

## Legal institutional hierarchies, justice and social order in Gurage area of Ethiopia

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Legal systems/forms do not exist in separation and creating dichotomy between them, particularly *traditional* and *modern*, may not help to understand the complex processes and socio-political contexts in which people attempt to achieve order and manage disorder. The paper explores multiple legal institutions and practices in *Gurageland* connected to local and supra-local frameworks. It then points attention to the importance of analysing the processes in which legal structural hierarchies develop and how people negotiate legal and popular justice through a simultaneous engagement with the different legal forms, formal/modern and popular/traditional.

### Introduction

Extrapolation of figures from the 1994 census and growth rate reports of the National Statistical Office show that the people referred to as the *Gurage* make up an estimated 3.5 million out of the total national population of around 75 million now. The *Gurage* consists of various linguistic sub-groups found in the central South-western part of Ethiopia. Among three main sub-groups this paper deals with the *Sebat-bet Gurage* found in the western part of *Gurageland* – the two other sub-groups being the Northern *Kistane* cluster and the Eastern *Silte*-speaking cluster (cf. Leslau, 1952, Bahru, 2002:19-20). The *Silte* have recently asserted their own non-*Gurage* identity and set-up a new politico-administrative unit at equal status with the *Gurage Zone* in the Southern Region. The majority agriculturalist *Gurage* live in the rural *Gurageland*, settled in kin-group villages, while a number of them are engaged in various petty-trade and small to large business ventures in other parts of the country.

A feature of *Gurageland* is that *traditional* institutions operate to administer affairs of societal members side by side structures of *the modern*<sup>2</sup> state agencies. The latter are introduced to the area since its incorporation into the central Ethiopian state as of 1889. The traditional institutions take organisational forms based mainly on councils of elders set up at different levels from neighbourhood/village to clan/tribal levels. Their purpose is to set and enforce norms and rules governing aspects of life ranging from simple socio-economic relations between individuals to wider community, local and regional

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<sup>2</sup> Interpretations of the terms *traditional* and *modern* differ and are points of contention between different writers and practitioners. In this paper, *tradition* is used to refer to institutional forms and social practices based on cultural patterns, norms and rules predating state authority with its bureaucratic concepts, which often is considered to be *modern*. The term *customary* is often used as a synonym for *traditional*. In line with the above definition, *traditional laws* exhibit differences from *customary laws* in that the latter are often recognized as constructs of formal state juridical institutions as was the case in colonial states (cf. Moore, 2001).

issues. Settlement of disputes and management of conflict aimed at obtaining justice and social order among community groups and members is one area in which these institutions are engaged. These institutional forms are ubiquitous and are identified with various names among different groups of people throughout the country – to mention only few, *Yejoka* of the Western *Sebat-bet Gurage* cluster; *sera* among the *Gordana*, *Silte*, *Masqan*, *Dobbi*, *Kambata* and other people; *gada*, *gabalaa* of various *Oromo* groups; *Dulata* among the *Gamo* people. While these traditional institutions operate at different levels in different areas, among the *Sebat-bet Gurage* the system is organised at neighbourhood/village, sub-clan, clan, and tribal/regional levels.

There is consensus among academics, policy makers and practitioners that studies on the varied nature, functions and interactions of traditional institutions with other institutions in the state and non-state sector do not match their ubiquity and relevance for people's daily life and overall development of institutions in the country (cf. Bahru, 2002; Getinet, 1999.) Against this background, this paper deals with issues related to traditional institutions and their relevance for current studies. It describes the legal institutional landscape in *Gurageland* and the historical development of legal hierarchies and inequalities. It also reflects on justice and maintenance of order, which people try to achieve through processes of negotiation that involve multiple legal systems and community groups and members.

### **Traditional legal institutions in *Gurageland* and their relevance for current studies**

At a glance, the centuries of history of traditional systems of governance in *Gurageland* and the rest of Ethiopia to date seems to suggest that societies with recent history of centralised state have forms of social control other than those with relatively long history of state bureaucracy that have *modern* institutions of law. One such sociological theory is provided by Perrow (1991), whose thesis in 'society of organisations' is that large and complex organisations are the key to orderly management of social, political and economic activities. Perrow reasons out that large organisations have absorbed society, where, among other things, 'activities that once were performed by relatively autonomous and usually small informal groups (e.g. family, neighbourhood) and small autonomous organisations [small businesses, local government, local church, voluntary organisations] are now performed by large bureaucracies' (p. 727).

