# Luqa site-specific topic: Customary dispute resolution

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**Wereda peace and security office**

The wereda peace and security office has sub-offices at each kebele which keep the peace and security of the communities. There are also community polices, militias help each other to prevent and control crimes. The wereda peace and security office has sub-sector called security administration office which is consists of the police, militias and appeal committee. Whereas the justice bodies at the wereda level are the court and the law prosecutor. Moreover, structurally, there are conflict resolving work process and the work process for listening appeals of the community and providing decisions inside the wereda militia office. The duty and responsibility of these work processes is to prevent conflicts and actions against law and to hear appeals of the community and take measures that resolve the security problem of the community. However, there are gabs to fill the human power for these positions.

The court performs better and passes strong decisions against criminal offences. However, there are times when offences associated with abduction and domestic violence are not seriously seen in front of the law and there are weak efforts to enforce law and punish offenders.

The wereda peace and security office orders police men to catch offenders when it becomes beyond the capacity of the community police and when the case is criminal case (e.g murder, rape,). Then, the police bring offenders to the court.

The cases that are seen by the court are mainly criminal cases and cases that are beyond the authority of the social courts at the kebeles. For example, the social courts at the kebele level are authorised to see cases of simple offence, conflicts relating to land, or to robbery of a property that is estimated to be less than 500birr, marriage/divorce. The social courts report their activities to the wereda court.

Thus, the common conflicts that occur in the community are land related conflicts, marriage related, rape, abduction, forced marriage as well as few cases of robbery and murder. Despite this, as the community’s awareness about the law is very minimal, the cases that are reported to police and the court are very few while the violence are too much. The cases that are seen by the court are mostly if they are related to murder because no justice body at the kebele level (either the customary elders or the social court) can deal with it. But such cases as the conflicts that arise among family members, neighbours, religions, land and marriage, rape, abduction and domestic violence are either resolved by the local justice system or remained unreported. Especially gender based violence are not reported to the court because the victims are women who have no idea what to do and where to report. They don’t get easy access to justice bodies and they don’t dare to talk about the violence they experienced because they fear social discrimination as some of the gender based domestic violence are considered as accepted behaviours in the community. Very few who have been to school and got exposure to the towns do run away and report to the police or to the wereda court.

The following table shows some of the few reports of GBV during the last two years

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Types of GBV | Year | | |
| 2002EC | 2003EC | (July 2003EC- November 2004EC) |
| 1 | Rape and Abduction | 3 | 2 | 5 |
| 2 | Under age Marriage | 3 | 3 | 2 |
| 3 | Forced sex with under 13 years old female children | 1 | 3 | 13 |

These are the most common violence that are reported to the court but most of these cases were found by the investigation of the police at the kebeles; and few girls came to the court and report the cases.

Other cases as murder and land related conflicts are also among the common sources of conflicts in the community. In the past, land has been freely occupied by those who could farm. Now, as the land size come smaller and smaller and as the government is putting some restrictions about land ownership rights, the community started to be conscious and its interest to own land has increased. Thus, land-related conflicts arise among neighbours who have landholding with unclear boundaries. They fight in times of ploughing when one thinks that his land has been crossed by his neighbour. This problem would have been solved if there could be land registration and certificate of land ownership because each one could identify his land boundary.

The other source of the land related conflict is that land, traditionally, has been transmitted from one generation to another generation. Thus, a father inherits his land to his older son (most of the time), and the other sons may be left without getting land. Thus, they tend to fight with their father. There are families that shoot each other due to land related conflicts.

Water for irrigation is also a source of conflict among the people who live in those kebeles that practice irrigation farm. They fight up on the canal water distribution system especially when there is shortage of water and when there is no norm that bides the beneficiaries. In large schemes of irrigation as in *Duma* and *Enchete* kebele, beneficiaries have rules that guide them on how fairly the can use the river water. But there are times when some beneficiaries violate the rules and try to dominate the benefit. This kind of conflict is also occurs among large scheme irrigation investors and the neighbouring communities; for example the case of *Woito* river where it has beneficiaries from Konso wereda at its upper falls and large scale irrigation investors at its lower level falls. When the number of beneficiaries at its upper falls increased, the amount of the river that reaches to the beneficiaries at the lower level decreased; so they started to complain up on the beneficiaries at the upper level of the river flow.

