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# A Quest for a Wider Mandates to Customary Justice Institutions in Ethiopia: A Particular Emphasis on ‘Yaa’aa Yaaboo’ (a Qaallu Court)

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*Abstract: This study assesses the functioning of yaa’aa yaaboo customary court (the Qaallu court), which is found in the Oromia National Regional State of Ethiopia, in west the Shewa zone in the Ambo district. This court accepts and handles any criminal and civil cases unless cases are pending in the formal courts. The effectiveness of this court in course of handling both civil and criminal cases is rarely treated in different kinds of literatures. Thus, the aim of this article is to fill this gap. To realize this objective, the study employed a qualitative research approach. By showing the overall functioning of this court, this article recommended a legal reform that may include a constitutional amendment to give wider mandates than envisaged under the current constitution to customary justice institutions.*

*Keywords: Customary Courts, Criminal Matters, Civil Matters, Qaallu, Ayyaana.*

## 1. INTRODUCTION

Every Qaallu center in Oromia national regional state of Ethiopia is the center for litigation and conflict resolution. It is not uncommon to see a large number of people gathered at Qaallu ritual centers to have their cases heard. Regardless of differences in their prominence and size of followers, all Qaallu have their own courts that render the services of settling disputes and maintaining social orders. Such a court is believed to be held at a sacred place, supervised by the spirit possessed by the qaalluu. This court is supervised and runs by qaalluu head who is sanctified by the spirit. The qaalluu court proceedings are held in open field under a tree at qaalluu ritual center. But major qaalluus have also halls constructed for this purpose. The major qaalluu have permanent judges of their courts known as daanyii, jaarsa yaboo or jaarsa bokkuu. Yaboo refers to the qaalluu court.

The qaalluu court that this study focused on is found in west shewa zone of Oromia National Regional State, in Ambo district, in Illaamu Mujjaa kebele, specifically in Wechen,



a village located 15 km south east of Ambo town. This study is specifically focused on the warra-danfaa, yaa'aa-yaabboo (yabbo-assembly). This is first due to the wider reputation that this court had among the local communities and its wider catchment area serving disputants from neighboring districts. The effectiveness of this court and the diverse nature of dispute cases brought before it are also some points taken to consideration while making the institutional focus. Unlike most customary courts held on ad-hoc bases, yaa'aa-yaabboo has a regular court hearing. It holds regular court hearings once or twice on every two weeks on average, depending on the number and type of cases. This qaaluu court had a hall established for this purpose which is called Yaboo. The major Qaaluu of Warra-danfa is Obbo kumala Feyisa. He is also called Aba boku of the qeyyee(the head of the ritual center).In addition to the major qaaluu, the most prominent mediators in the Yaaboo of warra-danfaa, are called Daanyii's and Samphalos'.

This article contains three parts. Part one provides an introduction of the study. Part two highlights about research methods. Part three offers the description of yaa'aa yaaboo court. Most importantly, it explores the types and nature of cases brought before this court, the court proceedings and procedures and the profile of the mediators. Part four offers concluding remarks.

## **2. MATERIALS AND METHODS**

In order to attain the intended objectives of the study, the researcher of this study employed qualitative approach. Qualitative approach is selected because of its very helpful contribution to gather firsthand and rich ethnographic information, and to understand the social, economic, political and religious life of the society of the study. Thus interview and non-participant observation qualitative types of data collection mechanisms were employed during field research. Data presented in the study has obtained from primary and secondary sources. Primary data was collected directly from daanyyii's and samphaloos, knowledgeable local elders and ordinary residents of the area who are familiar with the socio-cultural aspects of the society. Secondary data sources included both published and unpublished materials such as books, articles, working papers journals, pamphlets and thesis. In course of conducting this research, purposive or judgmental sampling technique is adopted.

## **3. DISCUSSIONS AND RESULTS**

### **3.1. Setting and Time**

The court house (yaaboo) of warra-daanfa is established approximately 50 meters away from Galma-Ayyaana or qaaluu(qaaluu's spiritual hall), where different ritual ceremonies took place. This court house is built on the place where the first major qaaluu named Elemo Duleaccepted and handled the first case brought before him, hundred years back. That is the main reason for selecting this site for establishment of court (yaaboo), according to my informants from qaaluu court.