The fact that the present day legal landscape in most parts of Ethiopia is made up of multiple forms of legal systems (traditional, modern, religious) raises the observer's interest to revisit the distinction drawn between the so called 'large organisations' and 'small informal groups' involved in the maintenance of social order. According to Perrow's theory, *traditional* ethnic-based, community institutions such as the ones found in *Gurageland* are nothing but 'the source of friends and marriage partners, counselling,...recreation facilities..., apprenticeship training... and retirement options' (Ibid). I argue that, firstly, such is a narrow characterisation of institutional arrangements outside the realm of government bureaucracies based on (limited) observation in industrialised societies. The situation in rural *Gurageland* and elsewhere shows that traditional, informal and non-state institutions are involved in providing wide ranging services similarly to those of formal bureaucracies. An example is settlement of conflict, adjudication of disputes, redress of damages, and maintenance of contractual relationships through institutional arrangements outside formal legal structures.

The existence of complex problems of development and governance as ones faced by present-day Ethiopians warrants that the root causes of the problems be understood and effectively tackled. Thus, there needs to be "... a deeper understanding of the formal and informal political, economic and social power structures and power relations in Ethiopian society as well as their implications for development..." (Vaughan & Tronvoll, 2003) The various types of livelihood strategies adopted by people in various parts of Ethiopia today exhibit the multitude institutional arrangements and the complex nature of the processes in which they are maintained. For many generations of Ethiopians to date, effective governance structures and meaningful processes have been mere dreams, and the systems introduced so far have remained, again in the words of Vaughan & Tronvoll (after Levine), in their 'waxen' forms. Analysis needs to go beyond the formal constitutional and institutional provisions to "... illuminate [their] golden [side]: the relations and systems of power and convention which underpin and give [them] life and meaning" (Ibid).

Secondly, the example of traditional institutions like the *Yejoka*<sup>3</sup>, *Geyz*<sup>4</sup>, *Mazoya*<sup>5</sup>, which have co-existed with the local formal security and justice systems shows that both *formal* and *informal* institutions should be understood as operating within a system of plural legal orders, oftentimes interacting with each other. Within the hierarchically organised lineage-based traditional judiciary systems, community members have dealt with disputes and conflicts by classifying them at different levels on the basis of severity and groups involved. Since the incorporation of *Gurageland* into the centralised Ethiopian system starting 1889, the *Gurage* people have defined and continually redefined disputes, conflicts and other social issues by types and levels or severity so that they can be dealt with by the traditional system and/or the *modern* state system.

Closer examination of the historical processes in which the *Gurage* traditional systems have developed shows the importance of analysing the directions of changes in institutional forms. In this regard, existing theory, as represented by Perrow's organisational theory, shows weaknesses in two ways. One change process that needs to be revisited takes the form of small groups or informal institutions losing their autonomy and actually disappearing as a result of a deliberate or unwitting process of absorption by larger ones, in which case "their functions survive under the control or auspices of centralised bureaucracies and shaped by the needs of those formal organisations" (p. 728). However, this is not always the case, and even in highly industrialised countries, the functions of small organisations and institutions persist and despite the increase in their size large organisations cannot takeover all of these functions. As we read in Winston (2001), even in the U.S.A today, what he calls "good order and workable social arrangements" centre on a variety of processes and forms of legal order, which include adjudication, mediation, contract, legislation, elections and administration or managerial decisions. Therefore, smaller social groups such as kin-groups, local associations, extended families, and informal neighbourhood groups are relevant in both Western and non-Western societies because the issues and problems they dealt with still persist at national, community, neighbourhood and family levels.

<sup>3</sup> A collection of the traditional laws of the *Sebat-bet Gurage*. Unless stated contextually, in this paper *Gurage* is understood as *Sebate-bet Gurage* and *Gurage* people as *Sebat-ber Gurage* people.

<sup>4</sup> Cf. Getinet, 2005.

<sup>5</sup> A traditional system of security through which a rotating responsibility for night-shift guarding of houses and neighbourhoods is operationalised (Cf. Getinet, 2008).

In terms of legal forms, one needs to understand not only the field of the law, which in the words of Donald Black, represents “the normative life of the state and its citizens, such as legislation, litigation, and adjudication [but also] the everyday life of people... in their private spheres” (1980:2.) The latter makes up the ‘normative aspect of social life’ and is controlled by social norms and practices that make up other regulatory forces within society. The importance of making a distinction between laws and norms lies in the common observation that rules alone don’t work and that the authority of law that is based on coercive threats does not provide effective social order. Law is applied as a response to human conducts that are found to be deviant, in which case social control takes the form of administration of sanctions. But the maintenance of order takes more than punishing deviant behaviour and calls for popular governance structures and processes that are widely accepted and supported by societal members. Thus, it becomes important to focus on processes and practices that form contexts for popular understandings, expectations, purposes, and principles for actors participating in and dealing with different cases. It is expected that closer understanding of structures and processes of people’s engagement with formal and traditional legal forms in *Gurageland* can contribute towards ensuring more inclusive, responsive and effective service provision to people.

