

ADDIS ABABA UNIVERSITY
COLLEGE OF SOCIAL SCIENCE
SCHOOL OF SOCIAL WORK

**JUSTICE THAT HEALS AND RESTORES: THE POTENTIAL OF
EMBRACING BORANA OROMO INDIGENOUS JUSTICE SYSTEM
ALONGSIDE THE ETHIOPIAN FORMAL CRIMINAL JUSTICE
SYSTEM**

Aberra Degefa Nagawo

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Dissertation Supervisors

Dr. Tadesse Barisso, Associate Professor, (Addis Ababa University) - Principal Advisor

Dr. Mamo Hebo, Assistant Professor, (Addis Ababa University) – Co-Advisor

Declaration

I, Aberra Degefa Nagawo, declare that this dissertation is my original work and that it has not been presented and will not be presented to any university for a similar or any other degree award.

Signature: -----

Date: _____

I hereby certify that the final copy of doctoral dissertation submitted by Aberra Degefa Nagawo is now complete in all respects and ready for defense.

Name: Dr. Tadesse Berisso, Associate Professor, Advisor

Signature: _____

Date: _____

Approved by Examining Board:

1. _____ Signature _____ Date _____

2. _____ Signature _____ Date _____

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Acronyms

ALO –*Akka Lakoofsa Oromo* (According to Oromo Calendar)

CSA- Central Statistical Agency

FDRE-Federal Democratic Republic of Ethiopia

FGC-Family Group Conferences

IASW-International Association of Social Workers

IASSW-International Association of Schools of Social Work

IFSW- International Federation of Social Workers

ICCPR- International Covenant on Civil and Political Rights

OLF- Oromo Liberation Front

UNDP- United Nations Development Programme

VOM-Victim- Offender Mediation

KPA: Kebele Peasant Association

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Glossary

The meanings of the following words are according to contextual usage.

Aadaa- culture/custom tradition, it may broadly mean the totality of values

Aadaa-seera – Custom and law, traditional norms and laws recognized by everybody as binding, combines culture and law, also used to mean value system

Aadaa Boorana- Borana way of life, tradition, custom it is closely bound with *seera*

Aadaa sidaama-Amhara culture

Aadaa Katama- urban culture

Aadaa Mangisti- Culture of the Government

Abaarsa- curse as part of ostracizing a Borana-exclusion from Nagaa Borana

Abaarssa Siiqqee- *Siiqqee* curse

Abba – father of a child, owner of something

Abba eela- owner of a water well

Abba Gadaa- Father of Gadaa, Gada leader, president in *Gada* patri-class

Abba herrega-a responsible person to facilitate water use, he supervises the watering of animals at the wells

Abba Konfi-the owner a particular well or pond

Abba Olla- Father of Olla or head of olla

Abba Qa'hee: a leader of the clan, a man elected by *gosa* assembly, arrange the place where annual *gosa* get together and follow such affairs

Abba Seera- the father of law counting on his rich experience. Retired *Abba Gada* in charge of matters of law, advisor of the *Abba Gada*.The *Abbaa Gadaa* in office is the organizer and host

but does not make decisions during this particular event because this is when his administration is evaluated.

Abba Warra- head of family or homestead

Adaba: punishment/sanction

Adoolessa- the cooler shorter dry season-July to September

Adulaa –Gada ruling Council, in one Gadaa class there are six adulaa including the Abbaa Gadaa himself according to Borana system.

Afaan Oromo- Oromo language

Araara- Reconciliation

Ardaa– A specific location or geographic unit that olla(s) occupy, locality, compound villages occupying a particular geographic unit, local administrative structure below pastoral association

Argaa Dhageetii- literally means who has seen and heard. It refers to a person who is an expert in oral history of the Borana

Baalli- an ostrich feather symbolizing authority in the Gadaa system

Balbala- literally means door, sub-lineage

Bineeyyi- wild animals

Biqiltoota- plants

Boorana- the people and the area

Boorantitti- Borana identity

Bosona- jungle or forest

Bisaan- water

Bona- The long dry season, drought- December-March

Buusaa- gonofaa- Borana traditional social security system usually between clan *members* for economic and other contingencies to redress or compensations

Caffee- meadow, currently used to refer to the legislative body of Oromia Regional State, Assembly or parliament

Dabballe- Name of the first grade in Gadaa system

Dachee- land or earth

Daguu- a wrongful act committed unintentionally or accidentally

Daraara- tobacco used to signify flower used for ritual purpose

Derg- Military Government of Ethiopia from 1974-1991

Dhaddacha/ Xaddacha: shade/court where the elders sit to resolve disputes

Dhara-untrue, false

Dheeda- A large cluster of grazing areas in Borana land consisting of several madda, a group of village sharing pastures land

Dheete- regret or remorse

Dhiiga- blood, close kin

Dhugaa- truth/justice, reality

Dhugaa-baasu- truth-finding, to witness, give testimony

Eeba- blessing

Eela- well water/water hole

Eela Tuula- deep wells

Eela adaadi- Seasonal shallow wells

Falmmi- dispute, litigation

Furmmaata- frequent small showers of rain outside the regular rainy season

Gaadisa- shade of a meeting, shelter

Gaamme didiqo- the second *Gadaa* grade (8-16)

Gaamme gurguddo- third *Gadaa* grade (16-24)

Gaangee-mule

Gaattira- juniper tree

Gadaa- indigenous socio-cultural institution of Oromo in general and Borana in particular

Gadamojji- the last *gadaa* grade, senior elders perform special rite of passage that enables them retired from political leadership

Ganna- Long rainy season-March-May

Godaana Siiqqe- It refers to women's protest march with their *Siiqqee* in solidarity

Goodhabsu/abaarssa- exclude, ostracize

Gogeessa- *gadaa* sets among the Oromo, line of classes in the Gada system

Gorfo- traditional leather dress worn by women

Gosa – sub- moiety

Guddifacaha- adoption, foster

Gumaa- blood price/ revenge/feud/ ritual of purification after homicide

Gumi Gaayyo-The supreme decision making assembly of the Borana Oromo that meets once in every eight years at *Gaayyo* in the Dirre District.

Haalo- revenge, vengeance

Hagayya- the short rainy season October-November

Halagaa- does not belong to/related to kin or family, not friends

Hamaa mudaa muddi- Capital punishment where the condemned man was killed by being hit with blows on the palms of the hands, groin, soles of the feet and neck.

Harkatu xura 'e- became impure as a result of spilling human blood

Harre- donkey

Hayyuu- a clan councilor, knowledgeable person elected to lead each *gosa* for term of 8 years

Hayyu adula- the top six *gadaa* leaders among the Borana

Hayyuu miilo- knowledgeable person elected to lead close agnatic kins

Hidhaa- incarceration, imprisonment

Himata- complaint

Hiriyaa- age-set, age-set system

Hoola bulaa- a sheep brought by the offender to a victim who has suffered bodily injury to get well

Hoola dheeta- a sheep given by an individual/offender to the family of the deceased

Horooro- married men's ritual stick of double-edged bottom that signifies reproduction

Iyya Siiqqe - solidarity shouts made by women when a woman's right is violated.

Jaalaba- clan leader, a person elected by kin groups to enforce decisions

Jaarsa- elder man

Jaarsa araara- mediator/ reconciliation through mediation

Jaarsa- dheeda- elders of rangeland management

Jaarsa- Gosa - Clan elder

Jaarolee- body of male elders

Jaarsumma- Reconciliation process

Jibbaata- a sheep or heifer given to the family of the deceased for the ritual of purification

Karraa-Mataa- a form of punishment, literally someone's property and the mind

Katama- urban or town

Kebele- sub- district administration unit (Amharic), term largely used for Peasant association or Pastoral Association

Keessummaa- stranger

Kora- meeting held to discuss on a certain issue

Kora Jaarrolee- Assembly of elders

Kora olla- village meeting

Kora gosa- clan assembly

Kora Saba- people's assembly

Kuusa- the fourth grade in *Gada* system

Licho- ritual whip

Horooro- a ritual stick of a married man

Luba- generation set, membership in *gogeessa*

Maakala- *Abba Gada*'s assistants- messengers who help the hayyu to implement their tasks, particularly in keeping communications with the local communities scattered in Borana land.

Madda- An aquifer, permanent water source -a wider geographic unit named after a permanent water source (usually water well)

Mana - literally house, household

Mangisti- government, State

Marra- grass, pasture

Marra-bisaani- pasture and water

Mogaasa- naming, name-giving ritual

Mormmi- oppose, object

Miilo aanaa- close agnatic kins

Mukkeen- trees

Mura- literally means cut, decide a case, authority to sanction judgment, give verdict

Nagaa- peace, harmony

Nagaa Boorana- peace of Borana

Numaara- pardon, have mercy

Nyaaphaa- enemy

Ollaa- smallest unit of residential area, village or pastoral camp, a group of homesteads that may be set up temporarily or remain in the same place over several years.

Qakke- a serious offence for which substantial fine is imposed

Qaalluu- spiritual leader, ritual expert in spiritual (worships) in *Waaqeffanna*

Qulqulleessu-cleansing a person whose hands have been made unclean by human blood

Qumbi- incense used as a ritual object

Raaba- prospective Gadaa leaders, the succeeding Gadaa

Raaba Gada- the Borana governing body, joint council of Raaba and Gadaa, the 4th grade in Borana *Gada* system

Ragaa- evidence, witness

Reera- Collection of close *ardaa*, compound villages, adjacent groups of villages/geographic unit

Safuu – mutual relationship between elements of the social and economic orders, a moral category showing respect and distance, it deals with taboo and condemned habits, and it refers mutual relationship between elements of the social and cosmic orders.

Seera- rules and regulations underlying something

Seera allofi aloola- laws of the inside and the outside

Seera buusa gonofa- laws regulating social support among the Borana

Seera fardaa - law of horses

Seera gumaa- laws of payment of gumaa

Seera horii/looni- laws of cattle

Seera marra bisaani- laws of water and pasture

Seera namaa- Law of persons

Seera Qajeelchu- unbending or straightening laws

Seera siinqe- siiqqee laws

Seera tumuu/tolchu – law making

Seera Waaqa- Law of God

Seera Yaayya shanani- it is the totality of laws governing Oromo way of life.

Seera Yaayya Gale aanno-

Siiqqee- a ritual stick used by married women

Soba- falsity/lie

Tuula- deep wells complex

Tuula saglan- the nine deep wells of Borana

Uumaa- creator

Uumama- creature, all things created by God

Waaqa- the creator/God

Waaqeffanna- original Oromo religion and means believing in or worshiping one God

Waaqeffata- follower of *Waaqeffanna*

Waldhabde- disagreement/conflict

Waldhoosu- bodily injury

*Waliin sooratu-*a ritual of eating together from one dish/bowl after *araara*

Wallaala- loser in a dispute

Warra- family, homestead area that people live permanently

Warra gumaa- families in blood feud

Woreda- district

Xuraa 'u- being dirty/unclean, unholy

Yaa 'a gadaa – *gadaa* council ritual assembly

Yayyaba- foundation

Yuba- retired *Gada* elder

Abstract

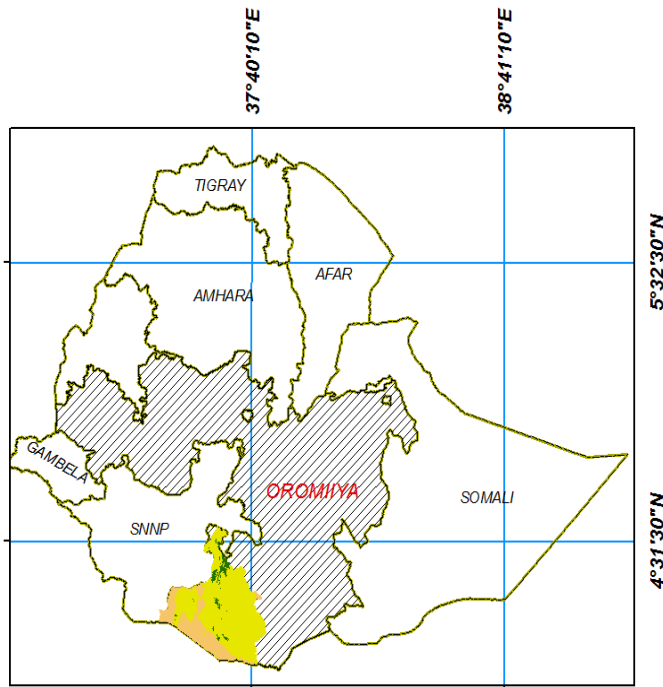
Experiences in many countries, including Ethiopia, indicate that the formal criminal justice system has not been achieving its objectives of controlling crime and reducing recidivism. Dissatisfaction with the process and outcome of the formal criminal justice system has led to the quest for alternative way of addressing the problem of crime and its consequences. In the course of time, a new way of viewing and responding to crime known as restorative justice has emerged. In its approach, restorative justice focuses on the healing of the harm caused to the victim and restoring the personal and social relationship disrupted by criminal act. In cases where restorative practices and values are embedded in their indigenous justice systems, some countries have opted to maintain or revitalize these restorative practices. The main objective of this study was to explore the restorative potentials embedded in Borana Oromo indigenous justice system which has been providing the people an alternative way of responding to problem of crime. In order to find out these potentials, qualitative data have been gathered from victims, offenders, Borana elders and officers of formal justice system in the study area. The data have been gathered mainly through interviews and FGDs. The findings revealed that Borana indigenous justice system aims at the restoration of the disrupted personal and social relationship and harmony in its response to problem of crime, instead of incarceration. The justice process involves all those affected by the crime and they are the ones to determine the outcome of the justice process. The outcome addresses victim's needs and ensures peaceful reintegration of the offender into the community. In the *araara*/reconciliation/ process, both the material and the spiritual aspects of the damage caused by the crime are addressed. For example, in case of murder, 30 head of cattle is paid as *gumaa* by the clan of the offender to repair the material damage caused to the victim. The spiritual and emotional disharmony between the parties is healed through the ritual cleansing ceremony. Based on the principle of collective responsibility, the clan of the offender is accountable for the crime committed by a clan member. As there is no category of civil and criminal law under Borana indigenous justice system, *gumaa* is a non-punitive and non-custodial punishment which combines both criminal and civil liability. The findings have revealed that Borana indigenous justice system is functioning in parallel with the formal justice system with wide support which shows that the desired homogenization of legal system has not succeeded. The study has shown that the Borana have acknowledged the jurisdiction of the formal criminal justice system over detested crimes like rape, intentional homicide and recidivism. But as there is still lack of mutual recognition between the systems and their unregulated rivalry, this has made the people vulnerable to the sanctions of both systems creating tensions and uncertainties in the society. The study has shown that there is a need to avoid the destructive aspects of the two systems and make both systems user-friendly. The study has revealed that the existing Borana normative landscape would require giving some space to Borana indigenous justice system in the area of criminal justice so that the people may be beneficiaries of the restorative potential embedded in the system.

