to pay compensation to the victim. In Afar society the family of the offender or his clan members, who guarantee the performance of the decision of the Makaban persuade the offender to pay the compensation.

CAPTER THERR

3. The current status of the mada'a and personal observation regarding the resolution

3.1 The current status

When I came to the current status of the mada'a, like many other indigenous dispute resolution mechanisms is cheap, easily accessible and non-bureaucrats. Besides, it allows the disputants to actively participate and resolve their conflict based on customary rules, norms and the values of their own people which make its decisions acceptable. It emphasizes reconciliation, rather than punishment of an offender, so that it is still now preferred to the formal justice system in Afar regional state. Due to this fact, the people of Afar in general and the younger particularly accept and respect their custom because it avoids revenge within the disputant and maintains peace within the generation. The value of this resolution is not limited by specific generation.

3.2. Institutions of dispute settlement of Afar people from human right point of view

The right of equality is one of the fundamental principles incorporated under the EFDR constitution. This principle declares equality of all human beings before the law and guarantees equal protection of the law without distinction. The Afar mad'aa that provides compensation of 50 camels for intentional killing of women and 100 camels for the same crime committed on a man and the application of this rule by makaban violet the principle of equal protection and equality between women and men in the enjoyment of rights and obtaining protection of the law. The EFDR constitution also ensures the right to life. This right is limited only to protect the right of others that is a person may be deprived of his life only as a punishment for a serious criminal offense determined by law. The occasional decision of the Afar maro to take revenge on a persons who are suspected of committing murder and disappear from the traditional justice system contradict this basic constitutional right. The practice of maro to conduct public hearings in resolving dispute confirms with article 20(1) of the EFDR constitution.

3.2.1. Gender roles in conflict resolution

Women generally occupy a lower social status in Afar society it reflected in the area of conflict resolution. With regard to conflict arising at the local community level, women are not authorized to play a part in negotiation and decision making process. The rational given for such exclusion is that according to the Quran women were not created evenly with men.

3.3. The possible challenges under the institution

Although the maro has many advantages in conflict prevention and management, it has some weaknesses that need to be addressed to improve its performance. Firstly, the makaban give decisions orally based on precedence and customary rules passed to them from their father orally by word of mouth. This allows for flexibility but may result in variation and lack of standards fair decision making over time and space. Secondly, the only remedies available under this customary system are compensation given in terms of livestock or money which is mostly paid by the contribution of family or clans of the offender to the injured party or clan. This may leave the offender unpunished and a potential threat to the community.

3.4. Solution for the above mentioned challenges

- Building institutional linkages between the formal and customary dispute resolution institutions. It will be important to raise the awareness of the Afar people, especially those who serve as makaban and elders, about the need for relating the jurisdiction of the customary dispute resolution mechanisms to national norms and the importance of enforcement of criminal law by the formal justice system for the protection of the fundamental rights.
- Strengthening and supporting the institutional set up. This can be done by the way of providing financial support to cover basic costs associated with customary procedures of the institution, recognizing and supporting local meeting place and where appropriate improving shelter options, recording decisions taken in dispute settlement process.
- Promoting the documentation and codification of the institution.

CHAPTER FOUR

4. General overview of customary dispute resolution mechanisms

It will not be an exaggeration to say that customary dispute resolutions are the primarily source of dispute settlement of the society. Customary law is a compressive body of law that governs every aspect of the life of a certain society, social, economic, political and environmental it govern all aspect of relationship and it is the life lines of a society. There have also certain advantages such as reduction of cost and time, improve or maintain the relationship and avoid the feature dispute. Due to this fact those are very important for the society to maintain peace and security.

4.1. The role of government

The government should be the leading organ in the promotion and institutionalization of the institution. It should be stressed at this point that attempt to simply or mechanically incorporate traditional and informal justice forms in to the formal state system. There are also serious risks for individual human rights, notable of women, children and minorities that need to be taken in to consideration and protected through state legislations. Customary rules in certain areas do not live up to the minimum standards of human right. The question of rights of women, children and minorities are a major concern. The government has to therefore monitor the activities of the

institution in such fundamental area of concern. Efforts to address this short falls should embrace carefully designed legal and educational method.

4.2. Lessons to be learnt from customary dispute resolutions

In our daily life at home, work and school, in personal and business relations conflict is inevitable. In today's complex society it is not uncommon to see when communications breakdowns, differences increases and conflicts arise. The good thing is that the occurrence of such inevitable social phenomena, if resolved, does not curtail from living together peacefully.

In comparison with the formal justice system, Ethiopian societies also have their own distinct means of dealing with dispute. In many regions of the country, and especially in the remote and peripheral area, those customary dispute resolution mechanisms are more influential and applicable than the formal justice system. Customary dispute resolution mechanisms use for reconciliation and in order to control acts of revenges its better than the formal system and also they are mostly, though not exclusively, vibrant in rural areas where the formal legal system is unable to penetrate because of a lack of resources, infrastructure and legal personnel as well as a lack of legitimacy for the modern law is seen as alien, imposed, and ignorant of the cultural realities on the ground. Hence, in the fact of such a shortage of facilities and legitimacy, the customary dispute resolution mechanisms play a very vital role in the administration of justice. Due to the fact that it simply appears, more relevant, appropriate and accessible then generic imposed legal norms.

Generally we learn from this to maintain paces and security within the society thus resolution are better acceptances in the society. Due to this fact the governments need to give attention.

4.3 Personal recommendations regarding the project

Finally, I would like to say thanks for those the founders of this project. The project is so important at this time in many perspectives. As we know at this time this projects are especially important to university, college and high schools students are stay at home without any work because of covid-19. So this may be lead the younger in to unnecessary and harmful conducts so, this project protect our from many things in addition to this it helps know about our culture, customary practice of the society, it appreciate, support and solve the problems of the society.

I recommend, for the founders to continue such kinds of projects to create awareness with the younger and develop the reconciliation idea.

CHAPTER FIVE

5. Conclusion

The customary dispute resolution mechanisms are traditional practices used to resolve conflict and maintain peace and stability in the community. Those traditional practices are deeply rooted in different ethnic groups of Ethiopia and arise from age- old practices that have regulated the relationships of the peoples in the community. In Afar they beliefs that all disputes with their ethnic group should be settled peacefully and according to the long –standing customary laws (Mad’aa). Mad’aa consists of guidelines and rules how to handle disputes. The Afar people have a strong sense of respect to the legendary traditional rules and guidelines that descended to them from their predecessor. When a breach of conduct or misbehavior is defected reference is quickly made to such unwritten customary laws the basis of which is the normative framework and values systems entrenched in their culture from time immemorial. The Mad’aa covers every aspect of societal life which is applied as arbitration through the Maro courts at various level and mediation through assembly (Mablo) or a mixture of both.

The paper, therefore, assessed the significant contribution that various institutions have in resolution of disputes within the study area, the procedures of dealing with such disputes and the role that the government should play in making the efficient use of the institutions and a one means of respecting the human rights of the people mentioned under FDRE Constitution.

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