Conflicts also arise due to the illegal use of forests when people cut trees for fuel wood or to clear the forest for farming. Then, the government officials and NRM DAs prevent them from their actions. Most of the time, the community refuses to follow the formal laws of the government about prevention of the natural resources such as the forest land and wild animals. They want to behave as they used to be in the past without any regulation. Sometimes, they shoot to the government officials who try to enforce the law.

Conflict among religions has decreased since the government interferes to stop the clashes among the expanding Protestants and the traditional followers. There was high level of conflict among the two religions 7-8years ago. Now, there might be some tensions especially among the followers of traditional religion and their converted family members or relatives. Otherwise, they are living peacefully and there is no report of religious conflict.

There are other causes of conflict that are created among family members like beating wife, reducing food for wives, restricting wife’s social interaction, preventing married women not to wash their bodies and their hair, preventing pregnant women not to be seen by others at the health post, preventing women not to use contraceptives, preventing female children not to school, having forced sex, avoiding sex with legal wife for more than one year, refusing divorce proposal by the wife, forcing women to get married by inheritance, etc

Alcoholic drinks that are prepared locally such as areke, and cheka as well as beer cause people to be nervous and hurt other people around them. Wives are victims of such drunken husbands.

At the community level, the elders play great role in resolving most of the conflicts. They are known and respected male elders who deal in such conflicts related to land, irrigation land, fighting, family members and marriage. When the cases is to deal only with women, women elders are selected and hear the case. Despite this, there are times when women also participate as observers at the dispute resolution process. When the case is at individual level, the two disputing parties are allowed to select elders whom they want to reconcile them. The elders can be from any social status but they should have experience of dispute resolution. But when the conflict is at group level and tends to have sense of great violence, the community leaders, government officials and religious leaders play the dispute resolution role. They should be we experienced and take responsibility on what is going to be decided.

At the court level, there is one judge and law prosecutor who hears cases every day. The judge is appointed by the government and the lawyer is hired computing to the position. The court uses medical evidences for rape cases, eye witness (1-3), judgmental (as oral test with crisscross questions), materials or tools used to commit the crime, recorded evidences (if any) and other techniques to make decision on the suspects.

The court provides mobile trials so that the community gets justice without travelling long distance to reach to the wereda court. The court’s final decisions can be reconciliation, corrective punishments, advises, warnings, sanctions from participating at political as well as social activities; but not blessings or curses. The customary elders use curses and blessings to control the behaviour of individuals.

Most of the time disputes are resolved by reconciliation that doesn’t cause further appeals. But some people appeal to the wereda court after final decision is given by the social court or the elders. In most cases, the social court decisions are most appreciated by the community because they don’t cause further threat to the disputing parties and finish cases in a very smooth manner. The community have trust more on the elders and the social court judges. But many people don’t have trust to the judges at the court. Although there are translators at the wereda court, many people do not want to take their cases to the court. They prefer the customary elders’ decisions. Cases resolved by the customary elders do not relapse and people who were in conflict at some time may intermarry each other after reconciliation.

The customary dispute resolving elders do not have direct contact with the wereda court. But they work in collaboration with the kebele social court which has direct contact with the wereda court. The social court refers cases that are beyond its authority. The wereda court also hears activity reports from the social court and provides training and guideline on how to do their work to the judges.

The customary elders and the social court judges are effective in resolving cases because they give time to see details from all directions. They don’t have many appointments; rather, they resolve disputes soon but with sustainable solution. Appeals are not many after the social court’s final decision. The community accepts their decisions because it appreciates the power of blessings and cursing.

## Kebele officials

The kebele hear cases through the social court which has three judges nominated by the kebele and elected by the community. The common conflicts that occur in the community are conflicts among family members due to the need to share parent property as land and livestock or due to marriage choices. When the children refuse the marriage proposal by their parents or when the children want to marry a partner that has blood relationship, the parents strongly resist. There are also families that create conflict when some members get converted to Protestants. They discriminate him/her and may use physical harassment to force him/her leave the religion. Family conflicts occur when some children have work load while others don’t, when property inheritance is unfairly distributed, and they fight each other, children of different wives of one husband fight each other because of sharing their father’s property; and the wives (of one man) may fight each other if they suspect that the man is biasing to one of them. But in most cases, they live together and help each other.