The regular court hearing is conducted once on every two week on Friday from 10:00 am to 6:00 pm. This day is locally known as kudha-arfan. But this doesn't mean that the court never accept cases brought before it other than this day. The rationale behind selecting Friday as a regular court hearing day, according to informants from qaalluu court, is associated with the appearance of the spirit called Gooftaa Daanfaa (lord daanfaa) on every Thursday bi-



monthly. Thus culturally the day after the appearance of the spirit (GoofaDaanfa), which is Friday, is considered as Guyyaa Ayyaana Qabeessa (lucky day) and it is also believed that on this day God is ready to hear the word of Hiyyeessa (the poor) and Dhuga Qabbessa (the honest). As a result, He gives timely response for those who have truth. Plus to that many people from different corners of the districts or zones, who came to attend the 'dalagaa' ritual ceremony conducted on Thursday, may have a cases to be seen the next day. This might be another reason for selecting Friday as regular court hearing day of the study area.

**a. Types and Nature of the Cases of Qaalluu Court**

Even though there is no formal or clearly provided constitutional recognition for customary justice institutions to accept and handle criminal and civil matters other than family and personal cases, most customary justice system (CJS) in Ethiopia accepts and handle any civil and criminal matters. The case of yaa'aa yaaboo of warra-danfaa, is not exceptional in this regard. There is no limitation as to the types and nature of cases brought before yaa'aa yaabbbo, except, those cases being handled by the formal courts, and homicide case on which the suspected person has not surrendered to government. According to obbo Nat'aa Xurii, the mediator at yaaboo of warra-danfa and Samphalo of Boku Xule:

“This court cannot accept and entertain those cases being handled by the formal (state) courts until the final judgment is given, or until the court transfer the case to this customary court. The same is true with regard to homicide case until the suspected person is surrender to government”

Accordingly, this court accepts and entertains any criminal or civil cases includes: - property inheritances rights, abductions, rape, divorce, homicides, theft, conflict on land borders, grasslands, double marriage, intoxication, loan, injury and etc. Thus there is no limitations on type and nature of cases except the one stated above.

**b. Profile of the Mediators in Customary Justice System Leadership**

At the Warra- Danfaas qaalluu court, there are five major senior daanyii's who have served as mediators for over three decades. In addition to these five major mediators, there are also, other daanyii's in the qaalluu court of Warra- Danfaa. According to obbo Badhadhi Ulfaata, the president of all daanyii's at this ritual center, the total number of daanyii's in this yaaboo(qaalluu court) may exceed fifty, but the major mediators are five. There is power division among members of daanyiis which include chairperson, secretary, cashier and members.

These daanyii's are appointed by the major qaalluu depending on personal integrity they had in their society, their knowledge of norms, tuma (laws) and their loyalty to the Ayyaanaa (the spirit). The post of daanyii can also be inherited from the family. They are appointed for indefinite period of time, however, if they lost their personal integrity or breached the loyalty bestowed upon them by major qaalluu and the spirit, they may removed from the post of daanyii by major qaalluu. Taking bribe from one of the disputant party with an intention to favor him/her by judgment is one ground among many for removal of mediator from the post of daanyii.

Before starting ones' carrier as a daanyii, the prospect daanyii had a duty to make an oath (kakuu); to guarantee that he will undertakes his duties properly. In course of making kakuu he says that, “I am committed to serve my community and this Ayyaanaa (the spirit), depending only on truth and the customs, norms and 'tuma's'(laws) of Oromo people”. He



went on and further state that “If I go against these customs, norms and tumaa’s, let bad things happen to my maati(extended families) and karraa(properties)and..... etc.” After the kakuu ceremony and blessing of the major qaaluu, the prospect mediator, officially start his career as ‘daanyii’.

