

For the detractors of Eritrea, the country has no “no laws or rules”. This is a refrain often parroted by the so-called mainstream media. Seen through their distorted prisms, Eritrea is plunged in a complete anarchy. But, really...? Actually, Eritrean society has a rich track record of customs and traditional justice systems used for centuries. Even the Italian and British colonial powers recognized the importance of preserving and upholding the customary laws during their respective colonial rule of the country.

As I went to buy the new codes at Awget Bookstore, I was wondering how the new revised codes took into account customary laws and what is the role of customary practices in resolving disputes or any other legal issues? That’s when I remembered this brochure called “Eritrea-EU: 20 Years of Partnership”. You might wonder where is the link here? Actually, one part of the catalog looks at the role of the EU in supporting community courts in Eritrea. There it is! Community courts! I always wanted to have a look at these community courts work and as soon as I came across the idea, I contacted one of the judges in Asmara. Next morning, I went to visit and attend a session at the community courts located in Edaga Hamus, at the heart of the market area in Asmara. The community courts of Edaga Hamus include the district areas of Arbate Asmara, Abashawel, Edaga Hamus and Maakel Ketema.

I arrived in the middle of a session at the Arbate Asmara community court. The courtroom was full and I see elders in front of the crowd sitting behind a desk alleviated by a sort of stage. As I am sitting quietly by the side hoping that I won’t disturb the session, one of the judges looks at me and asked what is my case. When I responded that I was just here as a writer for Eritrea Profile, he warmly called me by my name and introduced me to the crowd. Well, I guess my will in staying discrete failed. Here I am, listening carefully and observing the whole process in which young and less young are heard.

So, what are community courts? Community courts, as the name says, involve the participation of communities in judicial system. It is a common method, merely in the African continent, in dealing with disputes through mediation and reconciliation mechanisms. In recent years, the international community started to acknowledge its effectiveness especially in post- conflict areas.

In Rwanda, for instance, after the genocide, three levels of justice mechanisms were implemented and perceived as the best solution in dealing with the different levels of crimes perpetrated. In this framework, the International Criminal Tribunal for Rwanda (ICTR), in Arusha and the National Court in Kigali deal with high ranked orchestrators/perpetrators of the genocide while the traditional method, the Gacaca, adjudicates issues of victims and lower crime perpetrators. Indeed, Gacaca comes from a traditional pre-colonial mechanism to deal with issues at community level to reconcile and forgive offenses through dialogue. Hence, the Gacaca jurisdictions were implemented nationwide by the Rwandan government in 2001 under the “Organic Law of 1996 and the Gacaca Law of 2001” (Clark 2008).

Combining Traditional Customs and Rule of Law: The Strengths of Eritrean Community Courts

Written by Mela Ghebremedhin

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Another example can be found in the Democratic Republic of Congo (DRC), called the Barza, which means the meeting place where the local population will resolve their problems by referring to the elders of the community. The Barza came into play in 1998 in the region of North Kivu. It was implemented after discussions on transitional justice measures at the Inter-Congolese Dialogue (ICD), a commission focusing on peace and reconciliation (Borello 2004). The Barza was implemented by local leaders representing nine ethnic groups to deal with crimes and to enhance, as in the Gacaca, dialogue between victims and perpetrators.

To go back to the community courts in Eritrea, we can notice that it is not solely implemented here but in many regions in Africa and elsewhere. This system of using customary laws within the national law can be beneficial in resolving disputes. What makes it practically unique to Eritrea is that customary laws are codified and written and date as far back as the 15th century. Eritrean communities used Hegi Endaba or 'laws of the forefathers' to settle their disputes. However, under Ethiopian colonization, the Ethiopian codes were introduced to supplant and dismantle the Eritrean customary laws (Woldeab 2011).

Nonetheless, in the late 1970s, as the EPLF was highly organized, it implemented Communal Assemblies of Elders in the liberated zones aiming at resolving disputes through mediation. Unquestionably, at independence, the Government of Eritrea acknowledged the great role of traditional justice by institutionalizing it through village courts which then became community courts from 2003 onwards. A cursory examination of the justice system in Eritrea reveals that there are four levels of courts in Eritrea: community courts, regional courts, high court and the Court (Bench) of Final Appeal. Community courts are part of the Government legal system at the lowest level and deal with lower crimes and more 'daily life' disputes. Accordingly, article 44 of the Civil Procedure Code of the State of Eritrea, released in 2015, stipulates, "Unless expressly provided otherwise, Community Courts shall have jurisdiction to try all suits: (1) Not regarding immovable property, where the amount involved does not exceed 100,000 ERN; and (2) regarding immovable property, where the amount involved does not exceed 150,000 ERN".