The conflict that arises among the neighbouring males is when livestock of the neighbouring man come to cross/destroy fence of farm land for the other man. Or conflict can arise when a man ploughs over a land of his neighbouring man or when one still livestock of his neighbour. The conflict that arises among women at neighbourhood is most of the time due to their children who fight each other.

There are no serious conflict occur among the two religions in the kebele (traditional and protestant). Some 8-10 years ago, there was high conflict. The followers of the traditionalist were shooting at new converted. And they did beat the new converted. This was because the government worked intensively, trained community leaders repeatedly about the constitution, and issues of equality. Besides, other government employees started to be assigned at the kebele, and people from the kebele appointed at other places. This helped the community to learn about equality and supremacy of the law. Although the shooting has stopped, the discrimination is still prevails.

Marriage related conflict arises when a father promised to a man that his daughter will marry him and if he has been accepting gifts from the fiancé conflict is created if the girl refused the marriage and escape. As the fiancé’ will demand to get back his gifts or the girl, the father uses force to beat her daughter and marry the man. Conflict also is created due to abduction of a girl by a man and when her brothers or adult men relatives don’t accept the action and demand for returning her home. If the man refuses, those adult men go through to his house and do fight with him. Sometimes, conflict arises as a result of conflicts among wives and biased behaviour of the husband (if the husband doesn’t treat all his wives equally), and physical harassment of the man to beat his wife. Culturally beating wife is accepted behaviour, to some extent. Women don’t report such cases to the court.

Family related conflicts are been most common conflict because, the respondents said, of the intergenerational idea conflicts. The parents always want to maintain the cultural way of doing things while the young children demand for change which they hear through the media and see at the locality. This is clear when it comes to be about going for schooling to neighbouring town or when it comes to be about choosing marriage partner. Besides, the need to own land among the young men has increased to put pressure on parents to share their land holdings equally with their male children. Otherwise, the family relationship grows to cause further conflict among the siblings.

There are no other conflicts caused by water for irrigation. Perhaps, as men always want to exercise their power on women, their wives and their children, they use force to make sure that their power is always respected. Alcoholic drinks are also becoming caused of conflict among the people especially at market day when a lot of people get drunk.

Male elders in the community play great role in resolving any type of conflict which is reported to them. Women elders participate more of in resolving conflicts among women. The customary judges are elected either by the two parties in dispute or the other people who are interested to resolve the dispute. Although most of them are likely to be elderly in age, it is not a must. But too young people can’t participate in dispute resolution. There is no difference in their social status. Practically, elders from the dominant clan groups are elected to resolve conflicts. They use eye witness and judgemental evidences to pass decisions. Unlike the *wereda* court, they don’t ask for medical evidence. They give final decisions of reconciliation, corrective punishments, advices warnings, blessings and curses.

The punishments are beating, slaughtering an ox, prepare feast for the local community. For example, a man who beats his wife is given warning four times. But if he couldn’t improve his behaviour, he is beaten 20 sticks, he slaughter an ox, prepares *checka* (local drinks). Then, he has to ask apologies to the community and elders and he should promise, in front of the gathered people, that he will not behave the same.

Most of the time, the local elders are active to resolve such conflicts that arise among family members and neighbours. They use eye witness and judgmental evidences to resolve the conflict. The social court also uses the same evidences and provides reconciliation, advices, warnings and corrective punishments. These are similar to what the customary (local) elders do. Blessings and curses are more used by the customary elders than by the social court. So far, no sanctions from participating in political or social activities are used.

Although the social court was established only few years ago, the community has positive attitude to the decisions give by the social court judges because they are part of the community elders and are the ones who had been actively participating in customary conflict resolutions. Thus, the decisions given by both the customary elders and by the social court are equally respected and there are no appeals after final decisions are given. People do not complain after the final decisions and the reconciliation is very popular in the community as it avoids sense of revenge and as it brings conflicts to an end. The community has trust on the local elders and the judges at the social court.