The daanyii’s can entertain any cases referred to them by the major qaaluu, except some serious criminal matters like homicide and cases that involve compensations to be paid. In a later case, if the matter at hand consists of the issue of damages or injuries to human bodies or properties for which the compensation is to be paid by the accused, the judgment to pay compensation is passed by daanyii’s, but the amount to be paid is the jurisdiction of Samphaloo. The justification here is that, it is the ‘Samphaloo’ who knows better, the laws (tumas) that governs the amount of compensations to be paid for damages or injuries sustained by the victim. The very important point that need consideration here is that, there are already laws (tumas) that were passed by Abaa Gadaa’s and Hayyu’s regarding the amount of compensations to be paid for different injuries or damages (full or partial) sustained by human beings or to properties. In course of assessing (calculating) the amount of compensation to be paid, the ‘Samphaloo’ consider different factors like the body part that sustain damage, the degree of damage, the age of the victim, the means of livelihood, the possible impacts of the damage on the future well-being of victim and etc. Other than cases of these natures, the daanyii’s can accept and handle all cases referred to them by major qaaluu. The number of daanyii residing over a single case can be three, five or seven depending of the gravity and nature case. But, it must be not less three daanyii’s on any case.

In addition to daanyii’s, samphaloo is the other mediator in qaaluu court of warra- danfaa. He is the intellegencia of customs and norms, as well as the legislature and guardian of tumaas, of the Oromo people of West Shewa. He had a deep knowledge of the customs, values and norms that guided the Oromo of West Shewa for centuries. The post of Samphaloo is inherited. ‘Unlike the jurisdiction of daanyii’s, there are no limitations as to the types and nature of cases that samphaloo can handle.’ This is to mean that he can entertain and handle any case as long as it referred to him by the major qaaluu, along with the haayyu’s. There are also situations when major qaalluu acts personally as a yaaboo daanyii either with others or alone.

### **c. Ignition of the Case at the Qaaluu Court**

Cases are brought to this qaalluu court first, if the injured parties are unable to testify the truth of the case before the formal court, if it relates to ritual cases such as ritual appeasement or lifting of curses or serious matters, which may also be referred to him by the state legal system or if the jaarsummaa(local elders council) system bears no fruit. This qaalluu court never dismisses a case on the ground that the evidence is not conclusive enough. The defendant possibly proves his innocence through oath in the absence of any witness. The failure or refusal to take oath to prove one's own innocence is an indication that the person is guilty.

Secondly, “a plaintiff who knows that his opponent believes in the spirit and would not by pass it takes his case to a qaalluu court. In doing so, the person can make use of the golden opportunity to secure an effective and efficient outcome. Individuals often make strategic move from other options to the qaalluu court based on the context of the relationships between the defendant and the qaalluu in person and his spirit. Consequently, even, plaintiffs



who do not trust the qaalluu and his spirit appreciate the qaalluu court as an alternative way of dealing with cases.”

Thirdly, the other way round, regardless of whether or not the offender is willing to respond to the qaalluu court or/ and qaalluu, a plaintiff faithful to the qaalluu and his spirit would not by pass this court. Such a believer in the spirit goes to the qaalluu court with two options: either to get his case resolved or to be permitted to try any other alternative, including the invoking of the spirit.

The very important points that matter a lot here is that, it is not the types of cases that determine for one to bring his claim to this qaalluu court, rather it is the context in which both or either of two disputants found themselves. According to the word of Dejene what matters is”the context rather than the type of case.” The relationship between dispute and its resolution is determined by the context.

### **3.5. The Qaalluu Court Processes and Proceedings of handling cases**

#### **3.5.1 The Blessing and Opening Ceremony**

The qaalluu court processes and proceedings are always starting with blessing (Ebbaa). After the local communities and people with different claims to be heard are gathered in ‘yaa’aa yaabbo’ which is literarily to mean ‘a court room’, established for this purpose, the opening blessing (Ebbaa) ceremony is conducted by two local elders (haayyuu ofkalanii) in which the blessing by one elder is responded to by the other elder that might be called ‘argumentative blessing’. Then the official opening ceremony is conducted by blessing of the major qaalluu and the representative of the seven clans living in and around Ambo area according to their clan seniority respectively.