Key Terms: Borana, indigenous justice system, restorative justice, criminal justice

Chapter 1: Study Background

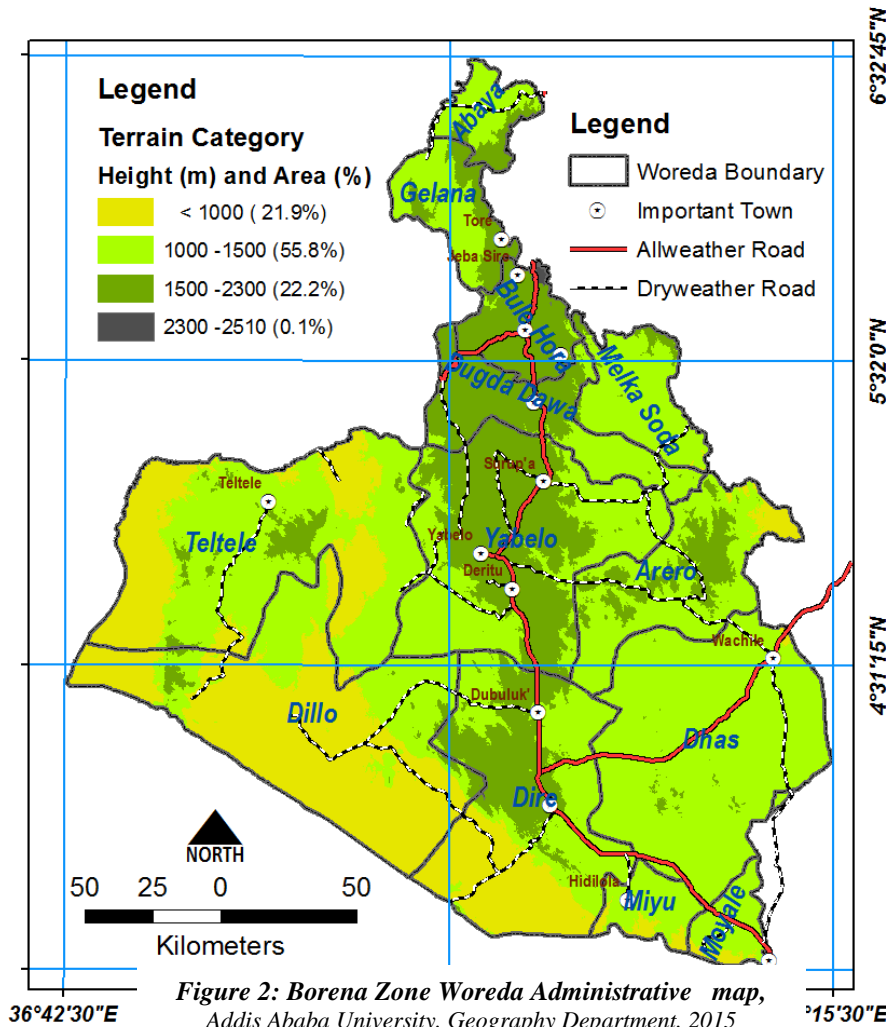
Description of the Study Area

Borana land as a whole is located in the southern part of Ethiopia in Oromia National Regional State which has an area of about 600,000 square kilometers. Borana is one of the 13 administrative zones of the National Regional State of Oromia. Borana land as a whole extends to parts of northern Kenya and is found between $36^{\circ}39'10''$ and $38^{\circ}41'40''$ east longitudes and between $03^{\circ}30'30''$ and $06^{\circ}33'30''$ degree north latitude.



*Figure 1: Location Map of Oromia National Regional State in Ethiopia
Addis Ababa University, Geography Department,*

With an area of about 95,740 km²; Borana Zone has a common boundary, to the east, with Somali National Regional State, to the west with Southern Nations, Nationalities, and Peoples' Region, to the north-east with Bale Zone of Oromia, to the north-west with the Guji



Zone of Oromia and to the south with Kenya.

Borana Zone is divided into 13 districts called *woreda* namely Yaabballo, Taltalle, Dirre, Miyo, Moyale, Arero, Dugda Dawa, Bule-Horaa, Gelana, Abaya, Melka Soda, Dilo, and Dhas.

The Zone is sparsely populated with approximately 20 people per km square. The population of Borana zone is about 1 million (2007, CSA). While Borana and Guji Oromo constitute the majority in the zone, other minorities include the Gabra, Burji and Garri. Most of the Borana are followers of indigenous Oromo religion called 'Waqeffata' (Lasage et al., 2010).

According to the belief of the people in the area, Borana refers to anybody belonging to Borana Oromo who lives in Boranaland which is an extensive territory crossing the Ethio-Kenyan border including the Waso area of Kenya. But this study is limited to the Ethiopian part of Borana who live under one *Gada* system lead by one *Abba Gadaa*. This part of Borana includes Dirre, Arero, Taltalle, Gomolee, Liiban, Malbee, Yaabballo, and Wayama (Leus & Salvadori, 2006).

Climatically, Borana land is characterized by a semi-arid environment and lies in an altitudinal range of 1,000 m to 1,500m above sea level. With this altitudinal range, the Zone has contrasting seasonality. Physically, Borana land is divided into two agro- ecological zones: semi-arid and lowlands to the south and more humid lands at higher altitudes to the north. The highlands are 1500 meters above sea level and the lowlands are below 1500 meters above sea level. The largest portion of the Zone (62.5 percent) is below 1500 meters above sea level. The mean annual rainfall is between 500m to 700 meters where the overall average will be below 600mm. The minimum temperature is 14.10 to 18.10 degree centigrade and the maximum is in the ranges of 25.26 to 28.79 degree centigrade (Ayalew, 2002; Boku, 2008; Ibrahim Amae, 2006).

In Borana, there are four locally defined seasons comprising two rainy seasons (long rains – *ganna*, and short rains – *hagayya*) and two dry seasons (long dry season – *bona hagayya* and the short dry season – *adoollessa*). In normal years, the long rains are received between March and May, and the short rains between September and October. During the two rainy seasons, the onset and cessation of the rains are often irregular, but the *ganna* rains are more reliable than the *hagayya* rains in their amount, temporal and spatial coverage. The *ganna* rains account for 60% of the total annual rainfall, while the *hagayya* rains contribute only 30% (Sutter, 1995). The remaining 10% is expected from the occasional rains (*furmaata*), which provide sporadic relief

by punctuating the progress of the dry season stress and making inter-seasonal transition easier for human and livestock populations(Bassi, 2005; Boku,2008;Kamara, 2001).

The land is covered with light vegetation of predominantly pod-yielding acacia species of low forage that favor pastoralism more than farming. Acacia shrub and grassland represent the dominant vegetation. Water and pasture are the two most important natural resources in Boranaland. Borana usually call the two resources together as *marraa –bishan* which means grass and water. The water wells are known as *eela*. The water wells */eela/* are categorized into *eela tuula* referring to deep wells and *eela adaadi* which refers to the shallow ones (Bassi, 2005: Boku, 2008).

The study had focused on exploring the restorative values and practices embedded in Borana Oromo indigenous justice system. Little research has examined the restorative potentials of Borana Oromo indigenous justice system in dealing with problem of crime and its consequences.

Problem Statement

Prior to the emergence of the modern state and its formal criminal justice system, human society had customary rules, procedures and institutions through which disputes and conflicts were resolved. Before the advent of modern state and its criminal justice system, the administration of justice was mainly a mediating and negotiating process within and by the community rather than a process of applying rules and imposing decisions by courts. The main actors in settling disputes between victims and offenders were those affected by the wrongful act and the community within which such wrongs had been committed. The customary justice system which aimed at restoring the ruptured relationships and providing reparation for the harm

caused by the wrongs committed was essentially community-based and restorative (Braithwaite, 1998; Llewellyn & Howse, 1998; Van Ness, 2005; Zehr, 1990).

With the emergence of the modern state and its formal criminal justice system, the earlier authority and roles of victims, offenders and the community in the settlements of criminal dispute faded away. Instead of resolving criminal disputes in a way that satisfies their needs, the formal criminal justice system disregarded the material, emotional and social needs of victims of crime and the community. In the formal criminal justice system, the stakeholders lost their control over the justice process and the outcome. As its main focus is on establishing guilt and incarcerating the offender, the formal criminal justice system has been ineffective in re-integrating offenders into the community and in preventing recidivism (Barton, 1999; Bezuidenhout, 2007; Schmid, 2002; Umbreit, Voss, Coates & Lightfoot, 2005; Zehr, 1990).

Because of its ineffectiveness in reducing crime, alienating victims, offenders, and the larger community from the justice process, there has been dissatisfaction with the performances of the formal criminal justice system all along. For this reason, human society has been in constant search of more constructive and effective ways of resolving criminal disputes. In the course of time, the quest for alternative response to crime has led to the emergence of a new way of viewing crime and responding to its consequences. This new way of viewing and responding to crime has come to be known as restorative justice. Restorative justice is fundamentally concerned with healing and restoring victims, offenders and communities whose relations have been damaged by the criminal act (Platek, 2007; von Hirsch, Roberts, Bottoms, Roach & Schiff, 2003; Jenkins, 2004; Handbook on Restorative Justice Programmes, 2006; Liebmann, 2007; Van Ness, 2005; Johnstone, 2002; Llewellyn & Howse, 1998; Zehr, 1990).

The mounting dissatisfaction with the performances of the formal criminal justice process has gradually led all those seeking genuine reform in the criminal justice system to embrace restorative justice. The move towards embracing restorative justice as an option to formal criminal justice became a worldwide phenomenon. In Australia, New Zealand, Canada, USA, England and Wales, restorative justice is increasingly making significant sways in criminal justice policy and practice areas. In their search for alternative response to the problem of crime and its consequences, many countries (South Africa, Uganda, Namibia and Ghana in Africa) have opted to revitalize or regain their indigenous justice systems and restorative practices (Johnstone, 2002; Van ness, 2005; Liebmann, 2007; Schmid, 2002; Handbook on Restorative Justice Programmes, 2006; Johnstone & Van Ness, 2007).

Overall, experiences in many countries, including Ethiopia, indicate that the formal criminal justice system has not been doing well in achieving its objectives of controlling crime and reducing recidivism for a number of reasons. First, victims of crime who should have been the prime actors in the criminal justice process are often denied the opportunity to express their views about the losses they have suffered. Second, the formal criminal justice system does not address the material, emotional and social needs of victims adequately. Third, as its main focus is on establishing guilt and incarcerating the offender, the system pays little attention to offenders' re-integration into the community (Gavrielides, 2007).

These points suggest that the formal justice system does not heal the wounds caused by the crime or minimize future harm as it fails to engage the victims, offenders, and the larger community in the justice process. In other words, key stakeholders are largely excluded from participation in the process and the outcomes of the formal criminal justice system (Handbook on Restorative Programmes, 2006; Liebmann, 2007; Van Ness, 2005; Zehr, 1990). Instead,

“outcomes are imposed by the legal authority of judges and juries who stand outside the essential conflicts” (Reimund, 2005, p.667).

This tradition of putting emphasis on retribution as a better and only mode of dealing with crime has been challenged (Zehr, 1990). Consequently, contradictory views are being observed among policy makers and criminal law practitioners. On the one hand, there are those who are reluctant to look into the possible strengths of indigenous justice systems and who resolutely promote more punitive and centralist approach. The formal approach advocates for the exclusive control of the state and state law over crime and denounces indigenous laws and institutions as obsolete.

On the other hand, there are groups earnestly looking for an alternative and more restorative approach to deal with crime and its aftermath. This pluralistic view has evolved out of dissatisfaction with the performance and outcome of the formal criminal justice system. Those who pursue this approach have decided to maintain or regain their indigenous justice practices along with their state laws. Others have opted for a newly emerging restorative justice approach (Handbook on Restorative Justice Programmes, 2006). According to those looking for an alternative response to crime, indigenous laws should be given room along with state law in dealing with problems of crime.

Though more and more countries and people are looking for a better criminal justice model within their existing traditions and cultures and seeking culturally appropriate practices that can be used in criminal justice process, not much seems to be developing in Ethiopia in this direction. In the context of criminal justice, the formal legal climate in Ethiopia has so far remained unwelcoming to the existing customary justice systems. The justice system is characterized by its extreme centralist approach and lack of sensitivity to cultural diversity. The

justice system shows no tendency to promote formal pluralism in the area of criminal justice. As a result of this disregard and the imposition of alien justice system, indigenous justice systems were de-legitimized, undermined and the people disempowered (Tsegaye, Urgessa & Tena, 2008).

As the Ethiopian formal justice system was brought from outside and introduced by way of new codes, the people are not familiar with it. The newly introduced laws downplay the importance and potential of local knowledge. The State system does not appreciate and welcome the wisdom of solving local problems with local knowledge. The mainstream criminal justice system uses the adversarial system where the state claims full control of prosecuting and punishing offenders. In this retributive approach, victims are excluded from the criminal justice process. The system disregards the harms suffered by the victim as a result of the crime committed by the offender. The approach considers incarceration of offenders as the only option to deter crime and rehabilitate offenders. But after having been locked up behind bars for years, most offenders do not appear to be censored or reformed. Instead, there is difficulty on the part of the offenders to successfully reintegrate into their community. With sending more offenders to prison each year and increasing investment in prisons and incarceration of offenders, the formal Ethiopian criminal justice system does not seem to improve the character of the offenders or stop others from committing crimes (Tsegaye et al. 2008).

Besides, when seen in terms of achieving its objectives of controlling crime and satisfying the needs of the stakeholders, the Ethiopian formal criminal justice system is performing poorly (Oromia Capacity Building Bureau, 2009). The rate of crime does not appear to have been reduced. In the years 1995-2003, the number of crimes has grown from 140294 to 247818. The number of offenders for the same period has grown from 219965 to 384007 (Ethiopian Statistical

Abstracts, 2003). In Oromia, there is alarming increase in the rate of disputes which has resulted in court congestion, social chaos and family disruption. In Oromia National Regional State, 70-80% of the civil cases and 50-60 % of the criminal cases are resolved through informal justice system. Even then, there are growing case backlogs and delays in disposal of cases in the courts. Regarding case backlogs and court delays, a study made in 2009 in some *woredas* of Oromia National Regional State showed that in five of the six *woredas*, there were 4458 cases pending for more than a year (Oromia Capacity Building Bureau, 2009).

Although this inadequacy in the performance of the Ethiopian formal criminal justice system would call for more constructive and effective ways of responding to crime and its consequences the Ethiopian justice system has not as yet contemplated the need to reconsider its centralist and essentially punitive approach to problem of crime. With its exclusivist approach, the formal justice system remained reluctant to consider and welcome other possible approaches to criminal dispute- settlement (Macfarlene, 2007; Pankhurst & Getachew, 2008).

Even among scholars, there seems to be little discussion on the desirability and the means of giving space to any of the indigenous justice practices. In the legal education system of the country, little attention has been given to the teaching of indigenous laws, indicating the unenthusiastic attitude towards indigenous justice systems. As a teacher of law for many years at the School of Law of Addis Ababa University, I have observed that little attention has been given to the teaching of customary laws. In all law schools of Ethiopia, an introductory customary law course is offered at an undergraduate level which merely intends to make the students familiar with the concepts of custom, the nature of customary law, and the interplay between customary law and state made law (Muradu Abdo & Gebreyesus Abegaz, 2009). This may possibly give the impression that customary laws have been given some space but the

students are trained to practice state made criminal law which allows no space for the application of customary laws. This indicates how educational institutions also reinforce the supremacy of State made law and the inferiority of indigenous laws, thus contributing to the dearth of research/literature in the area.

In practice, although the formal justice system had difficulty in welcoming and officially accepting legal pluralism, there are diverse indigenous justice practices functioning in Ethiopia outside the realm of the formal criminal justice system. The indigenous justice systems operate informally with their own indigenous laws, procedures, and institutions at the community level. While the formal and the indigenous justice systems coexist in fact, the relationship between both justice systems can be explained as uneasy. As they lack legal basis to settle criminal disputes, the indigenous justice systems in Ethiopia are operating *de facto*. Community members want their cases to be settled in traditional way, but the government officials want all criminal cases to be brought before regular courts. This has created tensions between the police who want criminal cases to be brought before regular courts and community members who want their criminal disputes to be settled based on indigenous laws (Pankhurst & Getachew, 2008; Tsegaye et al, 2008).

Even in the face of the inhospitable Ethiopian legal climate for indigenous justice, diverse indigenous practices are widely in use, in nearly all parts of rural Ethiopia. As some studies suggest, these customary justice practices are characterized by being more accessible, flexible, participatory, and relevant. The people favor indigenous justice systems because of these qualities (Macfarlene, 2007; Pankhurst & Getachew, 2008; Tsegaye et al, 2008).

If one looks at the criminal justice landscape in Ethiopia including Borana, on the one hand, the performance of the formal criminal justice system does not seem to satisfy, on the other

hand, there are diverse indigenous justice systems with their unexplored potentials operating well with wider acceptance. In this setting, the basic assumption of the study is that there are unexplored potentials embedded in Borana Oromo indigenous justice system which may offer stakeholders an alternative criminal justice model helpful in overcoming some of the existing inadequacies of the Ethiopian formal criminal justice system. Most of the diverse indigenous justice systems in Ethiopia can possibly provide us with alternative criminal justice systems that are healing and restorative in their processes and outcomes. Besides, the use of indigenous justice systems alongside the formal criminal justice system may offer the opportunity of channeling significant number of the cases in regular courts to the customary courts which would help in reducing caseloads, costs, and time dedicated to resolving disputes in the regular courts.