The conflicts that are seen by the customary elders or by the social court, most of the time, come to an end and the disputants are reconciled to have as normal relationship as they used to have before the conflict. There are times when they intermarry (but not all disputants) and continue to live together. After reconciliation, they unite at *Aylo*(a traditional cooperation in which a person prepares food and drink, to invite people at his house and ask them to help him in doing some task like constructing house which might be difficult for him to do it alone).

However, some conflicts relapse when one of the parties violate the promise.

The cases that are referred to the court are those which are repeated actions of offenses, murder and rape cases.

There is no formal link between the customary institution and the government legal bodies. However, the customary elders contact the *wereda* court when there are cases beyond their capacity or when there are cases (like murder or rape) which the elders want to resolve before the court sees the case. The *wereda* court had provided a five days training for the judges at the social court. It also does some supervision and provides technical assistance to the social court judges. In general, they all cooperate each other in bringing suspects in front of the law.

The customary ways of dispute resolution are more effective than the formal legal institutions because they have been there for long time and have better acceptance by the community. As the customary elders are members of the community are known for resolving disputes sustainably, their decisions remain respected. Indeed, most of the cases resolved by the customary institutions end by reconciliation which doesn’t leave space for revenge or further relapse of the conflict.

## Customary dispute resolving elders (FGD)

The FGD participants said that there are many types of conflicts that are common in the community which include: conflicts among family members, among neighbours, land related conflicts, livestock related conflicts, religion related and marriage conflicts. There are also times when conflicts arise as a result of drinking alcohols a lot. There are people who fight due to farm land boundary and water canals (in rainy season). All these conflicts are first reported to local elders and most are resolved by the customary ways. One of the disputants who has claim brings the case to the elders. Sometimes, neighbours or militia men also bring the case to the elders or to the police.

Land related and family conflicts are the most common conflicts that occur in the community. As most of the community members have no clearly demarked farming land, land boundaries are frequently violated to be source of conflict. During the farming season, people dispute up on the boundaries of their land holdings. Besides, land related conflict exist among siblings (males) when their father doesn’t clearly put the limit of land ownership to each one of them. Family members also fight up on property ownership or due to disagreements on marriage relationships. When parents want to arrange the marriage of their children but when the children refuse, there conflict exists.

There are five members of the social court in which the three are permanent judges, one is secretary and the other one is reserve. There is no any women member of the social court only because there was no any who was appointee. In fact, at the customary law, all customary judges are males and the participation of women in dispute resolution is limited only for cases arise among women.

There is 10 birr of application fee to open file for sue. There is also 10birr fee to close the file. The community elders cooperate and work in parallel with the social court. They are used as witnesses. They are consulted before cases are referred to wereda court. The militia brings offenders and report cases to the social court. The kebele manager orders the militia to bring offenders to the social court.

Judges are appointed by the community vote with facilitation of the kebele administration. These are appointed every 3 years. There has been no change of position so far. The judges for social court are elected by their experience at government work, educational back ground and activities in the community, and age. Judges are not supposed to be members of any political party. The participants of the FGD added that judges are also supposed to have better economic status like those who have house with modern structure (rectangular) and covered by tin roof.

Three eye witnesses, for rape case is referred to wereda court and medical evidence is required. There is appealing system to wereda court. But all decisions by the social court had no appeals so far.

Problems: most of the conflicts arose at farm land were sent to wereda court. But it was decided to form a committee, local elders and the judges can solve the case at local level.

There is direct relationship with wereda court. The social court writes report to the wereda whenever it works. Cases beyond the mandate of the social court, such as murder, rape and abduction are referred to wereda court. Sometimes, the customary judges interrupt the court case (before it is heard by the law prosecutor) and demand to reconcile the disputants. The customary judges request for presentation of 1-3 eye witnesses and they use judgmental evidence; but medical evidence is not applicable.