After closure of the blessing ceremony, a session of hearing various cases will be launched, and then after, anyone who has a claim can starts to present his/her claim to the major qaalluu, either by himself/herself, or through the person appointed for this purpose. The qaalluu court proceeding has no filing system; rather it is the parties in dispute, mostly, the plaintiff that reminds the qaalluu or the daanyii’s that he/she has a case to be called on. The standard way of forwarding such a request is to get up and say 'galata yaa goftaa koo!'" O!Thanks my lord! As the case is called on for hearing, a concerned person comes forward and kisses the earth in front of the qaalluu at some distance (about five meters) to show great respect to the spirit of the qaalluu and the qaalluu himself. Such claims can be presented either in written form or orally, in any language that the plaintiff can speak or write. For instances, during field research conducted on February 17,2021 and May 12,2021,the researcher observed when different claims were presented in written form or orally in Afan Oromo and Amharic languages. Contrary to the government’s political discourse, which privileges ethnicity as the major principle of social organization, the vitality of local institutions of dispute settlement such as yabboo of warra-danfa has been evident from the fact that they cut across ethnic and religious boundaries, with clients hailing from different parts of the country.

After hearing the cases presented to him, the major qaalluu either handle the cases by himself or refer them to the daanyii’s or to the Samphalo. The cases that he mostly retains for himself include: homicides, rape and abduction. These are serious cases that had wider implications on peace and stability of the society, unless wisely and properly approached and that is mostly the reason behind retaining such cases. He may also refer the cases back to the local elders (jaarsa biyyaa) from where the plaintiff and defendant are from; if he strongly believes that the justice is better served had it been entertained by local elders or if the case



requires local know-how or assessments. In such cases, upon proving their interests, both of them are told to name the names of such local elders, and upon agreements as to those elders, the case will be referred back to these local elders with an order to bring back the agreements or the judgments thereof. As stated herein above, the natures and gravity of the case presented before him are the parameters for Abaa Bokuu of the qeeyye(major qaaluu)in course of referring the cases either to the daanyii's or samphalo.

#### **4.5.2The Court Proceedings of Yaabbo**

The court proceedings of 'yaaboo' lead by major qaaluu on the top, is started by issuing 'Qalaaxe' literary mean 'summon' to the accused, if he/she has not appeared. Such summon can be in a written form or oral. The contents of this summon contains - the case over which the defendant is accused of, by whom he/she is accused, the date of the next appointment and so forth.

The court summon can be sent to the accused through the plaintiff, person ordered by the court or by anyone who knows the accused. It can be sent more than one time until proved by the court that the accused has intentionally abandoned the sent summon. A person who is served summon is supposed to respond, no matter who the messenger is. Any contempt for such a summon equals to a contempt for the spirit in the name of which the person is summoned. Once approved by the court that (if the case is being handled by the daanyii's or samphalo), the defendant has intentionally neglected the issued summon, the matter will be communicated to Abaa bokuu of the qeeyee, and then he bless the plaintiff and guaranteed him/her the right to bring his/her case before formal courts if he/she wishes to do that.

But with regard to the accused person, who intentionally abandoned the summon issued by the court, then onwards he/she will not be allowed to bring his cases before this court, because he/she has intentionally neglected the all knowing spirit(the ayyaana) and also breached tumas, the laws by which the people are governed by. In the words of Obbo Alemu Hirpha, the vice-president of all daanyii'sat Boku Wechan, 'Dhugaa kennu ijaa diddef,dhugaa mana murti kanaati hin agartu.This is to mean that "hence he is not willing to give the truth in this courts, he will not be guaranteed the same."

However, if the accused appeared on the appointment date, the court starts its session by informing the plaintiff to narrate his/her claim. After the claim of the plaintiff is eloquently heard, the accused is requested to respond. These claims and counter claims are heard under required formality, each talking when allowed or asked to. In practice, of course, disputants often break this rule and interrupt each other, but mediators are tolerant of it. In the meantime, disputants are supposed to show respect for the mediators, speak only politely, be tolerant, and above all tell the truth. It is believed that the 'ayyaana' easily identifies the truth and falsity of the information, and the worthiness and unworthiness of the claims. The reliability of the information stems from the belief in all knowing spirit.