Purpose of the Study

In Oromia National Regional State, there is a manifest inadequate performance of the existing formal criminal justice system and consequent need for a more effective criminal justice administration system which will help in addressing the needs of stakeholders in criminal disputes. The findings from the preliminary studies made in the Region have revealed that there is an ever increasing rate of crime that has resulted in the inundation of regular courts with caseloads. These high case backlogs and delays would require some kind of alternative mechanisms where some of these cases may possibly be diverted to. As a possible alternative, there is prevalence of the relatively more accessible and acceptable indigenous justice system which is actually taking care of the lion's share of all kinds of dispute in Oromia. Based on the findings from the sample *woredas* visited in Oromia, of all the charges opened at formal courts,

about 50-60 percent of the criminal cases are ultimately resolved by the indigenous institutions (Oromia Capacity Building Bureau, 2009).

In view of the unsatisfactory performance of the formal criminal justice system and the consequent need for alternative, seeking the possible alternative within Borana Oromo indigenous justice system the potential of which has not yet been fully explored is a worthwhile venture. The fact that a number of countries in the world are using their indigenous justice systems constructively alongside the formal criminal justice system to deal with problems of crime has also been an additional factor that prompted me to do research on the potential of Borana Oromo indigenous justice system. The study is part of the continuing undertaking to seek for more user-friendly criminal justice system.

Objectives of the Study

In view of the fact that the existing Ethiopian formal criminal justice system has been unable to demonstrate its effectiveness, the need for an alternative approach to crime has become evident. Such an alternative can be sought in the overlooked indigenous laws and justice systems of Ethiopia. The local knowledge, values, indigenous practices and skills embedded in the indigenous justice system can possibly be used to solve local problems of crime.

If the performance of the formal criminal justice system is inadequate and if an alternative is required, we better look inwards and explore whether or not the existing customary justice system has possible potentials which may help in reducing some of the inadequacies of the formal criminal justice system. Along this line of searching for relevant and responsive justice, the proposed study had the following objectives:

1. Explore the restorative potentials embedded in Borana Oromo indigenous justice system which makes it favorable to those involved in criminal dispute.
2. Understand how criminal disputes are resolved under Borana Oromo indigenous justice system.
3. Show where the views of elders, victims, offenders and judicial officials differ on the Borana Oromo indigenous justice system.
4. Examine/analyze potentials and challenges of parallel application of Borana Oromo indigenous justice system and the formal criminal justice system in Ethiopia.

Research Questions

A research question refers to what specifically the researcher wants to learn by conducting the study which has not yet been known. The research questions help the researcher in focusing the study and give him/her guidance as to how to conduct the study. As it influences and connects with every aspect of the study, research questions are at the heart of the research design (Maxwell, 2005).

The study assumed that there are potentials embedded in Oromo customary justice system, about which little is known that can be harnessed in dealing with problems of crime and its consequences. The objective of the study was to identify these possible potentials in the indigenous justice system. To find out these potentials of Borana Oromo indigenous justice system, the following main research questions have been formulated.

1. What potentials are embedded in Borana Oromo indigenous justice system that makes it favorable to those involved in criminal dispute?

2. How are criminal disputes settled under Borana Oromo indigenous justice system?
3. Regarding Borana Oromo indigenous justice system, where do the views of elders, victims, offenders and judicial officials differ?
4. What are the possible challenges in applying Borana Oromo indigenous justice system along with the formal criminal justice system?

Significance of the Study

The study will hopefully add to the body of knowledge as it reveals Oromo people's perspective of justice. The study may help interested scholars and others become aware of the existence, appropriateness and potential use of Oromo indigenous restorative justice practices. The study was intended to reveal that there is local knowledge and practices which can provide solution to local social problems. The study will also contribute to the scarce literature in the area of the indigenous criminal justice system.

As the study links issues of law, justice and social work, the research is interdisciplinary in its nature which adds to the significance of the study. In social work practice, social workers usually handle cases having to do with persons who have been victims of crime or offenders incarcerated for their offending behaviors. Besides, there are strong associations between the core principles of social work practice and the ideals of restorative justice which makes the study relevant to social work practice.

In the particular context of the study, where the main concern is exploring the potential of Borana Oromo indigenous justice system, the indigenous and local context of the system will have strong implications for social work practice. The appropriate social work practice will be

context-dependent and culturally relevant. To the extent that the study reflects on the nature of social work practice relevant in the particular setting of the study area, the study may contribute towards the indigenization of social work or expansion of knowledge in the area of social work practice. The idea of indigenous social work refers to the efforts to promote the localization of social work practice whereby “traditional, indigenous and local helping interventions were integrated into mainstream social work practices and elements of mainstream approaches were adjusted to fit local contexts” (Gray, Coates & Bird, 2008, p.5).

By revealing the potentials of Borana Oromo indigenous justice systems the study will be helpful to all those interested in reforming the existing but inadequately performing and punitive formal criminal justice system of Ethiopia. The results may provide possible ways of overcoming the shortcomings of the formal criminal justice system. The possible findings of the study will be useful for the government in its endeavor to reform its social and criminal justice policy. It will also be welcomed by victims of crime, offenders and the community who are not satisfied with the performance of the formal criminal justice system and have been in search of more accessible, cheaper, responsive and culturally relevant criminal justice practices.

Embracing Borana Oromo indigenous restorative justice practices may offer a promising alternative to the formal criminal justice system in redressing problems related to crime in Ethiopia. Besides, those concerned with the reform of the Ethiopian criminal justice system may realize the potentials of Borana Oromo indigenous restorative justice practices and consider the findings as fruitful input for the reformation of the criminal justice system. The issues raised in the study may provoke other researchers to engage in further research and ensuing debates along this line.

Scope and Limitations of the Study

The scope of the study is limited in terms of geographical area, time and its subject matter. Ethiopia is a big country in terms of its land mass, the numerical size of its population, and in its diversity. The country has many ethnic groups that are culturally, linguistically and religiously diverse. In view of the multifaceted diversities and the geographical size of the country, choosing one appropriate study site was necessary. From the Regional States of Ethiopia, Oromia was selected but with its diversity and large territorial size, conducting study in all parts of Oromia was not possible. In view of this, from the vast territory of Oromia, choosing one appropriate study site was obligatory.

Hence, within the available financial and time limits, Borana Oromo and their indigenous justice system was selected. The reason for choosing this particular Zone was that, when compared with other parts of Oromia, Borana Oromo indigenous justice system was less tainted. Although the system lacks such categorization, within Borana indigenous justice system, special focus was given to criminal justice.

Organization of the Study

In order to address the main issues of the research, the study is structured into eight chapters. The First Chapter gives the study background which includes: description of the study area, problem statement, and objectives of the study, significance of the study, research questions and scope of the study. Chapter Two is a literature review which attempts to lay out the theoretical and conceptual framework of the study. In Chapter Three the research design used for the study will be described. Chapter Four gives a brief overview of Borana Oromo and its

indigenous Gada governance system. Borana indigenous justice system is described in Chapter Five. In Chapter Six, users' perspectives of Borana indigenous justice dispute process and outcome are presented. Discussions and analysis on the findings is presented in Chapter Seven of the study. Finally; the conclusions drawn from the findings of the study and their implications are given in Chapter Eight.

Operational Definition of Key Concepts

Concepts according to Berg (2001) are “symbolic or abstract elements representing objects, properties, or features of objects, processes, or phenomenon” (p.16). In his view, concepts, in addition to helping one to introduce a particular perspective, will also serve as a means of communicating and sharing ideas with others. For the purpose of the study, the relevant key terms identified as requiring definition include: justice, formal justice, informal justice, customary justice, restorative justice, and legal pluralism.

Justice: In its broadest terms, justice is the measure of right and the reaction to wrong (Parillo, 2008). Justice is an abstract concept with no one generally accepted definition. Its meaning varies according to time, place, and the persons concerned. Different meanings have been given to justice by different thinkers at different times. While positivists see the concept of justice in terms of the existing law, rights theorists see justice as doing what promotes the social good. But for the natural law thinkers, who view right as the ultimate basis of justice, the concept is linked with the idea of natural rights (Oraegbunam, 2010).

In its nature, justice is something inherent within an act or policy; it is not a feature of individuals or society as such. Justice manifests itself through the action or inaction of human beings. Whatever the view and nature of justice, its measure and essential quality are the

fulfillment of human society. In its objective, justice aims at “balancing the integrity and rights of the individual with the collective needs of society and dictates the corresponding responsibilities or duties of society and individuals, as well as the essential rights of the individual” (Parillo, 2008, p.512).

Formal justice system: The formal justice system refers to “controls organized by the state and enforced by specific institutions that follow procedures determined by law. These include courts, the police, prosecution offices and correctional facilities” (Harper, 2011, p.18). In the formal justice system, laws made and codified by State are used within court-room settings based on procedures and institutions (Dinnen, 2003; Wojkowska, 2006). Strict procedural rules are followed when administering justice and the process is adversarial (Woolford & Ratner, 2008). The concept has been used in the same sense in the study.

Informal justice system: The term informal justice is used in its broader sense to make a distinction between the non-state administered and state-administered formal justice system (Harper, 2011; Wojkowska, 2006). As an umbrella concept, informal justice (non-state justice) system incorporates customary justice systems, community-based justice, indigenous justice; and, restorative and alternative dispute resolution systems (Penal Reform International, 2000; Tamanaha, 2008). In that broader sense, the informal justice system refers to any non-state justice system or dispute resolution system that falls outside the scope of the formal justice system which includes indigenous justice, restorative justice and others like alternative dispute resolution.

Indigenous justice system: Indigenous justice is a type of an informal justice which is based on a holistic philosophy and the worldview of indigenous people. Indigenous justice systems are guided by the unwritten normative rules and practices that are learned through social

experiences and oral teachings of elders (Melton, 2004). Indigenous justice is used as synonymous with customary justice but owing to their culturally specific and localized nature, there is no one universal definition of customary justice. Customary justice in general is used to refer to “a system of customs, norms and practices that are repeated by members of a particular group for such an extent of time that they consider them to be mandatory” (Harper, 2011, p. 18). The term traditional justice is also used in some literature to refer to indigenous or customary justice (Penal Reform International, 2000). Some use the broad term informal justice to refer to the terms traditional, indigenous, customary, restorative, and popular justice (Wojkowska, 2006). In its broader context, customary or indigenous justice systems may refer to all those community-based approaches that are used in resolving disputes, to attain safety, secure social harmony, and provide access to justice for all. In this study, the terms customary and indigenous justice systems are used interchangeably.

Restorative justice: Restorative justice is defined as “a process whereby parties with a stake in a specific offense collectively resolve how to deal with the aftermath of the offense and its implications for the future” (Marshall, 1999, p. 5). This definition given by Marshall is the widely accepted one. Some of the terms used to describe restorative justice include, “ ‘communitarian justice’, ‘making amends’, ‘positive justice’, ‘relational justice’, ‘reparative justice’, ‘community justice’ and ‘restorative justice’ ” (Handbook on Restorative Justice Programmes, 2006, p.6).

In this broader sense, restorative justice signifies an umbrella concept under which various restorative values and practices may fall. In all the definitions, the central notion of restorative justice is the healing of the damage caused to the victim by the wrong committed and restoring of the relationship between the victim and the offender which has been disrupted by the wrongful act. Hence, restorative justice may refer to "any programme that uses restorative processes and

seeks to achieve restorative outcomes"(Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 2002, p.56). Both the process-based and outcome- based definition of restorative justice is used in the study.

Legal pluralism: Pluralism is a normative concept referring to a system that recognizes other norms emanating outside state institutions along with a state-ordained system of norms. The concept legal pluralism refers to legal systems, networks or orders co-existing within the same geographical space or jurisdiction (Twinning, 2010). The term is descriptive of a situation in which two or more distinct legal systems exist within the same political community.

Chapter 2: Review of Literature

This Chapter presents review of related literature and the theoretical framework that provide a basis for the study. The Chapter aims at putting the study within the context of the existing literature. Having an overview of the existing theory and the relevant research work will provide a framework that guides the study. In order to justify why a certain study is required, a researcher has to first determine whether or not any prior research has been done on the particular topic. This would enable the researcher to be aware of the existing body of knowledge in the area of study and place his/her research in the context of previous research (Creswell, 2009; Maxwell, 2005).

In the review of literature, the main thoughts on restorative justice and its foundational values are examined. As the two competing theories on crime, retributive and restorative justices are also looked into in this Chapter. A survey of the relevant literature on indigenous justice systems will be made with a view to identify the restorative values embedded in them. Since the main focus of the study is to explore Borana Oromo indigenous justice system, a survey of the relevant literature on the indigenous justice systems will be made. Finally, having looked at Borana Oromo indigenous justice system and its restorative values, works on the linkage of the study to social work will be reviewed.

Restorative Justice: Historical Background, Theoretical Framework, Values and Principles

In terms of the general state of existing knowledge on restorative justice, the readings indicate an abundance of literature. This sub-section will look at the major themes in the restorative justice literature that one usually comes across in the course of doing research in the particular area. Literature advocating for restorative justice that proposes an alternative approach

to crime and a new way of responding to its consequences has grown within the last two decades (Johnstone & Van Ness, 2007; Van Ness, 2005).

Historically, the term restorative justice was first introduced in the contemporary criminal justice system in the 1970s although as revealed from the reviewed literature, there is evidence in support of the view that principles of restorative justice had roots in the traditions of justice of the ancient Arab, Greek, and Roman civilizations. In fact, there is now a strong belief that the origins of modern restorative justice principles are rooted in the criminal justice practices of indigenous peoples around the world, much of which are embedded in religious and spiritual traditions. Indigenous restorative practices are in use in some parts of the world like in New Zealand, North America, Australia and many parts of Africa and Asia even today. For this reason, the idea of restorative justice is not something new (Braithwaite, 2002; Hadley, 2001).

The first persons to introduce the notion of restorative justice in the modern criminal justice system in the 1970s were Barnett, Christie, and Eglash. Barnett and Christie led the way in writing against the crisis within the criminal justice system and in taking a bold move to introduce a new and radical way of thinking in the area of criminal justice. Before the 1970s, retributive justice had remained the uncontested principle of the formal criminal justice system. For Barnett (1977), none of the declared goals of the then existing paradigm of criminal justice like, deterrence, retribution and rehabilitation had been achieved by punishment. It was Barnett who proposed a restitutive paradigm as an alternative to punishment. Eglash (1977) was credited for coining the term restorative justice (Llewellyn & Howse, 1998; Van Ness, 2007; Zernova, 2007; Zehr, 1990).

Nils Christie (1977) was the first person to openly contend that the modern state has stolen the conflict between citizens. In his view, conflict was a property which in the past belonged to

the people being an integral part of their everyday life. But at a certain point in human history, the state has stolen it from the people. As a result of this stealing of conflict, citizens have been deprived of the opportunity to resolve their own conflicts. But of all the works in the area, Howard Zehr's seminal book, *Changing Lenses* (1990) is the most widely cited work and was among the earliest literature to articulate the idea of restorative justice and the need for a paradigm shift away from punitive justice (Lellewn & Howse, 1998).

The idea has "captivated the imagination of the world in settling disputes" (Wormer, 2004, p.104). According to many writers, the single most important driving force behind the development of restorative justice theory and practices was the crisis in the formal criminal justice system and the consequent need to establish new ways of doing justice or addressing the inadequacies of the existing criminal justice system. This gradual development of restorative justice has been accompanied by the development of a body of research and scholarship on the academic front as well. In various parts of the world, restorative justice has come to be an impressive social movement with strong influence on the way crime is viewed and response is made (Johnstone & Van Ness, 2007; Johnstone, 2002; Lellewn & Howse, 1998; Zehr, 1990; Zernova, 2007).

As a new way of looking at crime, restorative justice is characterized by set of values and principles. The values of restorative justice include firstly, respect for the dignity of the individual. In the context of the administration of criminal justice, the recognition of the dignity of the human person applies to both the victim and the offender. Restorative justice restores dignity and healing for the victim and the offender both of whom have been damaged by the wrong committed. Inclusion or the participation of victims and offenders in the process of conflict resolution is a second important value of restorative justice. Reparation of the harm

caused by the wrong done to the victim is a final important value of restorative justice (Zernova, 2007; Liebmann, 2007; Zehr, 1990).