Finally, the sense of social order enshrined in the formal (governmental) legal institutions may appear to be “a more complex, rigid and systematic version of what people do everywhere to sustain an ordered life” (Strathern, 1985:111). However, the plural legal order in *Gurageland* exemplifies that legal systems could not always simply be distinguished by their simplicity or complexity but should be understood as sharing common domains and be regarded as complementary to each other. In other words, the settings in which processes of dispute settlement and maintenance of order take place range from formal courts and other judiciary systems to informal and less-procedural gatherings of community members at family, kin, neighbourhood, clan, etc level. Thus, in line with suggestions by the Benda-Beckmanns (2006), it becomes the task of the researcher not just to study the different bodies of laws in a plural legal order but also to understand the interactions between the different bodies of law, the social processes surrounding constellations of legal pluralism and how these are played out in social life to achieve justice and social order.

### **The making and unmaking of legal systems in *Gurageland***

*Gurageland* is inhabited by groups consisted of an amalgam of people originally from south-western Ethiopia and those from the northern forces of conquest that started to spread out to the south during the reign of Amda Tsion (1312-42). While the northern army of conquest brought with it laws that were based on the Christian religion, the series of military, commercial and social interactions with neighbouring peoples gave way to Islamic customs and laws, with intensified Islamic teachings and legal practices having taken place during the Christian-Moslem civil wars in the late 15<sup>th</sup> C. This resulted in the imposition of legal layers based on religion on top of the pre-existing traditional legal systems. In the 19<sup>th</sup> C. alliances were created that united *Gurage* clans, historically engaged in endemic internal strife and feuds, frequent conflicts with neighbouring groups and repeated wars with the expansionist central state forces. The alliance between the western clans gave birth to the *Sebat-bet Gurage Qitcha* – subsequently named *Yejoka* - as a collection of laws enacted for the administration of inter-clan relations and settlement of disputes at sub-clan and clan levels. Parallel

processes resulted in the promulgation of the *Gordana Sera* in Northern *Gurageland* (cf. Shack, 1966; Bahru, 2002.)

After centuries of parallel processes of independent existence and some level of amalgamation of traditional and religious laws, the final conquest of all *Gurage* clans and incorporation of *Gurageland* into the central Ethiopian state under then King of Shoa later Emperor Menelik of Ethiopia in 1889 brought with it another legal layer when the administrative and legal systems from the centre were introduced. Under the new system local administrators were appointed from among the ranks of the army of conquest, elite provincial governors directly from the power centre and clan chiefs to work in subordinate positions to implement the central system of indirect rule. At the surface of political administration, this ‘power from the centre’ replaced the traditional governance system which was based on hierarchically organised genealogical ties between local descent groups and independent political units with positions and authority attached to fields of clanship. This resulted in the loss of autonomy of traditional leaders which ranged from semi-domination to complete subjugation by the power holders blessed from the centre.

Detailed description of the institutional changes following the conquest had been provided, among others, by Shack (1966), Gebreyesus (1991), Worku (1991), Alemayehu (1993) and Dinberu *et al* (1995). The various writers unequivocally noted that efforts of the central state to centralise the traditional segmentary authority system did not result in totally transforming it. In an attempt to adopt a compromise political system, Emperors Menelik II and Haileselassie I appointed clan and village headmen to assume local administrative authorities under provincial governors. They also introduced changes in the territorial division of *Gurageland* through the splitting up of territories into districts and sub-districts to correspond to institutions of military and political superstructures imposed on top of the traditional governance system.

Until 1930, the legal system of the centralist government was based on the *Fetha-Nagast* – literally meaning judgement/justice of the King, which ‘... was basically a codex of law providing for secular and religious legal provisions (Fasil, 1997:17), drawing elements from both Christian and Islamic traditions. The introduction of the first *written* Constitution in 1931 represented a key development in the formal government system in Ethiopia, which provided a systematic framework for the reunification of the country, centralisation of power, fiscal administration, institutionalisation of a ministerial system and separation of judiciary courts to deal with civil and criminal cases and administrative tribunals to deal with civil cases affecting government (cf. Fasil: *Ibid.*) However, unwritten sets of laws continued to exist in the form of traditional and religious laws controlled by means of ‘pacts’. It was these laws that have actually been applied for the administration of societal affairs and had real meaning to ordinary people.