If the defendant denies the claim presented against him/her, and a plaintiff is unable to produce evidence to attest his/her claims in this court proceedings, the plaintiff may request the defendant to swear (kakuu) in the name of the spirit. It may be expected that not just the defendant or suspected criminal but his close relatives including his father, mother, elder brother and wife also take the oath. This is an effective and ready-made alternative people often resort to. If plaintiff had witnesses his right to bring his witnesses is also protected. According to obbo Nataa'a Xurii, the samphaloo who mostly lead this oath(kaakuu) ceremony, the 'kaakuu' ceremony is take place by holding or sometimes by biting the sacred



and respected tools among the Oromo community like Ebbo (Spears), Caaccu (ritual object used only by women as a symbol of female fertility), Qawwee (the gun) and etc. The one who makes kaaku says: “hin maquu, hin maqsuu, dabaa hin hojjedhu, yoon sobaan dubbadhee hamman mana kootiti ha gaalu, dhala hin agartin, yoon argadhe hinguddatin, yoo guddate jilbaa hin darbin, haatii manaa koo ilmaa hin duubbane haa deessu, Afaanin haa deessu” and etc which literarily means that;

“I will guarantee you that I will not give a false testimony, if what I am talking is not true: let bad things happened to my family, let me not get a child, let the child born to me not grow, let my born child not pass my knee, let my wife born the boy that cannot speak, let she gave birth through her mouth and etc.”

As stated somewhere herein above there is a great connection between this customary court (Yaabboo) and the belief system (Ayyaanna). So that the name of Ayyaanna which is called Goofta Daanfa is invoked at various levels of dispute process such as oath making, to ensure both the plaintiff and accused and also witnesses, would tell the truth and to sanction the final agreement.

After the oath took place and hearing witnesses' testimonies is conducted with cross-examinations by the accused and the mediators, and also final arguments from the disputant parties are heard, the court render a final judgment. Unless the nature of the cases so require or the accused is failed to appear on an appointment date, most cases presented before this qaaluu court will gate a final judgments in less than a month.

If one is dissatisfied by the verdict of daanyii's or samphaloo of this court, he/she can present his/her appeal to the major qaaluu. Upon receiving complaint, the major qaaluu order the daanyii's or samphalo who resides over the cases to come and explain the contents of their judgments and the justifications behind their verdict. If he found something wrong either with procedures or final judgments, he orders the daanyii's or samphaloto review of the judgments on spot. But if nothing is wrong with the former verdict of the daanyii's or samphalo, he communicates the matter to the appellant and induces him/her to abide by the judgment.

If one is again dissatisfied with the reviewed judgment, his/her right to make another appeal is also guaranteed. In such instances appeal is made to the spirit (Ayyaana) in the spiritual hall (galma ayyaana). The verdict by the Sprit (Ayyaana) is the final and conclusive. But sometimes there are also situations when the case made open to the people gathered at court room called yaaboo baal'aa to make final judgments. Here it is the people who make a final judgment, not the major qaaluu or daanyii or samphalo.

### **3.6. Enforcing Mechanisms**

The decisions of the court of qaaluu are believed to be enforced by the spirit. Contempt for the court's decisions offends the spirit that is powerful to harm the offender, his family, his cattle, his crop and his descendants up to seven generations. The fear of spirit that stems from the ideology of punishment by the spirit, of course, makes individuals to confess their guilty and obey the decisions. These mystical sanctions apparently explain the enforcing mechanisms of the qaalluu. According to Dejene, there are also cultural, economic and political factors that come into play for the enforcements of the decisions of the qaalluu court. The qaalluu system is highly value oriented. The mediators or/ and the major qaalluu appeal to values, traditions and Oromo indigenous laws. The mediators assist the parties in dispute to arrive at joint decision and to share the pain of losing. They usually mediate and rarely



adjudicate. If adjudicate they still appeal to Oromo seera (law) made by gulas every eight years. As in the jaarsummaa system, the qaalluu court equally focuses on the relationships between disputants as it does on the dispute itself. Restoring of peace and harmony rather than punishing the offender is the objective of the court. In addition, users of this court feel that the qaalluu court is native and its verdict is more of educational as opposed to government court, which they think is foreign to their culture and takes punitive actions. A defiant opponent in a dispute is more likely to be brought before this court than to non-spiritual CJS.

Moreover, the major qaalluu of Ambo area was and still is wealthy man who could easily mobilize their resources to extend their influences. He could win the supports of the poor peasants in the area owing to his wealth. He helps the needy. Consequently, people want to please the qaalluu whom they consider as their patron. One way of doing this is to take their cases to the qaalluu court and to abide by his decisions. The qaalluu court is also effective in both time wise and economically. Cases are settled relatively within a short period of time. They know that justice is delayed at the formal court. Courts and elders decisions among the Oromo of Ambo district have been enforceable through sacred sanctions. For instances, through cursing. They enforced decisions by resorted to cursing, which is sacred sanction. In the mean time, they make use of ostracization, exclusion, threat to ban him from lineage support and threat to curse as enforcing mechanisms.