There are three basic assumptions reflected in restorative justice. Firstly, crime is viewed as a violation of people and relationships. Secondly violations give rise to obligations; and finally, the resulting obligation is to put wrongs right. A number of principles flow from these basic assumptions. Firstly, as it gives focus to the harms and consequent needs of the victims, the offenders and the community, restorative justice requires that obligations resulting from those harms be addressed. Secondly, to the extent possible, restorative justice uses inclusive and collaborative processes. The process involves those with a legitimate stake in the situation, including offenders, community members, and society. Finally, in its outcome, restorative justice seeks to put right the wrongs (Zehr, 1990).

The basic beliefs in restorative justice are that it measures the meaningfulness of a criminal justice system and its worth based on the judgment of the victim, the offender, and the community affected by the crime. It considers the participation of all the stakeholders in the process of administration of criminal justice as an indispensable requirement for the justice system to be effective. Most importantly, the community should own the process and be involved in the prevention of crime and in responding to its consequences. In short, within the context of criminal justice and its ultimate goals, the core belief in restorative justice is that justice will be more meaningful when it heals not when it hurts (Braithwaite, 1999; van Wormer, 2004).

A criminal act would normally cause some harm to the victim where he/she may lose property, or suffer physical injury. In addition to that, there may also be loss of security or emotional or psychological harm. Where the offense has brought about material loss, restorative justice aims at restoring the property. Where there is personal injury, the personal injury is

healed. If goods are damaged or broken, the broken goods are repaired. Hence, restoring victims may take a variety of methods, including addressing the damage done verbally, emotionally, materially, or symbolically. The types of compensation may include, but are not limited to: money, community service in general, community service specific to the deed, self-education to prevent recidivism, and/or expression of remorse (Llewellyn & Howse, 1998).

In its entire process, restorative justice seeks a balanced approach to the needs of the victim, the wrongdoer and the community through a mechanism that preserve the safety and dignity of all where the victim may possibly receive an apology and reparation from the offender and the offender receives forgiveness from the victim. Victims will have the opportunity to express the full impact of the crime upon their lives, to receive answers to any lingering questions about the incident, and to participate in holding the offender accountable for his or her actions. Offenders can tell their story of why the crime occurred and how it has affected their lives. They are given an opportunity to make things right with the victim—to the degree possible—through some form of compensation which makes the healing process agreeable to all (Llewellyn & Howse, 1998; Zernova, 2007)

However, one should not ignore some limitations of restorative justice. Lack of a single definition of restorative justice may create confusion in determining which practices constitute restorative justice. The fact that restorative justice relies on the cooperation of the concerned parties makes the program unworkable when one of the concerned parties either refuses to take part or fails to carry out the agreement is also another limitation. In the restorative process, it may not be easy to achieve or determine sincere apology. Some criticize restorative justice for being soft on offenders. Others think the process may affect certain basic human rights of offenders (Marshall, 1999).

Some critics say an effective restorative justice program requires a certain level of competence and resource. But if these necessary resources are to be provided by State, that will make the restorative program dependent on the State as a result of which it may be co-opted or modified by the state. Owing to these limitations, some tend to argue that restorative justice programs are unable to replace the formal criminal justice systems (Sullivan & Tifft, 2006; Schmid, 2002). There are some who argue that restorative justice can work only in societies where the community bond is strong and not in urban societies where such bonds are lacking (Daly, 2003).

One cannot lightly dismiss the concerns raised and the criticisms leveled against restorative justice. But depending on the nature of the community and the strength of its informal justice system, the dispute settlement mechanism of the State and the level of satisfaction of all the stakeholders in the justice system, the need to have restorative justice may vary from system to system. Having due regard to the said limitations, restorative justice may still have some degree of relevance in one of its various forms with respect to certain types of criminal disputes in almost all societies (Gavrielides, 2007; Zernova, 2007).

Concerning the formal criminal justice system, the reviewed literature indicates that the system does not aim at healing and restoring the relations disrupted by the wrongful act. Under the formal criminal justice system, problems of crime are viewed by the system in total disregard of their social milieu. On the part of victims, the major reason for their discontent is exclusion or lack of a legitimate role in the processing of their cases beyond that of being witness for prosecution. Even after their cases are brought before courts of law, victims do not have the opportunity to be consulted about the progress of their cases (Marshal, 1999). The formal justice system “loses sight of human nature, causing it to ignore many of the emotional consequences of

the entire process (Beck, 2007, p.13). Zehr has illustrated how both retributive and restorative lenses portray crime as follows.

Table 1: Crime viewed by Retributive and Restorative Theories

Retributive Lens	Restorative Lens
Crime defined by violation of rules	Crime defined by harm to people and Relationships
Harm defined abstractly, Victim is the State	Harm defined concretely, Victims are people and relationships
Crime seen as categorically different from other harms	Crime recognized as related to other harms and conflicts
State as victim	People and relationships as victims
State and offender seen as primary Parties	Victim and offender seen as primary Parties
Victims' needs and rights ignored	Victims' needs and rights central
Interpersonal dimensions irrelevant	Interpersonal dimensions central
Conflictual nature of crime obscured	Conflictual nature of crime recognized
Wounds of offender peripheral	Wounds of offender important
Offense defined in technical, legal terms	Offense defined in systemic terms—moral, social, economic, political

(Zehr, H.A. 1990. *Changing Lenses, a New Focus for Crime and Justice*, pp. 184-185)

Certainly, one should not overlook the merits of the formal justice system. The fixed rules/codes are good guides to those who are the addressees of the norms. The rules and procedures give certainty and predictability to the decisions. The fixed rules help in controlling the possible subjectivity and arbitrariness of the decision makers. The rules applied by the formal justice system are more or less compatible with international human rights standards and are applied by trained legal professionals which may be lacking in the indigenous justice systems.

But on the whole, the reviewed literature has shown that the quest for an alternative justice system has developed as a reaction to the unjust and exclusionary approach of the formal criminal justice system. As a new way of viewing crime and a new way of responding to crime and its consequences, restorative justice has become an attractive option. Restorative justice process is holistic and relational in its approach to conflict resolution. The processes are founded

on the recognition of the interconnectedness of individuals with their community (Llewellyn & Howse, 1998; Marshall, 1999; Strang, 2003; Zernova, 2007)

Indigenous Justice Systems- General Features

In the informal justice system, including indigenous justice systems, crime or conflict is viewed as a problem causing harm to the society which requires that members of the society be involved in seeking a solution to the problem. It is a system whereby all the stakeholders participate in the process of resolving disputes. The decision is based on the agreement of the parties. As an integral part of the informal justice system, indigenous justice shares most of the characteristics of the informal justice system. In some parts of the world, the role played by indigenous justice systems is much more important than the State justice systems (Ubink & van Rooij, 2011; Wojkowska, 2006).

Although indigenous justice systems are unique to the communities within which they operate, and thus differ from place to place, studies reveal that they have a number of characteristics common to them all. Indigenous justice systems are characterized by having a dynamic and flexible operating modality. It applies flexible rules and procedures and the norms are changed from time to time in response to the changing social, economic and political realities. Indigenous justice systems are also characterized by having broad jurisdiction. They make no distinction between civil and criminal offenses since wrong -doing in general is perceived in terms of its disruption of social harmony. For this reason, adjudicators deal with both types of disputes in the same manner (Penal Reform International, 2000).

Indigenous justice systems have hierarchy of dispute resolving forums where small disputes are usually adjudicated at the lower levels and others are referred to higher levels

depending on their complexity. At lower levels, the small disputes may be adjudicated within the family by respected elders within the extended family. For complex disputes, adjudicators at higher levels might include persons with specific expertise in indigenous law, traditional leaders, and religious leaders (Harper, 2011; Wojkowska, 2006).

Under indigenous justice systems, the dispute resolution process is participatory and the decision is consensus-based. In indigenous society characterized by strong tie, disputes and conflicts are viewed as issues concerning the entire community. In view of that, restoration of social harmony is the main focus of indigenous justice systems. Offenders, victims, others who have a stake in the case, and the community take part in the dispute resolution and the solution is acceptable to the parties and the wider community. The solutions given are essentially restorative which may take a form of restitution or compensation depending on the particular case.

Decisions given under customary justice systems rely on social pressure for their compliance and enforcement. One important feature of customary dispute resolution is the reconciliation or reintegration rituals. The rituals symbolize apology by the perpetrator to both the victim and the community and the offender will be forgiven by the victim and the community (Harper, 2011; Nwabueze, 2002; Penal Reform International, 2000; Ubink & McInerney, 2011).

The common features of indigenous/customary justice systems are summarized as follows. Firstly, the process is voluntary and not backed up by state coercion and relies on social pressure to secure attendance and compliance with a decision. Secondly, the procedure employed is informal and participatory based on principles of restorative justice. Thirdly, in its outcome, the decision is based on compromise rather than strict rules of law and where the disputants and their supporters play a central role in the decision-making process. Indigenous/customary justice systems are based on laws that are unwritten, flexible, and pluralistic in their nature. The laws

are characterized by being more dynamic and capable of adaptation to changing circumstances (Penal Reform International, 2000).

Along with these positive attributes of indigenous justice systems, there are also a number of constraints tending to undermine their potential value. Some of the major constraints of indigenous justice systems include lack of predictability and coherency in decision-making. Owing to lack of fixed minimum standards to guide the elders/judges, decision-makers give their decisions based on their knowledge and moral values. Flexibility of rules and procedures may result in unpredictable and arbitrary decisions where adjudicators may possibly give decisions which deprive a party of his/her lawful rights (Harper, 2011; Wojkowska, 2006).

There are no clear checks in place as generally exist in the formal system for the selection and appointment of judges and since the customary dispute resolution systems may lack a well-established appeal system and fixed procedures, the decision-makers may not be held accountable. As indigenous justice systems rely primarily on social pressure for the enforcement of their decisions, the decisions made under the justice systems may fail to be executed. The justice systems are not well-resourced and the proceedings and decisions are not recorded. The systems are also criticized as being susceptible to elite capture which may serve to reinforce existing hierarchies and inequalities at the expense of the disadvantaged groups. Susceptibility to elite capture can actually be true of the formal criminal justice system as well (Harper, 2011; Ubink & McInerney, 2011; Wojkowska, 2006).

Without totally denying the existence of drawbacks, the advocates of indigenous justice systems maintain that the positive attributes of the systems outweigh the limitations. In their view, the key characteristics of indigenous justice systems, namely, dynamism and flexibility are important strengths of the systems. These characteristics allow the systems to constantly grow

and adapt to the social, cultural, economic, and political imperatives of the society in which they operate. As such, the systems are capable of curbing the existing flaws and building on their strengths (Penal Reform International, 2000).

In terms of making justice accessible to the poor and enabling the people to take part in the justice process, proponents of restorative justice maintain that indigenous justice systems provide a better option. In providing more safeguard/protection to marginalized groups, indigenous justice systems discourage possible exclusion and discrimination. In its outcome, the justice system delivers decisions that are mutually acceptable to all the parties/stakeholders. In short, the advocates maintain that customary justice systems have the potential of curbing their own flaws and addressing some of the inadequacies of the State -based justice systems. Actually, one cannot expect that all inadequacies of State-based justice systems to be totally removed by customary justice systems (Ubink & McInerney, 2011).

In spite of these weaknesses, studies show that people still prefer their indigenous justice systems for several reasons (Penal Reform International, 2000; Tsegaye et al., 2008). Accessibility is one of the principal reasons for preferring customary justice systems. The systems are closer to the people, geographically, financially and linguistically. Since decisions are given in a relatively short period of time and the proceedings are low cost, people have a preference for the local systems. Besides, the people are familiar with the rules and procedures which are based on norms of the society. Because of the cultural relevance of customary justice systems to the ways of life of the people and their responsiveness to poor people's needs, there is a sense of ownership on the part of the people (Harper, 2011).

African Indigenous Justice Systems: Restorative Features

Writers, trace back the origin of modern restorative justice and its principles to ancient societies. Owing to this, the values of most customary justice systems are essentially the same with modern restorative justice values. Most indigenous justice systems view crime as a violation of human relationships and in their responses to crime, restoring victims, offenders and the community is their main concern. This makes the processes and the outcomes of indigenous justice systems similar to modern restorative justice (Braithwaite, 2002; Hadley, 2001).

Studies show that the general trend in most parts of Africa including Ethiopia has been towards the total displacement of indigenous justice systems by giving monopoly of crime control to State-based justice systems. But in practice, indigenous justice systems have continued to play an important role in regulating many aspects of peoples' daily life in relation to dispute settlement. According to some findings, of late, there is a counter- trend with a move towards revitalizing indigenous justice systems. In some parts of Africa, this move towards embracing the ancient restorative values embedded in indigenous justice practices has been termed as a 'come-back'. This 'come-back' trend has not been welcomed by those who portray the indigenous justice system as an impediment to the broader development goals of the modern nation state system (Llewellyn & Howse, 1998; Ubink & van Rooij, 2011).

Not only in Africa, in many parts of the world, indigenous justice systems constitute the cornerstone of dispute resolution for the poor regulating almost every aspect of their daily life. In Africa, since most social life is structured by indigenous laws including disputes involving land, marriage, succession and criminal offenses such as rape, it is difficult to make customary/indigenous justice systems irrelevant. In Africa, since the States cannot provide access to justice for all their populations, making use of grass roots justice system to reach the

poor will be necessary. Besides, the remedies given under indigenous justice systems favor the excluded as they offer cheap and accessible services to the users of the systems. This accessibility makes indigenous justice systems more attractive to marginalized groups (Penal Reform International, 2000).

In its approach to criminal justice, the African perspective essentially differs from the Eurocentric perspective. Firstly, the African perspective explains crime not as a violation of a State rule, but as a disruption of the spiritual harmony of the community. In the Western approach, the individual needs rehabilitation to conform to Eurocentric standards. The Afro-centric perspective does not regard the Eurocentric standard as an appropriate rehabilitative objective. Secondly, in the Afro-centric perspective, the approach pursued is more communal and holistic than individualistic (Jenkins, 2004).

When it comes to features the African indigenous justice systems and the modern restorative justice systems share in common, Skelton (2006) has identified nine features. Firstly, in their processes, both aim at reconciliation, the restoration of peace and harmony between the disputing parties. Secondly, both processes promote a normative system that stressed rights and duties. Thirdly, both African justice processes and restorative justice processes highly value dignity and respect. The other six similarities, procedural in nature are:

- Neither process makes a sharp distinction between civil and criminal justice,
- There is no rule of *stare decisis* (the forum is not bound by previous decisions),
- Both are typified by simplicity and informality of procedure,
- They encourage participation and ownership,
- They have a powerful process that is likely to bring about change, and

- Both value restitution and compensation, including symbolic gestures or actions (Skelton & Batley, 2006, p.9).

In general, as shown by the reviewed literature, in many parts of the world and in Africa where indigenous justice systems are still functioning, a dispute is viewed as “a threat to human relationships since it disrupts and violates the accepted norms and values of a community which sustains and protects social harmony” (Dzivenu, 2008, p. 5). Wherever they are functioning, indigenous justice systems are preventing violence and maintaining social harmony at the community level through their consensual means of settling disputes. For this reason, advocates of restorative justice recommend engagement with indigenous justice systems in countries where the systems are still functioning well. In their view, restorative values embedded in indigenous justice systems can be harnessed for resolving criminal disputes (Handbook on Restorative Justice Programmes, 2006; Harper, 2011; Maloney, 2006; Woolford & Ratner, 2008; Wojkowska, 2006).

Restorative Justice Practices-General

This section of the review of literature aims at identifying some of the forms of restorative justice practices being used in different parts of the world. This would enable us to examine the extent to which restorative practices are entrenched in Borana indigenous justice system. Historically; the modern restorative justice practice is associated with the famous 1974 Elmira case in Canada. It all began on May 28, 1974 in Ontario, when two young men pleaded guilty to vandalizing properties. The probation officers, Mark Yantzi and co-worker Dane Worth, referred the two offenders to their victims. With cooperation between the voluntary workers for the Mennonite Central Committee in Kitchener, a meeting was arranged for the victims whereby

they met face-to-face with the offenders, thus giving rise to the first victim –offender mediation (VOM) (Llewellyn & Howse, 1998; Marshall, 1999).

