

JUSTICE IN ETHIOPIA: A System in Transition

John Ferris

Usually when one refers to a legal system, it is the formal adjudicative branch of the government and the court hierarchy enforcing statute and common law that is considered. In the past two years, I have had the opportunity to closely observe a very different system, namely the justice system in Ethiopia. In 2007 and again in March 2008, under the auspices of Justice for All-Prison Fellowship Ethiopia (JFA-PFE), I have also had the privilege of offering a three day Alternative Dispute Resolution (ADR) seminar to judges representing the three levels of Court (First Instance Court, Supreme Court and High Court) in two of the regions of Ethiopia, Bahir Dar and Gambella.

Ethiopians proudly declare that theirs is the only African country to have never been subject to colonial rule by another nation.¹ The legal system is based upon the Ethiopian Civil Code. There are in reality two concurrent, disconnected systems of justice operable in Ethiopia; the legal system and the traditional system. In this society, the traditional, informal system of conflict resolution cannot be said to be an alternative dispute resolution system. In fact, outside of the urban centres, the tribal system is the recognised, entrenched system and justice administered in the civil court is either disregarded or considered an alternative method of justice. Although informal in the sense that there are neither written rules nor any formal legal structure, and practices may vary amongst the 62 people groups that exist in Ethiopia, these processes are entrenched in the communities in which they operate, recognised as authoritative, accepted and understood by the people. Civil disputes between individuals, clans or ethnic groups usually concern the use of resources, specifically land and water, as has been the case since the Old Testament times.² There is no private ownership of land, but disputes often arise over the use of, or right to occupy land. These disputes quickly escalate to involve the entire clan, tribe, or in some cases, nations. During the first two days of the seminar at Bahir Dar, the President of the Supreme Court was absent because he and his Sudanese counterpart were required on an urgent basis to mediate a border dispute that had started as a conflict between Ethiopian and Sudanese farmers over a parcel of pasture land.

The firmly established traditional system is contemporaneously both an advantage and a detriment in seeking to modernise the legal system. The advantage

is the existence of a long and well-known history of settling disputes locally, promptly and at no cost by mediation or adjudication provided by clan leaders or elders. Usually a settlement includes payment to the elders for their time and services rendered. Thus, when a model of conflict resolution utilising mediation is presented, the concept is not new. By contrast, in North America the entrenched system of settling disputes is the court system and there is, to a certain degree amongst our legal professionals, a similar hesitancy to embrace ADR as those in the tribal have to utilising a government-administered system.

In the Bahir Dar seminar, while discussing enforceability of mediated agreements vis-à-vis court orders, participants at the seminar were confident that if the agreement were mediated by one or more of the elders, as is presently done, the agreement would be enforced both by virtue of its being accepted by the disputants, and by influence of the community.

The disadvantages of the traditional system are that basic human rights may be disregarded, justice may not be uniformly applied throughout the country, and the State does not participate, even in the most serious criminal offences. The constitution of Ethiopia does bar discrimination based upon race, social origin, gender etc. but these principles are not always considered and applied in the informal decision-making process. In a case of murder, the leaders of the two tribes may come together to negotiate a settlement, without a charge being laid and without any penalty being imposed by the State. The penalty payable is sometimes greater if the victim is a man as opposed to a woman. If a settlement is reached, the penalty is paid by the killer's clan to the victim's clan and the matter is at an end. The type of penalty varies between ethnic groups, but is usually a designated number of camels or cattle that are to be paid by the offender's clan to the victim's. Even in cases that have been adjudicated by the court and a sentence of imprisonment imposed, the negotiated settlement may still occur to avoid the strong possibility of a revenge killing of the offender upon his release.

In 2005, the Ethiopia Ministry of Justice approached JFA-PFE with a request that education be provided by a Canadian expert in restorative justice. JFA-PFE is a Christian Non-Government Organisation of very dedicated people that ministers to prisoners in Ethiopia, and also advocates for Justice Reform and provides education in such areas as Jus-

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tice Reform, Restorative Justice and Human Rights. University of Windsor professor Julie Macfarlane provided a three day seminar to the highest justice officials from each of the regions of Ethiopia in June 2006.⁴ At the conclusion, she was asked by the Minister of Justice and prepared amendments to the Ethiopian Criminal Procedures Code which would provide for diversion of criminal charges into a process of restorative justice, either prior to a charge being laid at the instigation of the prosecutor, or by the court after a charge has been laid. It is anticipated that these amendments could become law in 2008. CIDA is now proposing assistance, through JFE-PFE, to then implement a formalised system of ADR in all civil and criminal courts throughout Ethiopia.

The challenge in updating and reforming the system of justice is to include in the legal system an interest-based, uniformly applied system of Alternative Dispute Resolution. In this way, the members of the society that presently only use and have respect for the traditional system (which is a system of ADR) will not have to choose between a traditional and/or governmental system. If the governmental system includes a form of ADR administered locally by respected members of the community, it will both be recognisable and more readily accepted than if one

were to dictate that all matters of a certain nature must henceforth be dealt with by the civil or criminal court. The traditional system recognises the importance of restoration of relationships within the community and reconciliation of offenders and victims within the clan or tribe. □

Footnotes:

1. There was occupancy by Italy from a 1936 invasion under Mussolini. During this period, there was continuous resistance from Ethiopians and the Italians were dislodged by Britain in 1941 during the early stages of World War 2.
2. See *Genesis 25:12-25* As the Lord blessed Isaac he became wealthy. People became jealous and claimed the wells. Three times, rather than engage in conflict, Isaac moved to a new location and dug a new well. As he did so, the Lord continued to bless him.
3. There are 115 prisons in Ethiopia housing approximately 65,000 prisoners. Prison Fellowship of Ethiopia is active in almost all of the prisons. In recent years 2000-5000 prisoners per year have become Christian while incarcerated. They are then engaged in Group Bible Study for the remainder of their term in prison.
4. Julie Macfarlane *Working Toward Restorative Justice in Ethiopia: Integrating Traditional Conflict Resolution Systems with the Formal System* (2007) 8 *Cardozo Journal of Conflict Resolution* 487.



John Ferris (front row, third from left) is a CLF member and has a general practice in Grey and Simcoe Counties with offices in Flesherton, Dundalk and Creemore. In 2002 he obtained a certificate in Dispute Resolution from York University and in 2004 a Master of Laws (ADR), also from York University. He is a Collaborative Family Lawyer, qualified mediator and arbitrator, a trainer of collaborative lawyers, and is chair of The Collaborative Family Law Group of Grey-Bruce. He facilitates Alternative Dispute Resolution workshops and seminars and has successfully mediated many family and commercial disputes. John has completed mediation and conflict coaching training programs with Peacemaker's Ministries (www.hispeace.org), provides Christian mediation, and offers teaching and training on biblically-based conflict resolution and intervention in church conflict. He will be serving as an advisor to the government of Ethiopia on an international committee as changes to the legal system of justice are instituted in the next two years.