This as it is, the coming of the Italians in 1935 and their control of the public sector until 1941 resulted in the collapse of the formal state system. Similar to groups elsewhere in the country, in the interpretation of some writers, this period saw “the ‘liberation’ of the *Gurage* from [the central] Ethiopian [state] domination [and]... a short-lived cycle of reorganisation of their society along traditional lines.” (Shack, 1966:27) Among other developments, the traditional systems were re-engaged in a modified form through local courts to deal with cases that arose in relation to the reclamation and redistribution of land. This period also saw the strengthening and more frequent use of Islamic courts and many aspects of the traditional customs. After defeat

of the Italians and restoration of the Imperial System in 1941, old forms of provincial administration were re-introduced, including the regrouping of the previously independent provinces of *Gurage*, along other districts, within the new province of Shoa, with the South-easternmost and South-western regions of *Gurage* made districts of adjacent provinces.

In 1942, the Ministry of Justice was set up with a chain of legal institutions including communal/local courts, regional courts, provincial courts, the High court, and Supreme Imperial Court. In 1943, rules of procedures for vertical transfer of cases between courts and systems of circuit were introduced, while the Islamic courts were reorganised into *Kadis*, *Naibas* and *Shariat* Appeal Court (cf. Perham: Ibid). As part of the new system, administrative and judiciary functions and bodies were separated, at least in urban areas, and tribal chiefs and elders councils were given a modest role as a ‘means of effective social control’, with still overlapping and often conflicting responsibilities for the village headman (Perham: Ibid; Shack: 28, 170).

It was noted that on the occasion of introducing comprehensive legal codes and the revised constitution in 1955, the Emperor, then ‘provider’ of the Constitution and all other systems, was quoted for expressing that “no modern legislation which does not have its roots in the customs of those whom it governs can have a strong foundation” (Fisher, 1971: 709). However, neither this Constitution nor the detailed provisions within the legal codes, did adequately incorporate elements of the existing traditional and religious legal systems but only remained to be legal layers imposed on top of these systems. As a general policy, the writers or government officials did not necessarily view the traditional legal systems from entirely negative standpoint (cf. Fisher: Ibid.) However they did not attempt to fully recognise these systems and base the country’s legal framework on them. As the same writer has also explained, on the one hand, the problem seemed to lie in ignorance of the codifiers of the laws about the nature and functioning of the traditional systems but also in the lack of knowledge as to what elements and useful practices of the traditional systems could be incorporated into or be permitted to operate effectively under the umbrella of the new system. On the other hand, the strong drive for *modernity* made the few elites of the time to simply adapt western traditions and introduce a uniform system, which then did not address the needs and fit the realities of people as diverse as those living in Ethiopia.

The superimposition of legal systems on top of existing ones continued under the Dergue period (1974-1991), with the legal frameworks made to reflect socio-cultural changes and reorganisation of institutions along the Marxist-Leninist driven socialist principles, during which a new Constitution was promulgated in 1987. Like the constitutions and legal provisions that preceded it, the new system under the Dergue did not result in supplanting the layers established by the existing systems. Admittedly, however, while superimposition does not necessarily produce adherence, gradual process of integration between the systems have taken place, albeit at different degrees at different times. As it is rightly noted by Bussani (1996), “what is usually referred to as the [traditional] layer is made up of heterogeneous customs which interacted with each other historically as [the people of different groups] experienced migration, conquest, [intermarriage, trade, etc], which modified the customs of [all the groups involved]” (p. 47). As it can be seen from the *Gurage* case, with the introduction of a new system, the old system is not done away with. However, the efficiency of both the old and new systems may be affected as the interaction and adaptation process would

limit the functioning of both systems. In the end, the process maintains aspects of both systems and the resultant situation exhibits a plural legal order at the local level.

It is this local plural legal order that has been inherited and with the change of government and order of the state in 1991, promises were made that blueprint approaches will be avoided and newer approaches emphasising organisation of public services based on people's own existing practices would be adopted. The latest Constitution of 1994 based on Federalism provides, among many rights, for the nations, nationalities and peoples of Ethiopia to be able to establish independently or jointly their own self-governments at the Woreda level or above. Within this framework, people have been disposed with economic, fiscal and administrative powers to be exercised at national, regional and local levels. Under administrative power, people have the right to establish institutions and laws relating to various regional and local government organs including security and judiciary. In general, one could say that in principle this provides people with space to shape socio-economic and political organisations. This is particularly true in relation to the legal system, where existing institutional practices can basically be considered as alternatives. In this case, (Articles 78-5 and 34-5 of) the Constitution provide that religious or customary (traditional) courts may be established or given official recognition by the Council of Peoples' Representatives, with their jurisdiction limited to adjudication of personal or family matters (cf. Fasil 2002: 101.)