Victim –Offender Mediation and Family Group Conferencing (FGC) are the commonly used forms of modern restorative justice practices (Zehr, 1990). VOM is the most common restorative justice program. It involves a face-to-face meeting of the victim of a crime and the offender in the presence of a trained mediator. Due to limits on visitors, this form of restorative justice practice involves a small number of participants. It is often the only option available to incarcerated offenders (Handbook on Restorative Justice Programmes, 2006; Maloney, 2006; Reimund, 2005; Umbreit, Vos, Coates, & Lightfoot, 2005; Wormer, 2003; Zernova, 2007).

FGC has a much wider circle of participants than VOM. A conference is a structured meeting between offenders, victims and both parties' family and friends, in which they deal with the consequences of the crime and decide how best to repair the harm. Along with the victim and the offender, people connected to the victim, the offender's family members and others connected to the offender may participate. FGC is often the most appropriate system for juvenile cases, due to the important role of the family in a juvenile offenders' life. Examples of the use of FGC in a juvenile justice setting are found in New South Wales in Australia and in New Zealand (Umbreit et al. 2005; Wormer, 2003; Zernova, 2007).

Conferencing is a victim-sensitive, straightforward problem-solving method that demonstrates how citizens can resolve their own problems when provided with a constructive forum to do so. Conferences provide victims and others with an opportunity to confront the offender, express their feelings, ask questions, and have a say in the outcome. Offenders hear from others how their behavior has affected people as a result of which they may begin to repair the harm by apologizing, making amends, and agreeing to financial restitution or personal or

community service work. Conferences hold offenders accountable while providing them with an opportunity to discard the "offender" label and be reintegrated into their community, school or workplace (Doolan, 1999; O'Connell, 1998; O'Connell, Wachtel & Wachtel, 1999; Maxwell & Morris, 2001).

Participation in conferences is voluntary. After it is determined that a conference is appropriate and offenders and victims have agreed to attend, the conference facilitator invites others affected by the incident—the family and friends of victims and offenders. In some cases, if a victim is unwilling to participate in a face-to-face meeting, he may make a written statement to be used in the conference, or a surrogate victim may take his place. The role of the facilitator is to stick to the rules and keep the conference on focus but he/she will not be an active participant. In the conference the facilitator asks the offenders to tell what they did and what they were thinking about when they did it. The facilitator then asks victims and their family members and friends to tell about the incident from their perspective and how it affected them. The offenders' family and friends are asked to do the same (O'Connell, Wachtel & Wachtel, 1999).

When looked at from the perspective of the settings within which restorative justice takes place, it may be in the context of a courtroom. It may as well be within a community or non-profit organization. In the courtroom setting, the restorative justice process may be initiated at different levels. For petty or first-time offenses, a case may be referred to restorative justice as a pretrial diversion, with charges being dismissed after fulfillment of the restitution agreement. In more serious cases, restorative justice may be part of a sentence that includes prison time or other punishments (Llewellyn & Howse, 1998).

On the whole, how much diverse their forms may be, there are characteristics common to all the restorative justice practices. In all the practices, victims are given a more substantive role

and offenders participate in the process voluntarily. Moreover, the affected community will take part in the healing process, and in the reintegration of the offender back into the community. The ranges of offenses to be the subject matter of restorative justice include property offenses, as well as civil and criminal offenses (Maloney, 2006). Some maintain that restorative justice is unsuitable for crimes like sexual assault and domestic violence, But in parts of Australia and New Zealand juvenile sexual offenses are dealt with using restorative justice. Indigenous regions of Canada have also implemented different approaches, such as circle sentencing, to tentatively deal with domestic violence (McCold, 1999; O'Connell, 1998). In recent times, restorative justice has come to be part of the healing process at the macro level for victims of political violence (Umbreit et al. 2005).

Restorative Justice Practices in Africa

The indigenous justice systems in Africa are based on indigenous laws whose roots are in the culture, beliefs, values and traditions of the people in a particular geographic area (Nwabueze, 2002). Indigenous rules and procedures derive their authority from practices and beliefs embedded in the way of life of the community (Elechi, 2006). In the African context, “the concept of justice is derived from what the society considers to be fair and just in light of the overall context, and not what is fixed in advance by law”(Penal Reform International, 2000, p. 28). In Africa, law is an inseparable part of the peoples’ culture (Ayinla, 2002). Among many people of Africa, religion, law and philosophy are interwoven in the analysis of the life of the people (Olaoba, 2007). Hence, in order to know the African view of justice, one needs to understand the social setting within which an African is placed and interacts.

Studies have shown that Africa has rich indigenous justice traditions which focus on repairing the community harm caused by crime. African indigenous justice's systems embody the basics of restorative justice in their practices (Skelton & Batley, 2006). In their dispute resolution, the existence of restorative traditions has been revealed among the Igbos of South Eastern Nigeria (Elechi, 2006). In his extensive review of the restorative nature of the dispute process in Nigeria Omale (2006) has discussed that the councils of elders settle dispute through mediation. In order to make sure that real reconciliation has been achieved, in the practice of mediation, both parties may be expected to eat from the same bowl after dispute mediation. This ritual "forms part of the reconciliatory approach intrinsic to most African traditional dispute mediation" (p. 48). The Truth and Reconciliation Commission hearings in South Africa and the peaceful conflict resolution in Rwanda are good examples of the emerging restorative justice practices in Africa (Larson, 2009; Penal Reform International, 2000; Tutu, 1999).

Indigenous Justice Systems in Ethiopia

What has led to the quest for alternative ways of responding to problems of crime in a number of countries of the world was dissatisfaction with the performance of the formal criminal justice system (Zernova, 2007). Although in its performance Ethiopian formal criminal justice system has never been user-friendly, no attempt has been made to search for alternative ways of responding to crime. Starting from the Imperial era, legislative measures have been taken to abolish the indigenous justice systems, and replace them with alien laws with a view to establish uniform and centralized legal system (Pankhurst & Getachew, 2008).

The 1995 Constitution of Ethiopia has given limited space in civil matters. But in the area of criminal justice, the new Ethiopian legal system has not changed its earlier monistic approach.

The various indigenous justice systems, their rules, institutions and procedures are barred from handling criminal disputes except for upon complaint crimes (Ethiopian Federal Republic Criminal Policy, 2011). Under Ethiopian formal criminal justice system, the community in which the criminal offense has taken place has no role in resolving the criminal dispute. The justice system essentially lacks the quality of reconciliation of parties and reintegration of offenders. Besides, as the system is culturally irrelevant, it is viewed as alien in the rural parts of Ethiopia where the indigenous justice systems are widely used (Pankhurst & Getachew, 2008).

Even in the absence of formal recognition, in actual fact, the indigenous justice systems are still “more influential and affect the lives of more Ethiopians than the formal system, which is remote from the lives of many ordinary people” (Macfarlane, 2007, p.488). The various indigenous justice systems have remained active and prevalent in the larger part of rural Ethiopia. The indigenous justice systems operate outside the formal justice system and their enforcement depends on social pressure rather than legal backing (Jetu, 2012; Pankhurst & Getachew; 2008; Tsegaye et al, 2008).

Research findings show that indigenous justice systems in Ethiopia are characterized by more accessibility to the people. The justice systems are mostly local in their application (Macfarlane, 2007). Under the various indigenous justice systems, there is no distinct law-making body that centrally issues the indigenous laws and there is less degree of technicality and professionalism in the application of the laws. Indigenous justice systems focus on communal harmony and reconciliation of the parties in the dispute. Procedurally, the process is participatory, where parties are given sufficient time of hearing and work their way to the solution which are often negotiated (Jetu, 2012; Macfarlane, 2007; Pankhurst & Getachew, 2008; Tsegaye et al., 2008).

In short, under the diverse indigenous justice systems in Ethiopia, all the stakeholders, namely, the victim, the offender and the concerned families and communities take part in the process of resolving their disputes. In terms of their outcomes, the processes ensure that victims are compensated, restored, the offenders reintegrate with the society, and community peace and harmony are maintained (Tsegaye et al, 2008).

Oromo Indigenous Justice System

In the particular context of settlement of criminal disputes, very little is written about the potential role of Oromo indigenous justice system, practices, and values. In the few studies conducted so far, insufficient effort has been made to explore the potential restorative values embedded in Oromo indigenous justice system. A brief survey of the limited literature on Oromo has revealed that there is indigenous criminal dispute resolution mechanism and institutions of justice that coexist along the formal criminal justice system and operating. The studies made relate to Oromo indigenous dispute settlement mechanism in general (Areba & Berhanu, 2008; Dejene, 2002).

Studies indicate that Oromo indigenous justice system is known for its peaceful resolution of disputes and for guaranteeing social harmony. *Nagaa/peace/* is a concept pervasive in every communication in Oromo custom. In view of the fact that every day greetings constitute a form of preaching peace a “sustained feud between groups or individuals is unacceptable in Oromo” (Mamo, 2008, p.48). The Oromo believe in cosmic harmony where the individual should live in harmony with earth, nature and heaven. The belief system itself promotes harmony both at personal and social relationship level (Dejene, 2002; Tena Dawo, 2007).

The Oromo have an institution known as *jaarsummaa* which deals with all kinds of disputes ranging from simple quarrel to the most serious criminal case like homicide. *Jaarssumma* refers to the institution entrusted with authority to resolve disputes that arise within a group based on a body of unwritten rules and the process as well (Areba & Berhanu, 2008; Mamo, 2008). As a process, *Jaarsummaa* seeks to seal the dispute settlement “through reconciliation or mending severed relationships” (Tarekegn & Hannah, 2008, p.12).

As revealed in studies made among the Oromo in general, in *Jaarsummaa* process, all those affected by the wrong committed take part and the results are often negotiated (Areba & Berhanu, 2008; Jetu, 2012; Tsegaye et al. 2008). In terms of identifying the restorative features of Oromo indigenous justice system in the particular area of criminal justice, the baseline study made by Tsegaye and colleagues (2008) and Jetu’s article (2012) have particular relevance for this study.

The study made by Tsegaye and colleagues (2008) in some parts of Western and central Oromia has identified major restorative features of Oromo indigenous justice system and has revealed that most of the respondents from the study areas expressed their preference for Oromo indigenous dispute settlement. But the study was limited to central parts of Oromia where Gada System is not fully operational. Jetu (2012) has remarked that restorative justice values are embedded in Oromo *Jaarsummaa* institution which can be harnessed in mediating criminal disputes. But these studies did not embrace Borana area where Oromo Gada System is still in full operation and criminal disputes are handled based on Gad a system.

Borana is an area where Gada system is more or less intact and where indigenous justice system is operating as an integral part of Gada system. The study has attempted to reveal the unexplored restorative potential of Borana Oromo indigenous justice dispute resolution in the

area of criminal justice. In so doing this study will fill the knowledge gap regarding the status of Borana Oromo criminal dispute resolution mechanism. In terms of practice, the study has aimed at examining the performances of Borana indigenous justice system in addressing the problem of crime and its consequences in the study area. The study's main focus was on unveiling the strengths of Borana indigenous justice system that can possibly be used along with the formal justice system. It aims at revealing practical ways of making the two rival systems mutually supportive of one another and at showing the advantages of giving the Borana freedom of choice of systems.

Nature of Co-existence of the Formal and indigenous Justice Systems in Ethiopia

In almost all African countries including Ethiopia, because of the existence of various indigenous justice systems on the one hand and that of the formal state –based justice system on the other, there is co-existence of plurality of justice systems (Griffith, 1986; Penal Reform International, 2000; Wojkowska, 2006). Studies made in Ethiopia have shown that indigenous justice systems have continued to play a significant role in regulating the day-to-day lives of the members of different communities in Ethiopia (Dejene, 2002). In view of the fact both the formal and the indigenous justice systems coexist in Ethiopia, legal pluralism is a reality that cannot lightly be dismissed. This subsection of the study will examine the nature of legal pluralism existing in Ethiopia in the context of criminal justice system.

Legal pluralism presupposes the existence of multiple justice systems or bodies of norms of different origins within the confines of a state where the diverse systems are superimposed, interpenetrated and mixed (Twinning, 2010). Legal pluralism is a mirror image of the very nature of the society that is ethnically, culturally, and normatively plural. Legal pluralism basically

implies diversity of values in a given society and assumes “plurality of conflicting and incommensurable universal values” (Spector, 2009, p.355). In a legally pluralist society, there are multiple, conflicting norms or demands and competing claims of authority (Tamanaha, 2008).

In a certain normatively plural society, depending on whether or not the state gives recognition to informal justice systems, the nature of relationship between the systems may possibly be of harmony or conflict. Where such a state gives formal recognition to the informal justice system and the systems operate in parallel, there will be harmony between the systems. There will be *de jure* legal pluralism where the interaction between the systems is regulated. There is also a case where despite the fact that pluralism exists, the state totally outlaws and suppresses non-state justice systems in which case there will be formal legal centralism (Forsyth, 2009).

Where there is actual plurality of justice systems without state recognition, there will be *de facto* legal pluralism. In a situation of *de facto* legal pluralism with unregulated relationship, a specific dispute or subject matter may possibly be brought before the different justice systems that co-exist within that particular society. Such plurality will give rise to the possibility of individuals making use of more than one law to justify their decisions or their behaviors. In Tamanaha’s view, such “potential conflict can generate uncertainty or jeopardy for individuals and groups in society who cannot be sure in advance which legal regime will be applied to their situation” (Tamanaha, 2008, p.374).

Legal pluralism is opposed to the positivist ideology of legal centralism that views law necessarily as “the law of the State, uniform for all persons, exclusive of all other law, and administered by single set of state institutions” (Griffiths, 1986, p.3). In a legally pluralist

society, power structure has manifestation in the sphere of criminal justice system. Since the authority of laws is dependent on power, in order to make legal pluralism operational decentralization of authority is indispensable (Griffiths, 2002). In other words, the indigenous justice systems and institutions need to have the required level of authority to enforce their decisions made on the basis of their norms.

Studies have revealed that in Ethiopia the diverse indigenous justice systems co-exist along with the formal criminal justice system. As the indigenous justice systems operate in the area of criminal justice without legal recognition, this has given rise to *de facto* pluralism (Pankhurst & Getachew; 2008). The indigenous justice systems in Ethiopia are handling criminal cases without having formal jurisdiction because the formal criminal justice system has assumed exclusive jurisdiction over all criminal disputes formally.

In a legally pluralist Ethiopian society, the fact that the various indigenous justice systems are still operating along with the formal criminal justice system with wider acceptance makes legal pluralism a reality to be reckoned with. To that end, the study has explored possible ways of changing the existing *de facto* pluralism into recognized legal pluralism. Ethiopia's pluralist social and legal landscape would call for *de jure* legal pluralism. This may hopefully allow a situation where the best use of the two systems can be made by the people and the drawbacks of both can be avoided.

Restorative justice, Indigenous justice and Social Work-The Nexus

In the context of this study and Borana society where indigenous justice systems are still using their laws and indigenous institutions to resolve problems of crime and its consequences, the relevance of social work has to be established. In David Fritz's view, restorative justice is "consistent with social work's emphasis on strengths- based, holistic and systems perspectives of practice" (2005, p. 7). The goals of social work are compatible with the goals of restorative justice which aims at making criminal justice system more participatory and responsive to the needs of the disadvantaged and marginalized victims, offenders and concerned community (Zehr, 1990).

The core values of social work like social justice, importance of human relationships, service, dignity and worth of the person are basically compatible with restorative justice values. Most importantly, improving human well-being and helping to meet the basic needs of all people who are vulnerable, oppressed, and living in poverty are the most important objectives of social work profession all of which are compatible with values of restorative justice (IASSW, 2004; IFSW, 2002).

In Van Wormer's view (2003), how a society should respond to wrongdoing, whether one should seek retribution or reconciliation, how the offender finds redemption and be reintegrated into society and, how harms sustained by victims of crime can be healed are questions of paramount importance in social work practice. Within the context of criminal justice, in the course of restorative justice process "social workers can play an active role in case of referral and intake, preparation of all parties for the encounter, conferencing, and case follow up and research evaluation" (Van Wormer, 2003, p. 443).