The customary conflict resolution system involves reconciliation, advices and warnings for most cases, and corrective punishment punishments are used for cases that are reported at least four times. Curses and blessings are popularly used systems of reconciliation. Punishments decided by the customary dispute resolving elders include: beating, paying goats/cattle as means of compensation, preparing food and drink for local community and asking the community for apologizing. But sanctions from participating in political or social activities are not common.

The elders see one case a week. Disputes are resolved by 5 selected elders. The criteria to select the judges at the social court include: knowledgeable man, who has good general knowledge and who is active in the community, elderly age, he should be at least from the oldest generation, he should be at least 40 and above years old. He should also be interested to participate in conflict resolution and needs to have good acceptance by the local community.

Not much appeal cases are there. Most are resolved at the community level by the customary dispute resolution system. The decisions given by the customary judges are, most of the time, final and disputants are likely to respect the decisions. The people who once entered into conflict do not complain, after final decision is given by the customary judges, especially when the conflict ends by reconciliation. The community appreciates the reconciliation, blessing and curse used by the customary judges as controlling mechanism to resolve disputes. Besides, many people appreciate the formal law that allows customary judges to help in resolving criminal cases as long as they can. The community has trust on the customary judges as they are believed to be the ones who are most knowledgeable, neutral and provide equal justice for all.

The relationship of most disputants comes to an end after their case resolved by reconciliation. Even if the case ends by corrective punishment, they are likely to respect the final decision of the customary judges. Very rarely, they may inter marry long time after the dispute is resolved. Thus, they tend to maintain the positive interaction with each other. In fact, there are times when resolved cases relapse and come again to the customary judges who again look at the case.

There is some linkages with the government legal institution when there is need of involvement for the customary judges and when the judges need support of the militia, police or the court, when there is a need to collaborate to bring witness, to implement decisions and to find suspected people. But there has been no formal interaction among the customary and government legal systems and no training have been provided for the customary judges.

Most of the FGD participants said that the customary dispute resolution system is more effective that the formal legal system because there is no much time taken for appointment and they are mostly come in to an end by reconciliation which avoids further conflict. Besides, there are no appeals at the customary dispute resolution system because conflicts are resolved in a way where both conflicting parties are convinced for reconciliation or to accept the final decision of the judges.

## Man with a settled dispute case

The man had recent conflict with his colleague. It was in November when he accused his colleagues at the social court. The two men are guards of the mobile telephone tower who watch it by shift. The man applied that his colleague came at the night and frightened him to give him some money. When he refused, the man gave him warning that if he refuses to give him money another time, he would kill him. Then, the nest day, he came to the court and explained the situation to the judges. The judges sent a letter to the accused man to come for a trail because he was accused. After one day, the trial was seen by the judges of the social court in which he was requested to bring an eye witness. However, he didn’t have any evidence to bring to the judges and told them that there was no one at that time except tow of them. At the trial day, the sue was explained to the suspected man and he was asked whether he committed the action or not. He said that he went to the work place to sleep because it was too late for him to go home. He mentioned that he got drunk at that day and was not conscious of his action. But he denied that he didn’t attempt to frighten him with his weapon. The judges could find no evidence for an attempt to kill. So, they decided that if something happened on the life of the guard while he is at work place, the suspected will be responsible. Currently, although their relationship has not yet been so smooth, they both are in a way to watch each other and respect the decisions given by the judges. They don’t openly interact as colleagues but communicate only when they have work related issues.

## Woman with a settled dispute case

N is in her early 20th who is married and has one baby. She had conflict with her husband just before some 2-3 months ago. Her family is among the young Protestant households in the kebele. She keeps a small shop along the road side, some distance away from her house. She keeps it at day time and her husband sleeps there at night time to keep it from robberies. He does farming and livestock trade. He spent his day time at the farm land, keeping livestock or at market places. He goes to Key Afer, Brayle(Woito) and Turmi for trading. He brings consumable items for her to sell at the shop. They are considered among the middle class families that is been transformed to be rich.

She heard rumour that he stays with another lady when he sleeps at the shop for the night. She started to see his behaviour was changed to be busy in his own business only. He decreased the time he spent with his family. He was not also attending church programmes every Sunday. She started to gather information seeking evidence to talk to him.