### **The Status of Customary Justice System under the 1995 FDRE Ethiopian Constitution**

In many regions of Ethiopia, the customary norms and institutions are more strong, relevant, and accessible than imposed and top-down legal norms. 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 face of such a shortage of facilities and legitimacy, the customary justice institutions play a very vital role in the administration of justice. Moreover, experiences in different regions of Ethiopia show that people, even after passing through the procedures and penalties in the formal criminal and civil court, tend to use the customary justice institutions for reconciliation and in order to control acts of revenge. It appears to be in recognition of this fact that article 34(5) of the FDRE constitution states that group or individual can use their customary laws and institutions as far as their usage is consistent with human rights provision of the constitution. It says that “this constitution doesn’t preclude the adjudication of disputes relating the personal and family laws in accordance with customary and religious laws, with the consent of the parties to the dispute.” Plus to that, article 78(5) of same constitution mentions that “pursuant to sub-article 34 the house of people representative and state councils can establish or give official recognition to religious and customary courts”. These articles therefore imply that at least in those are mentioned, the customary justice system could exist separately from, and parallel with the state-sponsored legal judicial system. Regarding other civil matters than the family and personal, the constitution doesn’t specifically prohibit the operation of customary justice systems. Although this could potentially provide the space for the involvement of customary justice institutions in other legal domains, the fact that they are mentioned in contexts of family and personal law without reference to other legal areas creates a pervasive impression that their jurisdiction is or should restricted to family and personal law.





With regard to criminal matters, however, ‘the 1995 FDRE Constitution does not rectify the past mistakes and fails to extend the legal recognition to applying customary courts in criminal matters, despite the fact that they are still being used on the ground to resolve criminal matters: from petty offences to serious crimes, such as homicide as well as inter-ethnic and inter-religion conflicts, especially in rural Ethiopia.’ Hence, the use of customary justice systems to criminal matters still remains de facto. Understanding this fact, Alula and Getachew state that:

“In many regional states particularly, though not exhaustively, in border regions, customary justice institutions are involved in criminal cases. Moreover, the formal justice system often relies on CJS to solve less serious cases, to bring criminal to the courts to ensure verdicts are upheld and to achieve reconciliation after cases are concluded. Therefore, the customary institutions and legal process would need to gain legal recognition of their role in the criminal area to collaborate effectively with the state judicial system.”

Nonetheless, certain interpretative arguments may arise in these regard. Some legal scholars argue that the absence of express recognition of the application of customary laws and institutions to criminal matters in the Constitution does not necessarily mean that they are totally excluded from application. They further claim that the Constitution would have provided express provision to exclude the application of customary laws to criminal matters had the legislature intended it as such; and they call for a broader and holistic interpretation of the Constitution, as total exclusion of applying customary laws to criminal matters would defeat the overall objectives of the Constitution to ensure lasting peace and to maintain community safety.

However, such interpretive argument does not holds water for the writer this article due to the fact that these customary justice institutions are still very vibrant in regulating every aspects of life of the societies in most rural parts of Ethiopia in general and in the study area in particular. Thus there shall be a bold, clear and a **conscious** efforts on behalf of government to give them a wider recognitions on their mandates than that envisaged in the 1995 FDRE constitution. This may goes to the extent of amending the current constitution. In this regard, though very limited, the recent efforts taken by Oromia national regional state is plausible.

#### **4. CONCLUSION**

This customary court plays paramount roles in maintaining peace and stability by settling different disputes that range from petty offences to homicides. It achieves this golden purpose through reconciliatory roles it plays in handling and entertaining the cases brought before it. In addition to such reconciliatory roles, this court is preferred over formal court by local communities due to its accessibility, absence of strict legal procedures and jargons in its proceedings, the short time span in which the case brought before it entertained and etc. Thus, in most aspects of life, this customary court plays vital roles in keeping social harmony and stability in the study area that the formal courts can’t. Therefore a wider legal recognition on their mandate should be put in place.



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