Regarding social work practice in indigenous African societies, one has to be aware of the fact that modern social work has grown and developed in Western setting with its liberal roots. The Western social work has been having difficulty in welcoming “non-western and Indigenous world views, local knowledge and traditional forms of helping and healing” (Gray, Croates & Bird, 2008, p.1). Where we are in a world of diverse cultural setting, liberalism promotes individual self-determination and self-reliance and aims at universalizing these values. But these liberal values are inconsistent with the cultural beliefs, values and traditions of indigenous societies where priority is given to collective family and communal values (Gray, Croates & Bird, 2008).

From the perspective of societies with indigenous world view, there is a quest for responsive and culturally relevant social work practice. For them, a responsive social work practice is the one consistent with local cultural beliefs, traditions and collectivist values (Gray, 2002). Indigenous people judge the appropriateness of social work practice based on the extent to which it fits their local contexts (Mel Gray, 2005). To the extent that social work practice disregards local contexts, it becomes irrelevant. The idea of indigenous social work refers to the efforts to promote the localization of social work practice whereby the indigenous and local helping interventions are integrated into mainstream social work practices with a view to make the mainstream approach fit local contexts (Gray, Coates & Bird, 2008).

Mel Gray (2005) has elucidated the dilemma international social work is facing nowadays in terms of being responsive to local needs. In her view there is a conflicting process where “cross cultural dialogue and exchange is molding and shaping new forms of social work (indigenization) while social work is, at the same time, trying to hold onto some form of common identity(universalism)”(2005, p.231). Social work practices in indigenous societies

necessitate that social workers acquire a body of knowledge, values and skills that is appropriate for these societies. This body of knowledge is derived from the local customary values, beliefs, cultural norms and helping practices existing in the indigenous society. Without mastering this body of knowledge, one cannot see things from the perspectives of the society which would make any well-intended social work practice in such society irrelevant (Gray, Coates & Bird, 2008).

As revealed from the reviewed literature, indigenization of social work has emerged as a reaction to the dominance of the modernist Western brand social work. As a result of this, international social work has been trying to grapple with the opposing forces of universalism and indigenization. Surely, in order to create mutual respect and cross cultural dialogue, both forces have to be reckoned with. In a world of diverse cultures, dialogues across cultures have to be welcomed so as to benefit from the strengths of all and avoid the weaknesses of all (Gray, 2005).

One of the defining features of social work is its primary interest in those who are marginalized or excluded from the services enjoyed by mainstream society (Sheppard, 2006). But the contemporary criminal justice systems in Ethiopia exclude, marginalize, and disempower victims, offenders, and the community thus denying them the opportunity to take part in the legal process and resolution of criminal cases. The Borana people have their own indigenous values, cultural beliefs and institutions that are used to solve their social problems. Collectivist values which are anchored in common belief, cultural values, kinship, extended family system and clan networks are deep-seated among Borana Oromo. The Borana people are predominantly pastoralists and lead a communal life. Their indigenous justice system is an offshoot of the common beliefs, cultural values and norms.

The predominantly pastoralists Borana with their indigenous systems and institutions are not beneficiaries of the services enjoyed by mainstream society. The objective of looking into Borana Oromo indigenous justice system is to find out the potential helping practices in the system which can possibly be harnessed when social workers are involved in dealing with problems of crime and its consequences. To be relevant in Borana social setting, social work practice has to be responsive to the local context of Borana people. Their collectivist values that are based on kinship, community networks and extended family system need to be given space. In dealing with problem of crime and its consequences, context- based social work practice with collectivist lens would be imperative.

Conceptual Framework

Conceptual framework refers to the system of concepts, assumptions, expectations, beliefs, and theories that supports and informs a given research (Miles & Huberman, 1994). The main task of conceptual framework is “placing the researcher in relation to the research” (Holliday, 2002, p. 48). Along with, prior research, the existing theory, my personal experiences are the valuable sources I have drawn on in developing the conceptual framework (Maxwell, 2005). Accordingly, in this study, my legal background was of help in appreciating the relevant legal theories and concepts. My social work doctoral education has enabled me to understand the relevant social work concepts and theories. Moreover, as a researcher who knows the language and is familiar with the actual life-setting of the participants and shares their values and identifies with them, I had no serious difficulty in understanding the contextual setting within which the study took place.

In this study, inquiries have been made to know the participants' lived experiences and their socially constructed views about Borana indigenous justice system. The inquiry and the data collection were geared mainly towards learning the participants' appraisal regarding the user-friendliness of the process and outcome operation of the indigenous justice system. From the perspective of social work, the need for responsiveness to local context has been the main focus of the study (Yellow Bird, 2008).

As revealed in the reviewed literature, restorative justice views criminal offenses through a changed and different lens and responds to crime with a view to repair the damage caused by a criminal act (Bezuidenhout, 2007; Schmid, 2002). As opposed to retributive theory pursued by the formal criminal justice system, the indigenous justice systems are based on restorative theory. As a new approach to problem of crime, restorative justice conceptualizes a wrongful/criminal act within three dimensional relationships whereby the victim, the offender and the communities are involved in rebuilding the relationship and in deciding on the responses to crime (Zehr, 1990).

In the general context of Ethiopia and the particular context of the study area, the reviewed literature has revealed the existence of two distinct justice systems with their own separate institutions competing and operating in parallel within the same society. In view of this fact of plurality of normative orders, legal pluralism is included in the study spectrum. On the whole, in exploring the potentials of Borana indigenous justice system, the study has taken restorative justice and its core values as a framework. The study has examined the processes and outcomes of the systems from the perspectives of the users of the systems.

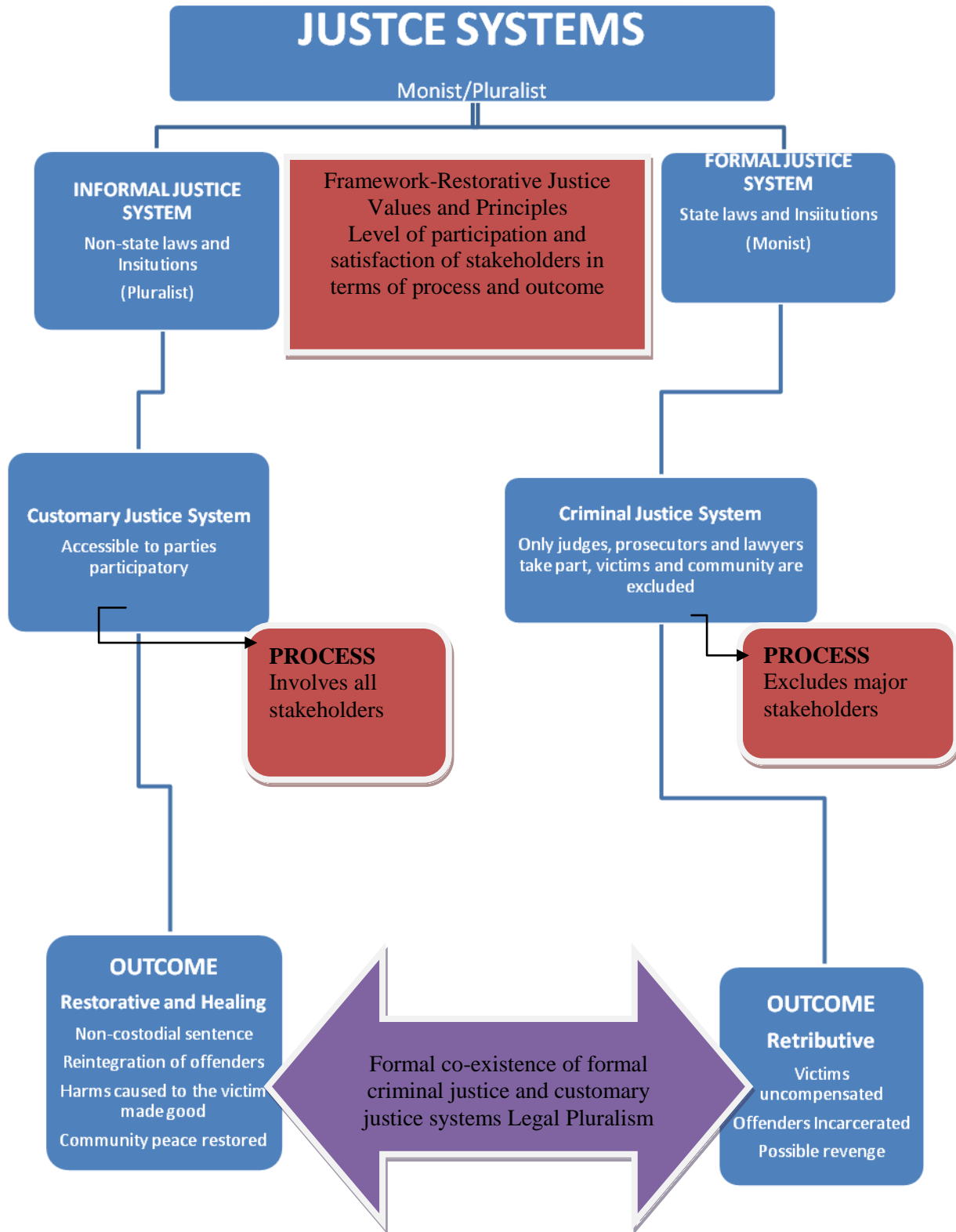


Figure 3: Conceptual Framework adopted by author

Chapter 3: Research Design

The objective of the study was to gather data relating to Borana Oromo indigenous restorative justice practices about which little is known with a view to reveal the restorative potential of the system. The research questions in the study required that participants recount their experiences about the phenomena under study as socially constructed. This necessitated a research design appropriate for collecting qualitative data from participants who have experiences relating to subject of the study.

Choice of Qualitative Research and its Rationale

I have opted for qualitative approach because it is an appropriate “means for exploring and understanding the meaning individuals or groups ascribe to a social or human problem” (Creswell, 2009, p. 4). A constructivist paradigm which assumes that knowledge is socially constructed has been used in the study. Constructivists believe that subjective meanings emerge from interactions and discussions in real life-settings. In their view, meanings are constructed by people as they engage with the world they are interpreting. For constructivists, reality is inherent in the perceptions of the individual which may result in multiple meanings. This need for understanding social reality from the participants’ perspective has made social constructivism relevant for the study (Baxter and Jack, 2008; Creswell, 2009).

As the main objective in the study is to understand the operation of Borana indigenous justice system from the perspective of the people, I relied on the participant’s viewpoints. In their epistemological stances, social constructivists maintain that researchers cannot distance themselves from what is being observed. In their view, the researcher interacts with the subject

being observed in the research process which would require that the researcher be responsive to the context of the research and be immersed in the situation (Guba & Lincoln, 1994).

The choice of a research design can be looked at in terms of ontological, epistemological and methodological questions. Ontologically, the nature of reality, epistemologically, the nature of the relationship between the knower and the known, and methodologically, how we come to know what we know are important issues having bearing on the research design (Krauss, 2005). In this study, a key ontological assumption was that reality is socially constructed with possible multiple interpretations (Denzin & Lincoln, 1998).

Epistemologically, the knower and the known interact and the findings are the creation of the process of interaction between the two. Likewise, to understand the insiders' perspective, I have tried to immerse myself in the study to the extent possible. From a methodological point of view, the approach pursued was that multiple realities can be elicited from participants only through interaction between the researcher and the research participants (Creswell, 2009; Mack, Woodsong, MacQueen, Guest & Namey, 2005; Krauss, 2005).

Personally, as a researcher, until my first field visit which was in February 2012, my knowledge about Borana and their way of life was limited to what I have read from literature. I had little knowledge about Borana governance system and their justice system. In order to have an adequate understanding of the indigenous governance system, I had to get the required qualitative data from the people during my field work through formal and informal means. My expectation in the study was to discover restorative features embedded in Borana Oromo indigenous justice system that can be used along the formal criminal justice system. But during the research, divergent views have come out with respect to certain issues which I have entertained and shared as part of my findings.

For the study of Borana indigenous justice system and its processes, obtaining culturally specific information about the values, behaviors, and social contexts of Borana people was crucial. One important characteristic of qualitative approach which makes it appropriate for this study is the fact that it seeks to understand a given research problem from the perspectives of the local population involved (Mack et al, 2005). Hence, in order to get the participants' appraisal of the process and outcome of Borana indigenous dispute resolution mechanism, qualitative research was used.

Data Gathering Methods and Procedure

By methods we mean specific techniques used to collect data with respect to the research problem. A research method employed for a certain study is dependent on the nature of the research problem and the research questions (Kothari, 2004). Within the qualitative research design, the particular research strategy I have considered appropriate for the study was case study. A case study is a holistic inquiry that investigates a contemporary phenomenon within its natural setting. According to Yin (2009), case studies are preferred when 'how' or 'why' questions are being posed, when the investigator has little control over events, and, when the focus is on a contemporary phenomenon within a real-life context. As the intent of the study was to gain insight and understanding of the potential of Borana customary justice system, the case is a single justice system (Baxter & Jack, 2008). The multiple sources of data for the study included interviews, observation, documents and focus group discussion.

Purposive sampling techniques were used in selecting the study site and the research participants. Purposive sampling is used when seeking information from specific groups or individuals in a population based on whether the individual has information necessary to answer

the research questions in the study (Dawson, 2009). In addition to purposive sampling, I have also used snowballing method to access the hard-to-reach research participants (Mackwood et al. 2005). Spatially, although the qualitative data required for the study have been gathered from all districts of Borana Zone, Yaabballo, Dirre and Arero districts were the main areas from which most of the participants were drawn. Since Borana is the place where Oromo indigenous justice system is functioning relatively well, the site was selected purposively. The Borana are “one of the few, if not the only, Oromo society in which a *Gada* system remains virtually intact” (Helland, 1996, p. 137).

The participants involved were those familiar with Borana indigenous justice practices, processes, or users of the system. Since the researcher is expected to collect multiple forms of data in the natural setting in qualitative study, I have been at the study site physically repeatedly to elicit the required data from knowledgeable and purposively selected members of the community. I have been to the study area four times starting from February 2012 to May 2014. The duration of my stay in the study area has been from two weeks to two months. As there were persons who could give useful data during my field work, opportunistic sampling has also been used in the study (Lodico, Spaulding & Voegtle, 2010). Most of the persons I met at the 40th *Gumii Gaayyo* were of such type.

In order to have access to the informants and the required data, I had to obtain letter of support from Addis Ababa University School of Social Work describing why I have been at the study area and what kinds of cooperation I expected from the informants. In addition to letter from the University, I had to obtain a special letter from Borana Zone Administration and Security Bureau to interview prisoners in Yaabballo Prison. During my stay I was based at Yaabballo town from where I made visits to the different sites in the Zone.

In my first visit to the study area, I had telephone number of one person whom I contacted when I reached Yaabballo. The person has been helpful in identifying and tracing most of the research participants. This person I met in Yaabballo town was Jaatani Dida, who was Chief for Borana Zone Culture and Tourism Bureau. In addition to being one of the key informants, Jaatani was the one who helped me to identify prominent Borana *hayyu*/clan leaders/all of whom have been found out to be vital sources for the required data. During my successive visits, these elders were the ones who connected me with other participants which made my access to the broader members of the society easier for me. The participants included but not limited to: *hayyus*, victims of crime, offenders, criminal justice professionals and others involved in the process of settlement of criminal disputes. The data gathering basically aimed at knowing the views of the research participants regarding the performance of Borana indigenous justice system in handling criminal disputes.

The main techniques used for data collection for the study were unstructured interviews, documents, participant observation and focus group discussions (FGD). The total number of persons involved in the study was more than seventy. During the data gathering, my objective was to get as much information as possible through individual interview. But along with interviews, having a number of FGD with some degree of observations has given me the opportunity to get data which I could have missed during the individual interview. At the commencement of every interviewing and recording of the discussions, the consents of the participants have been asked.

Face- to- face interviewing was the principal method through which important data have been gathered from participants in the study. Open-ended questions were designed for the interview which had served me as a guide during the conduct of the interview. The interview

guides have been prepared in such a way as to enable all the participants- the elders, victims, offenders and the criminal justice professionals to narrate their own appraisal of the customary justice system. The questions were made open- ended with a view to allow participants to talk what was in their mind freely. The use of open –ended questions has enabled me to probe and reveal the personal reflections of the participants concerning the potentials of Borana Oromo indigenous justice system. The questions have helped me to get the perspectives of the participants regarding the potentials of Borana Oromo indigenous justice system and its likely use along the formal criminal justice system.