One day, he went to Brayle for trading at the market day. Unlike other days, he didn’t come back home before it was too late. He spent the night there and he came back the next day. She was very disappointed by his behaviour. When he came home, she asked him where he was the other night been very nervous. He replied her, looking her down; it was not her business to control him. Then, she went to her mother and told her about the problem. Her mother waited him at home at the evening. But he didn’t come home. His wife saw him he was at the shop. The next day, her mother met him at his house and asked about the problem. He was not willing to spend much time talking about what happened in the past. He went away saying that he stayed there because there was no transportation.

His wife couldn’t feel peace that she continued to follow his actions. Their relationship was affected that she had no communication with him for about 5 days. One morning, she went to the shop early before her normal working hours. Then, she saw from far distance that a young lady came out of the shop and quickly went away. She was very frustrated and went to talk to her husband. He was still sleeping at the floor of the shop room. She couldn’t find evidence at the room. There was no one around to see when that girl was inside the shop room.

When he shouted at her to close the door and go away, she came back home. She started to think about what she should do and to whom she should ask for help. When he came home for breakfast, she went out and go to her mother’s house. She didn’t prepare food for him. She didn’t open her shop that day. At the evening, he came and asked her to give him his dinner. She said it should be that lady that had to give him dinner. Then, he got angry and did beat her repeatedly at her back. She shouted and all the neighbours came. They tried to cool him down and took her away. She said loudly that he committed adultery. They elders told everybody to sit down. There were also the kebele manager and the community police because they live at her neighbourhood. The kebele manger told him that he has no right to beat her, although she is his wife. He told him that he can be taken to prison only because he is caught to physically harass his wife. The husband said that nobody has the right to interfere on his private life so they all have to go home. But the police man said that as she called the community for help because her right was violated, they wanted to ask him about the problem peacefully. If he refuses, the police noted that he has the right to take him to prison. The elders interacted and said that they will resolve the problem but if it is beyond their capacity, they will refer them to the court. The kebele manager and the elders advised both to cool down and they should forgive each other. As it was dark evening, the elders decided to meet both the next morning. When the husband agreed, the wife refused to stay at her house and she went to her mother’s house which was not very far.

The next morning, he didn’t come home and the elders couldn’t talk to them. Then, she decided to report to wereda court about the harassment he did for her. When she went out of her house to get a car that takes her to Key Afer, the neighbouring people took her back home and advised her to see other ways by which the problem can be resolved. She went to the church (Kalehiwet) administration and reported the case to the church leader and told him that she wants divorce. The church leader appointed her the next day because he first wants to hear the idea of her husband. The next day when she went to the church administration office, she found her husband and the church leader sitting there. She could understand that her husband was there some time before her arrival and had some discussion about the problem with the church leader. The priest asked them about what their problem was, how it could happen, how both understand the problem and how each of them suggest that the problem could be resolved. After he heard the idea from both sides, he did tell them what the bible says about marriage. He took long time and provided them spiritual advises. He told them about the marriage responsibilities of the husband and the wife. Then, he asked them whether they love each other or not. Both didn’t deny that they loved each other and they got marry only because they loved each other. The priest asked again whether they loved their baby or not. They said yes. The priest asked final question whether they wanted to continue living together or divorce. When the woman kept quiet, her husband said that he had no doubt that he wanted to continue living with his wife and he would ask apologise because he became a cause of the dispute. The priest allowed him to ask for apologise. He said that he spent the night at Brayle because he got drunk after his friends invited him to drink *“berth’* (local drink made up of honey). But he denied that he had sexual affairs with another girl. When he did swear in front of the priest and the bible, she trusted him and did forgive him. She said that she wanted to live with him and she has no his hatred inside. The priest noted that they must visit the church and attend church programs regularly, to bring their problems to the church and live spiritually. He told them to hold each other and to go home.

She said that she was very much happy about the final decision because she could safe her marriage and because the reconciliation process was very smooth to build their capacity to help each other spiritually. She learnt good lessons from the conflict that it is better to see things spiritually rather than emotionally. She appreciated the help of the elders at her neighbourhood, the kebele officials and the church leader.