After engagement along the Constitutional provisions for more than a decade now, despite extensive reforms in the civil services including institutional overhauling in the justice sector, formal courts at all levels from local to federal are reported to be choked with multiple problems. A recent Ministry of Justice report indicated that the number of legal cases has significantly increased in recent years, among other factors, in tandem with the swollen population size and expanded economic activities in urban areas. Institutions within the justice sector have been plagued by problems related to outdated systems and practices, low manpower and organisational capacity and inefficient management skill and systems.

While the formal legal system has been undergoing processes of transformation in the face of multiple challenges and problems, the traditional system has also been struggling to overcome problems that range between lack of full recognition by the *modern* system to practical issues of achieving decisions on legal cases and enforcing them. The transformation being pursued within the formal legal system includes computerisation of information management, automated information provision to litigants on status of their legal cases, upgrading of manpower skills and strengthening of coordination between the different formal legal bodies such as police and courts. A somewhat equivalent engagement in transformation of traditional systems has also been witnessed, where the example of the *Yejoka* system exhibits attempts to standardise legal practices among different communities, codify the laws and incorporate new concepts of law such as human rights, gender, etc. Of course, whether these transformations have been initiated as part of the *modernisation* drive among the mainly urban-based, educated elites to the exclusion of the marginalised, largely rural population on which the changes seem to be imposed remains an issue to ponder at.

### **Implications of plural legal orders for justice and social order in Gurageland**

The overall national context for institutional landscapes in present day post-socialist, post-conflict Ethiopia is provided by decentralisation and democratisation reforms

implemented since more than a decade now. The decentralisation and civil service reforms being undertaken within government agencies have shown signs of localising power with local government structures. However, beyond promises, the extent to which these processes have resulted in recognition of multiple local institutions including traditional legal systems is a subject for further investigation. Have the processes resulted in strengthening of local governments and the different organs of the legal system, so that the local institutional landscape is more formalised than before? Have they empowered parallel local institutions so that local governments and formal courts now receive few public powers and face competition for legitimacy? Have the new processes helped to transform the local institutional landscape in such a way that the interaction between the different systems is taking a more positive form and helping to provide efficient governance and legal services to citizens? Several questions need to be raised and researched.

The aim of this ongoing research is, by raising these and other investigative questions, to explore the interactions between different legal institutions as people undertake complex processes of negotiation of justice and social order. As noted in previous pages, *Gurage* people have been engaged in and/or exposed to the definition and redefinition of laws. Historically, hierarchies of laws have developed as legal cases were differentiated by types and levels to be dealt with by the *traditional* or *modern* system and this has formed the negotiated basis for engagement or disengagement of one or the other legal system as people dealt with legal cases. In practice people used one or the other system depending on their desired or anticipated results as they tried to determine the likelihood of decisions by also considering their differential connections to power centres under the traditional and/or modern system. In general, given the plural legal order in *Gurageland*, decisions on legal cases and social order have to be negotiated between individuals and groups that engage with the different legal systems separately or in combination under different circumstances.

### **Concluding remarks**

Through a brief historical account of the emergence of legal institutions, this paper has attempted to show how a plural legal order has been created and maintained under different socio-political and economic contexts in Ethiopia, in general, and in *Gurageland*, in particular. The *Gurage* have come a long way to experience the making and unmaking of different legal systems throughout their history within Ethiopia. As much as generations of *Gurage* have witnessed institutional changes and improvements in social order in their localities and within national frameworks, they also have seen and borne the costs of institutional breakdowns in both human life and property terms. The observer keeps wondering what it takes to ensure a peaceful coexistence and, when necessary, amalgamation of institutions with view to providing more efficient legal services.

Studies of legal systems have so far been concerned with different bodies of law and how different constellations of legal systems emerged. The purpose of this research is to push the investigation a step further and focus its attention on what happens to justice and social order as people deal with legal issues in an environment of plural legal order. This rather short paper points to the need to analyse realities among *Gurage* people who are challenged by situations of legal limbo that complicate the achievement of justice as their cases wander between different legal systems, in as much as they have ripped the fruits of legal pluralism in terms of a generally flexible legal arrangement through

institutional choices available to them. Ongoing further investigation is hoped to shade more light on forms of interaction between different legal systems, processes of negotiating social order and the extent to which justice is served (and sometimes thwarted) as people dealt with and tried to benefit from multiple legal institutions operating in their localities.

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