The study has made use of focus group discussion (FGD) which is a data gathering method that involves discussing a set of issues with a pre-determined group of people which is led by a moderator. Since my main objective was to understand the justice system from the perspectives of the participants themselves, my role during the FGD was to act merely as a facilitator by way of introducing the topic, asking specific questions where there is a need, and controlling digressions. In the meantime, I was engaged in taking notes and recording the interview. I have organized the total of four FGD sessions, two for elders and two for offenders. I thought four FGD sessions were large enough sessions to enable me to generate adequate data in terms of variety and quality. FGD is useful when multiple viewpoints or responses are needed on a specific topic/issue. The FGD has helped me in the identification of wide-ranging issues concerning the research topic (Hennink, 2007; Maykut & Morehouse, 2005).

In qualitative research, data collection is done in the natural setting where the researcher immerses himself /herself into the community and makes the necessary observation (Maykut & Morehouse, 2005). Observation was one other technique that was used in the study to gather data. I have made observations of the indigenous law making process and customary criminal

dispute settlement processes to get the insiders' view of the phenomena under study. I was able to attend the 40th *Gumi Gaayyo* which was held in 2012 and observed how Borana indigenous governance system works. I have observed the deliberations of the Gumii, how they made their laws and how they gave decisions.

During my stay in the study area, as an observer, I have attempted to be familiar with the lives of the people holding back as much as possible my own ways of viewing the world. During the 40th *Gumi Gaayyo*, a number of clan assemblies have been reluctant to allow me attend their meetings. It took me quite a while to win the trust of the people and be familiar with their world view and value system. The observation I made during the *Gumii Gaayyo* general and clan assemblies were helpful in making me understand the overall social, cultural, and economic contexts in which the study participants live.

I have also looked into and reviewed and interrogated literature on Borana Oromo indigenous justice system and others from secondary sources: books, journals, and archives in court. There were handwritten notes of the interviews, diary of the observation and audio-taped data. The types of data generated from the primary sources were field notes, audio recordings, and transcripts. The data gathered from participants through open-ended interviewing have been triangulated with the FGD and the observations. In making combined use of multiple sources, limitations of a single source have been reduced and the respective benefits of each have been exploited.

Data Analysis

The data collected from the multiple sources were converged in the analysis process which was done concurrently with the data collection. I did not wait until all of the data have been collected because analysis of data is a process which begins as the research progresses making the required refining and reorganizing in light of the emerging results (Lodico et al., 2010). In the whole process of data analysis, I have edited, classified, and tabulated the collected data so as to make them amenable for analysis. In the analysis of the data, there was a search for patterns of relationship that existed between the data-groups (Kothari, 2004; Dawson, 2005; Krauss, 2005; Mack et al., 2005).

Data analysis is an inductive process where the data gathered from the informants are “analyzed inductively building from particulars to general themes, and the researcher making interpretations of the meaning of the data” (Creswell, 2009, p.4). In the data analysis process, I had to decide which data were to be singled out as relevant to the study having regard to the research questions. Data reduction was made continuously throughout the research. In the data reduction process, the critical test was the relevance of the particular data for answering the research questions (Glathorn & Joyner, 2005).

The interviews have been transcribed verbatim and then translated into English from *Afaan Oromo*. Through repeated reading and review of the collected data, analysis was made where themes and patterns have been identified. I have then summarized and explained the results by describing the major ideas, patterns or themes that emerged from the analysis (Lodico et al., 2010; Miles and Huberman, 1994; Maxwell, 2005). Finally, I have reflected on what the analyzed data meant and assessed their implications for the questions in the study.

The meanings that emerged from the data have been tested for their trustworthiness so as to determine whether the conclusions drawn from the data were credible and dependable. Member-checks, prolonged engagement in the field and data triangulation were the strategies I used for achieving trustworthiness. Interview transcriptions have been shared with some of the participants to ensure credibility. Sufficient and detailed documentation of the field notes have also been made to allow independent audit of the study and to draw sound conclusions about trustworthiness of the findings.

Besides, to enhance trustworthiness, triangulation of multiple data source types has been used. Triangulation of multiple sources and perspectives was an important strategy which helped me in generating converging/diverging ideas and reduced the chance of bias. Through prolonged stay in the area and engagement with participants and the consequent exposure to the phenomenon under study, I was able to establish relationship of trust and to have adequate understanding of the phenomenon which contributed to trustworthiness. I also had the opportunity of discussing the research process and findings with some of the participants and colleagues who had experience with qualitative research.

In qualitative study, the researcher is the major instrument in the data collection and analysis whereby his/her value preferences and biases may influence the findings and interpretation of the data. In order to mitigate possible bias, I have not focused only in identifying cases that support my ideas or explanations, but documented negative cases and alternative explanations. My conclusions are based on the data gathered from the research participants; they are not based on my value preferences or motivation.

Coming to the challenges faced, as a non-Borana doing research about Borana justice system, at the start, I had difficulty of overcoming the people's distrust of my real intention. In most

instances, the participants freely talked with me when I was accompanied by a Borana whom they knew and trusted. One other serious challenge I faced during the field work was transportation from Yaabballo to the different sites. In view of the pastoral way of life of the Borana, finding and locating victims of crimes or their relatives was a challenging task during my field work.

Finally, this study related only to Borana Oromo indigenous justice system which operates as an integral part of Borana Gada system. As such, this uniqueness of the socio-cultural-historical contexts of the Borana will have its own impact on the implications of the study for others by way of limiting the degree of generalizability of the produced knowledge/conclusion to other settings and people.

Ethical Considerations

In qualitative research, people are involved as research participants. Hence, research ethics in qualitative research gives focus to safeguarding the interests of research participants and the interaction between the researcher and the people involved in the study (Mack et al., 2005). With this in mind, in this study, my primary objective has been establishing a relationship based on trust between me and the research participants. Respect for the people and their values have been central in my approach.

From an ethical point of view, what I have been doing during my first encounter with a research participant was explaining the objectives of the research. Before the commencement of the interview, I explained to every interviewee the voluntary nature of the participation and the rights of the participant to withdraw from the participation at any stage. The participants have not been paid money for the data they have provided during the interviews. But in recognition of the

time and the knowledge the participants' willingly provided, I had lunch with them where they agreed or given them money for lunch.

I have given explanations regarding the potential uses of the findings. As part of my ethical duties, the face- to- face interviews and the FGD have been made based on the consent of the participants. I have promised that the real names of the interviewees may not be disclosed. In cases of audio-recording and photographing, I have asked the consent of the participants. Although I have presented the prepared consent form to them and explained its content the participants preferred to give the interview without signing the consent form.

Chapter 4: Borana People and their Indigenous Gada Governance System

This Chapter has given an overview of the historical and political settings of the Borana. The organizational structures of the Gada system and its institutional set up having pertinence to criminal dispute resolution have been examined. The Chapter has provided a general framework for the proper understanding of the subsequent parts dealing with Borana indigenous justice system and its operation. In view of the fact that the Borana are one of the major groups of the Oromo nation, having general overview Oromo people will be useful.

The Oromo: General Overview

The Oromo people are the largest ethnic group in Ethiopia and one of the very largest in Africa. They are one of the most numerous people in Africa sharing a common language, history and descent. The Oromo people constitute a significant portion of the population in the Horn of Africa and about 40% of the Ethiopian population (Asmarom, 2000; De Salviac, 1901; Gada Melba, 1988).

The Oromo are descendants of one of the Kushitic speaking groups of people. The Agaw, Afar, Beja, Burji, Gedeo, Hadiya, Kamabata, Konso, Saho, Sidama, and Somali are the major Kushitic speaking people in Ethiopia. The Kushitic speakers have inhabited north eastern and eastern Africa for as long as recorded history. The home of Kushitic speakers was the middle and lower Nile, particularly in the areas of ancient land of Kush, Nubia or the ancient Ethiopia. The Oromo speak one language; *Afaan Oromo*, which is one of the languages with great number of speakers in Africa. The Oromo language belongs to the Afro-Asiatic family of language. They are among the indigenous people of the Horn of Africa with an indigenous socio political organization (Alemayehu Haile et al, 1998, Asmarom, 2000; Gada, 1988; Tabor Wami, 2014).

Regarding the extent of the settlement areas occupied by the Oromo, the evidences indicate that they “dominated the areas from Abyssinia to Mombasa and from Somalia to the Sudan (albeit there was no well demarcated boundaries) before they were partitioned and colonized during the scramble for Africa” (Asafa, 2010). In modern Ethiopia, the Oromo are found from Hararge in the east to Wallaga in the west, Borana in the south to Rayya in southeastern Tigray. There are also a small percentage of Oromo in northern Kenya (Gada, 1988). The Oromo were brought under Abyssinian rule through war of conquest during the reign of Menelik II. After the conquest, the Oromo have been treated as “aliens in their own land” (Asmarom, 2000: xiv; Mohammad Hassen, 1990). Before being incorporated into the Ethiopian Empire, all Oromo shared common political, legal and religious institutions (De Salviac, 1901; Gada, 1988).

Many Abyssinian writers, the rulers and their European supporters contended that the Oromo were not indigenous people of Africa. The writing claimed to be that of Abba Bahrey, characterized Oromo as cruel, warlike, barbarian hordes interested only in killing and devastation. It was this misrepresented writing about the Oromo that served European writers as one of the early sources on the history of the Oromo (Bahrey, 1993; Huntingford, 1955; Mekuria Bulcha, 2011).

Another Abyssinian writer, Alaqa Taye (1963), stated that the Oromo came to Africa in the 14th and 16th centuries from Asia and Madagascar through Mombasa. In most Ethiopian and Ethiopianist scholars’ view, Oromo history began in the sixteenth century. But the sixteenth century was actually the period when the Oromo recaptured their lost territories and rolling back both the Christian and Muslim empires (Asafa, 2010). This distorted representation of Oromo people by Ethiopianist writers had served as the basis for the knowledge of most European writers concerning Oromo people. Following these biased Abyssinian writers, most European

writers wrongly assumed that the Oromo people came to their present land only after the 16th century (Gada, 1988; Mekuria, 2011).

From the time of Bahrey onwards, many Ethiopianist writers pursued this alienating approach, and “virtually excluded the Oromo from their purview” (Asmarom, 2000, xiv). Although the Oromo have indigenous culture, indigenous religious and democratic political institutions of their own making that sustained their spiritual and material well-being; these have never been reflected in almost all the writings of Abyssinians. Rather, unsubstantiated myths were created and Oromo were deliberately degraded as having lower level material culture in need of the “civilizing mission” of their Abyssinian neighbors. The intellectual knowledge of Oromo people, its production, reproduction, and dissemination has been suppressed by the Ethiopian colonial State (Asafa, 2010).

From among the Ethiopianist writers Ullendorff has immodestly stated that the Oromo “had nothing to contribute to the civilization of Ethiopia, they possessed no material or intellectual culture, and their social organization was at a far lower stage of development than of the population among whom they settled” (1960, p. 76). He used the derogatory term *Galla* that was used by Abyssinians to refer to Oromo which actually is no more in use. The successive ruling regimes in Ethiopia have been pursuing their anti-Oromo prejudice at the State level. This prejudice has unashamedly continued to be repeated in the name of scholarship. It is this negative portrayal of the Oromo by Ethiopianist writers which overshadowed the Oromo cultural pride and socio-political contributions in the Horn of Africa (Mekuria, 2011).

Oromo historiography challenges this Ethiopianist view about the Oromo and the way they are portraying Ethiopian State itself (Brian Yates, 2009). The Oromo have never accepted this negative portrayal and they have been struggling through all available means to show their

correct image to the world and to restore their dignity lost by conquest. Contrary to the distorted representation given by the Ethiopianist writers, Professor Asmarom described the Oromo as “one of the many peoples of Africa who invented their own variety of democracy” (2000:93). The fact is, for over four hundred years, before they became under the subjugation of Abyssinian rulers, the Oromo were in a position of posing threat to the Abyssinian rulers themselves (De Salviac, 1901).

As stated by Professor Asmarom Legesse, while many civilized nations were going through centuries of insurrections and civil wars, with its complex laws and long legislative tradition, and effective methods of checking the abuse of power, the Oromo “maintained orderly government and succession to political office for four centuries” (Asmarom, 2000, p.27). The reality about the Oromo was quite the opposite from the way the Abyssinian rulers who forcibly subjugated the Oromo under their rule have tried to portray them. That they had a system which was far more advanced than most of the civilized societies of their time was witnessed by independent writers (Bassi, 2005; De Salviac, 1901; Yates, 2009).

According to De Salviac, had it not been with the help of firearms imported from Europe by Menelik, the Abyssinians could never have conquered an inch of Oromo land. But thanks to the power of firearms he obtained from European powers, Menelik succeeded in carrying out his murderous conquest of Oromo land from 1870 onwards until 1898 by incorporating Boranaland into his Empire (De Salviac, 1901/2008:8).

Borana People- Historical and Socio-Political Context

According to my informants, the name *Boorana* was derived from *Booro*, and the people refer themselves to as 'Boorana *Booroo*' 'the people of *Booro* (E11, E12, 2013). Based on oral sources and scholars, the Borana Oromo have lived in their present land for many centuries (E11, E12, 2013; Asmarom, 1973; Bokku, 2000; Lewis, 1966). The people are largely pastoral where the livelihood of eighty percent of the population is based on herding livestock. Those who practice subsistence agriculture are about ten percent. As a pastoralist area, it is quite common to find villages near major deep wells which are known as *tuula*. The Borana do not like to shift their villages and even if they do they shift short distance. Among the Borana, it is common for village members to cooperate in the watering of animals, herding, in the sharing of goods and services and in the settlement of disputes (E11, 2012, E12, E13, 2013).

In Borana social system, the entire society is divided into two exogamous moieties known as *Sabo* and *Gona*. A member of one moiety is allowed to marry only into the opposite moiety. The two Borana moieties are further subdivided into five sub-moieties. There are three sub-moieties under *Sabo* and two under *Gona*. The three under *Sabo* are *Digalu*, *Karrayyu* and *Mattarri*. The two sub-moieties under *Gona* are *Harooressa* and *Fullelle*. These sub-moieties are further divided into numerous clans and lineages. In terms of number, the two moieties are almost equal but in terms of settlement pattern, they are completely intermingled throughout Borana territory (Bassi, 2005; Cappock, 1994). Oral historians say that the moiety system was introduced by the first Abba Gada Gadayo Galagalo who was also said to be the first to introduce many laws (E12, E12, 2013).