I realized during the session at the community courts, that most cases were about divorce and other domestic issues, rental and housing issues or wedding debts between the family of the groom and bride among other low crimes or disputes. As I walked around the community courts, I noticed that in the community court of Maakel Ketema, the three community court judges are women with the main judge named Alganesh Haile. In all other courts, there is at least one woman represented. As a matter of fact, it is not explicitly written in the Proclamation 132/2003 to have a woman representative in each court, nonetheless, according to tradition, most courts followed the ratio of having at least one woman in each community court. In statistical terms, it was registered that from 2003-2008, the number of women community court judges increased by 8.4% (Woldeab 2011).

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Talking about elections, community court judges are elected by their community initially for two years and now it has changed into four years, as Mr. Bereket Araya, community court judge for Arbate Asmara, explained. Most of the judges are elders who have adequate knowledge of customary practices but also the national law. They must also be active participants in the affairs of their community. The three members of the bench are traditionally distinguished as one judge and two nebaro. The nebaro have the role in assisting the 'main' judge by using their knowledge of customs and of the community. That's when I understood why I did not see any youth behind the community court benches. However, anyone from 25 years of age who is free from chronic mental problems, has fulfilled all national duties and has no criminal record can run for election as a community court judge. Another point, which came into mind, is the background of the community court judges. What type of trainings do they take? Actually, it is not necessary that judges have educational background in law. However, as the community courts are under the responsibility of the Community Courts Coordination Office of the Ministry of Justice, there are requirements on literacy and attendance of basic legal training on a constant basis. Besides, the capacity building program supported by the UNDP and the European Union aims at integrating customary laws within the formal rule of law. In numbers, 1200 community court judges, 370 clerks and 700 supporting staff were trained (EU 2015).

As I spent my morning at the community courts, I witnessed how every litigating party came in front of the bench with the will to resolve an issue and with readiness to compromise, which is very different from the usual defensive approach we notice in the more formal courtrooms. Here, instead, people do not have lawyers, as the idea is to have equal hearing in front of the community court judges. Most cases, Mr. Bereket explained, are resolved outside of the court through mediation and compromise with the involvement of representatives of family members known as shimagle. Between 2004-2009, about 57% of cases were settled through mediation and compensation among the litigants (Woldeab 2011).

I was even touched by the speech of an elder. As the plaintiff, he expressed his will to live in peace and he was only asking the tenant to pay him the rent. He was very diplomatic for someone who did not receive his rents for almost a year. This is the strength of traditional mediation as they came into agreement very quickly.

The establishment of community courts was not solely put in place with the idea of keeping traditional mechanism for peaceful settlements of disputes but also with the aim of ensuring better access to the legal system to all layers of the society. Indeed, in many parts of the world, access to justice is only guaranteed to those who can afford it or have it at proximity. The unequal access to justice was, henceforth, one key issue the Government of Eritrea was willing to eradicate.

Allowing all citizens to have access to community courts does not only lighten the burden of the higher courts but it also provides increased access to those living in remote areas. With over 400 community courts nationwide, Eritreans do not need to travel long distances and incur substantial financial expenditure to see the administration of justice. The current framework of enhancing popular participation while guaranteeing the representation of women, tackling the barriers to justice and promoting the peaceful settlement of disputes is thus immensely useful and meshes well with a comprehensive legal system that has additional provisions and

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institutions for adjudicating more complex crimes

The newly revised Penal and Civil codes released in 2015 took into account this positive aspect of customary laws. The new laws were worked in a long consultative process of seven years with the involvement of stakeholders including international experts as well as the national law reform committee that was composed of Eritrean legal professionals work hardly for more than seven years.

And as mentioned in the Prelude of the Penal Code: “Eritrea is renowned for being a treasure-nation of age- old, self-advanced customary laws [...] it was, thus, imperative, over and above the 1991 amendments, that we review the Penal Code which was currently in force, in light of the traditions of our societies as revealed in the customary laws. This required us to embody the workable penal principles of our customary laws into the new Code”.