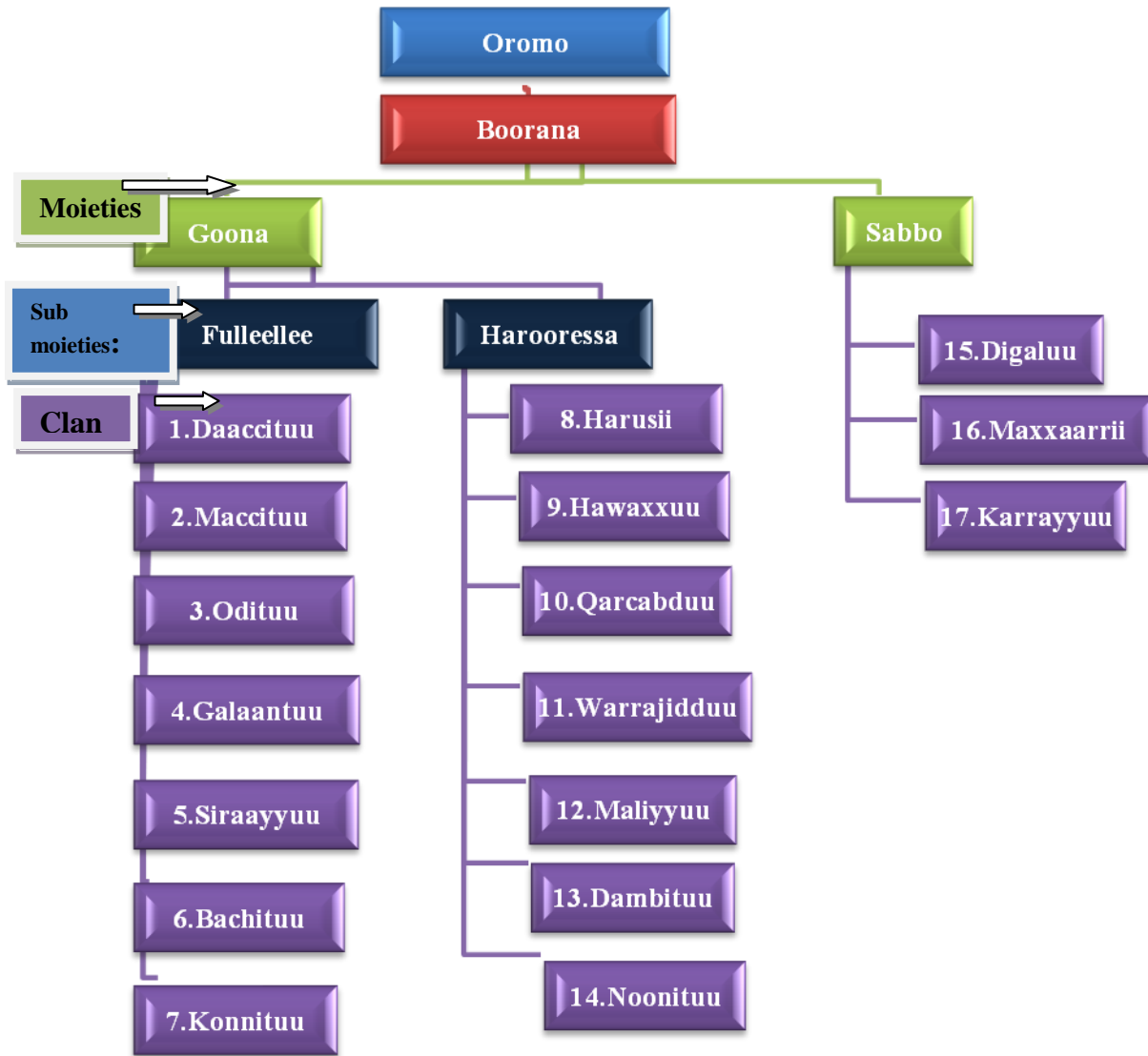


Figure 4: Borana Clan Structure Adopted from Asmarom 1973.

The Borana descent system is patrilineal and segmented into clans, sub-clans and lineages. Descent is counted through male line and all are considered to descend from a common ancestor. A clan is the minimal descent segment with a common *Hayyu*. *Hayyus* are organizers and moderators of their clan. Among the Borana, clans share collective rights and obligations. Clan members settle their disputes peacefully at clan assemblies and help one another in times of hardship. The clan *hayyus* have the responsibility of settling disputes and imposing sanctions on

those who commit wrongful acts. As significant resources are still common property among the Borana, clans are important structures through which wealth distribution among clan members is made (E13, E12, 2013).

Each Borana clan is clustered into lineages which is an important subdivision of a clan with a considerable influence on the life of individual Borana. Through his clan, a person can be coerced to fulfill his obligations towards his clan and lineage. The three most important areas where clans play a key role in Borana social life are ritual performance, regulation of water resources and election of political leaders. Besides, digging, maintenance and regulation of wells and other sources of water are important communal activities of clans. The social privileges, rights, duties, seniority position, and social identity of a person are rooted in Borana clans and lineages. In addition to being an effective way of reaching him in Borana land, in times of crisis, a person's clan and lineage comes to his rescue (Asmarom, 1973; Bassi, 2005).

In attempting to identify a stranger, a Borana proceeds from moiety downwards to family. First he is asked if he is *Sabo* or *Gona*; having established the stranger's moiety affiliation they will proceed with *gosa*, *mana* and *balbala* and expect to get progressively more specific information. Each Borana belongs to a given *balbala*, *mana*, *miilo* and *gosa* (Bassi, 2005; Leus & Salvadori, 2006). As the basic unit of Borana social structure, the family unit constituted of a man, his wife and their children, with the family livestock. As he represents the household, the husband is called *Abba warra* which means the father of the household. The husband is the overall manager of the household, the flocks and herds. After she marries, each woman has the right to own property and form a new household with her husband. In the domestic scene, women have *de facto* control over the more important resources. In domestic matters, women are the ones to decide on who should get what and when. Houses are built by women and whatever

is in the house and around the house is under the control of women (Bassi, 2005; E11, E12, E15, 2013).

The households are grouped into villages (*olla*). A village may contain over 30 houses and is headed by a senior man in the village called *Abba Olla*. *Abba Olla* is the protector of the village's interests and represents the village to the outside world. He is the person most closely identified with the village from whom strangers seek hospitality and from whom new comers first request permission to join. His position is ultimately dependent on the support of the people and other village elders (E12, 2013; Bassi, 2005).

Politically, Borana land was incorporated into Ethiopian Empire by the forces of Menelik II on the eve of 20th century. The larger Boranaland was divided between the two colonial powers of the region, the then British East Africa which later on became Kenya and Abyssinia in 1907(Bassi, 2005; Helland, 1996). As described by Hodson, (1927), armed with rifles, the Abyssinians shot down the helpless Borana like rabbits. But “being by nature a philosophical people, the Boran soon saw the uselessness of resisting the Abyssinian hordes” (p.43). In terms of the political viability of Borana society, under the circumstances the move was considered “the wisest possible strategy” (Helland, 1996, p. 142). It was one of Menelik's generals, Fitawrari Habte Giorgis who led the war of conquest against the Borana. This General was later given Borana as a fief in reward for his bravery in the battle of Adwa of 1896 (Bassi, 2005; Helland, 1996).

After incorporating Borana into the Ethiopian Empire, the rulers of the Empire were, by and large, interested in payment of yearly tribute and maintenance of law and order for which they appointed loyal officials from the local people. The Ethiopian rule at the time hasn't gone beyond that and destroyed the indigenous Gada governance system. There was relatively

peaceful coexistence between the Ethiopian Government and Borana traditional authorities. This was partly owing to its peripheral position and partly because of the central government's disinterest in the area. The feudal system put in place at the time of Menelik's conquest remained in place until the Italian occupation. After the end of Italian occupation until the 1974 Ethiopian Revolution, Boranaland had practically been left all alone by the Ethiopian State. As long as they paid government taxes and maintained law and order, Borana people remained more or less free to order their own affairs through their own institutions. The presence of the central government was felt and restricted only to the small towns in the area (Bassi, 2005; Helland, 2001).

Oromo Worldview

In any study concerning a community, if one wants to do productive work, one needs to understand the worldview of the target community. The concept of worldview is described as "mental lenses that are entrenched ways of perceiving the world" (Hart, 2010, p.2). In most contemporary societies, the differences between justice systems are based on the underlying philosophy or worldviews of the systems. Our assumptions, decisions and modes of problem solving are influenced by our worldviews (Idowu William, 2006).

According to Hart (2010), there are seven principles of indigenous worldviews. First, knowledge is holistic, cyclic, and dependent upon relationships and connections to living and non-living beings and entities. Second, there are many truths, and these truths are dependent upon individual experiences. Third, everything is alive. Fourth, all things are equal. Fifth, the land is sacred. Sixth, the relationship between people and the spiritual world is important. Seventh, human beings are least important in the world. What gives rise to indigenous peoples'

worldviews is the close relationship and interaction with their environment. Inseparability of spirituality and governance system is one of the important characteristics of indigenous world views. Indigenous worldviews are holistic, local and oral in their nature (Hand et al, 2012; Hart, 2010).

In our context, Oromo worldview is an expression of Oromo values and their perception of the world. Oromo world view is the basis for the indigenous governance and justice system and their functions. Borana worldview is holistic and, as such, it is difficult to separate the spiritual and the legal domains. The indigenous religion of the Oromo is known as *Waaqeffanna*. This indigenous Oromo religion is centered around *Waaqaa* (God), who among the Oromo is considered the Creator of the universe and the sustainer of all life on earth. The Oromo see manifestations of *Waaqa* “in the great forces of nature, without mistaking them for Him” (De Salviac, 1901[2008], p. 3).

The daily prayers, blessings and greetings of the Oromo are manifestations of Oromo worldview. They believe that the continuous blessings of God in rain and fertility of stock and women is manifestation of the peaceful relationship between them and their *Waaqa*. For the Oromo, *Waaqaa* is the creator (*Uuma*) of all that exists and He is the one who takes care of His creation (*uumama*). Majority of the Borana are still upholding their indigenous religious values by resisting conversion to Christianity or Islam which are also practiced among the Borana (Asafa, 2010; Baxter, 1978; Melba, 1988; Karl Knutson, 1967; Alemayehu, 2006).

Another moral value that is an integral part of Oromo world view is the concept of *safuu*. *Safuu* is a moral standard that is based on Oromo notions of distance and respect for all things. It is a standard which helps to judge social taboo and deplorable habits (Gemechu Megersa, 2005). The moral and ethical obligations embodied in *Safuu* are guides for the respect of the

creator and all creatures/*Uuma and Uumama*/.Human actions or inactions are founded on *safuu* which directs everyone on the right path (E11, E15, 2012).

The underlying philosophy of *safuu* is that everything has a role to play and natural right to exist. Based on *safuu*, the Oromo give respect to human relationships with other life which makes Oromo worldview relational and holistic (Dejene Gamachu, 2007). Oromo worldview incorporates harmony and solidarity between human beings, nature and God. Among the Oromo, there is a strong belief that human beings and the natural environment are interconnected and live together in a relationship of harmony (Workneh, 2001). As they believe in the reciprocal relationships and interdependence between human beings and nature, the Borana give high respect for the natural/cosmic order. They take care of all forms of life; they never mistreat any form of life (E14, E11, E15, 2012).

The Oromo understanding of what is wrong and right in human interactions is drawn from their holistic and relational world view. In practice, Borana indigenous justice system which is based on the people's indigenous worldview is playing an important role in regulating human relations among the Borana. Generally, Oromo view of cosmic order and respect for the law of *Waaqa* provide many checks and balances on the people's interactions with each other and their environment. The role of Borana indigenous justice systems among Borana people is negated by the Euro-centric formal Ethiopian justice system. The formal justice system in Ethiopia disregards the relevance of Borana indigenous worldviews and justice system in regulating human relations (Tena, 2007). Oromo Gada system is the store-house of Oromo worldview and Gada institutions are custodians of Oromo indigenous values. The following subsections look at Gada governance system and its institutions.

Borana Indigenous *Gada* Governance System

Borana Gada system is an indigenous system because it has a distinct and an all-embracing governance system which has been regulating the political, legal, juridical and economic aspects of the Borana people. Borana Gada system is the treasure house of Oromo democracy which is very much misunderstood (Asmarom, 2000; Asafa, 2010). The system consists of indigenous beliefs, value systems and socio-political structures. Gada system is a storehouse of Oromo world view, philosophy of justice and values. Borana Gada system is the treasure house of Oromo democracy which is very much misunderstood (Asmarom, 2000; Asafa, 2010; Helland, 1996; Mohammed, 1994; Tena, 2009).

The Gada indigenous governance system incorporates indigenous world view, indigenous method of transfer of knowledge and peacemaking. Even after being incorporated into Ethiopian Empire, the Borana have managed to retain their ancient Gada socio-political system. The indigenous governance system with its institutions has continued to work well. The Borana have indigenous ways of managing the scarce resources and means of coping with harsh climatic conditions. They have effective regulatory system for the use of common range resources like wells and pasture. They have their own indigenous ways of resolving disputes (Bassi, 2005).

As a concept, Gada has different meanings. It may refer to the sixth Gada grade and to a calendar period of eight years within which the elected members of the grade have ritual and political responsibilities for the period of eight years. It may as well refer to a person belonging to the class which occupies the grade “*gadaa*”. But on the whole, Gada refers to the “Oromo indigenous socio-political system” (Leus, 1995, p. 320). According to Asmarom Legesse, Gada system refers to “a system of classes (*luba*) that succeeded each other every eight years in

assuming military, economic, political and ritual responsibilities. Each Gada class remains in power during a specific term (Gada) which begins and ends with a formal power transfer ceremony” (1973:8). As a system, Gada is an arrangement of interacting parts where understanding any one part of the system would require understanding the whole system (Bassi, 2005).

Gada system is described as the most sophisticated socio-cultural organization ever known in traditional Africa. The system did not begin in Oromo lands in the sixteenth century but has been functioning for centuries. The system is “one of those remarkable creations of the human mind that evolved into a full-fledged system of government, as a result of five centuries of evolution and deliberate, rational, legislative transformation” (Asmarom, 2000, p.195).

A complete Gada cycle consists of five age- grades. A person is born into a certain age – grade and “specific activities and social responsibilities associated with each grade” (Bassi, 2005, p. 54). Every Borana of specific age- grade is expected to perform a certain function according to specific rules and regulations attached to that specific age-grade. Attaching roles and rules to each of the age-grade system have enabled Borana society to effectively regulate social relations and maintain *nagaa Boorana/peace of Borana/* (Asmarom, 1973).

According to Professor Asmarom, Gada system governs “the life of every individual in the society from birth to death” (1973, p. 8). From birth up to the age of 24 years, a person passes through three age-grades known as *Dabballe*, *Gaamme Didiqo* and *Gaamme Gugurdo*. *Dabballe* is an age-grade within the range of 0-8 years. It is a period of immaturity and childhood. Among the Borana, children are considered sacred with whom God would talk. As they are viewed spiritually clean, there is a belief among the Borana that children are mediators between God and men. *Gaamme Didiqo* is an age- grade ranging from 9- 16. At this age-grade, as they are too

young, they look after calves around house or in the village. At the age –grade of *Gamme Gurgudo* which is from 17-24, they tend big stock over the whole grazing area. They handle arduous tasks of drawing water from *eelas* to water stock (Asmarom, 1973; 2000; Bassi, 2005).

Kuusa, *Raaba* and *Gada* are respectively the 4th, 5th and 6th age-grades. In terms of their responsibility, these three age-grades play important role in Borana socio-political system. *Kuusa* is the age- grade where future leaders who became *Adulaa* council are elected and take a certain name. The nucleus of Gada leaders is created at this grade. *Raaba* is an important and active age-grade in Gada leadership. It conducts raids on enemy territories and resources and protects Borana against alien intruders (Asmarom, 2000).

Gada grade is the most important grade that takes power from the outgoing Gada leaders. The power transferring ceremony is called *baalli wal harka fuudhu* which means an exchange or handing over of the *baalli* which is an insignia of power. During the transfer of power, the *hayyu adulaa* of the out-going class hands the *baalli* to the incoming one. After taking the *baalli*, members of the *gada* council visit all parts of Borana territory to meet with the people. They perform ritual ceremonies at various shrines, convene assemblies and settle disputes (Bassi, 2005).

After eight years in service and handing over power to the incoming Gada class, the previous *Adulaa* council members retire and become *Yuba* grade. *Yuba* is the retirement stage which ranges from ages 54-80. The *Yuba* are referred to as *hayyus* who are repository of Borana indigenous knowledge and laws. As such, their role will be acting as advisors to Gada leaders and settling disputes within Borana society. *Gadamoojii* is the grade that comes after *Yuba*. The *Gadamoojii* are respected and given the necessary care. After the completion of *gadamoojii*, the

last stage is referred to as *Jaarsa* who are cared for by their clans (E11, E12, E15, 2013; Asmarom, 2000).

Table 2: Different Gada Grades and their Corresponding Roles

	Designation	Age limit	Remarks	Specific role in society
1	Dabbale	0-8	1 st stage <ul style="list-style-type: none"> • Long hair style decorated with cowries and shells • Referred to as girls-<i>hintal</i> 	Symbolic role- Mediator spiritually clean to whom God would speak free from social evil treated with great respect
2	Gaame Xixiqo	9-16	Naming	Look after small stock around ollas
3	Gaamme Gurgudo	17-24	3 rd stage	Mature enough to tend big stock Draw water from wells
4	Kuusa	25-32	Politically significant Apprentice warriors	Luba elects its leader and is named after him. Nucleus of Gadaa leaders (Adula councils) emerge
5	Raaba Doori	33-40	Marry, hunting and warfare, senior warrior grade	Warriors
6	Gadaa	41-48	Politically the most active Represents either the whole system	Rulers
7	Yuuba I	49-56	Partial Retirement	Advisors to Gada leaders
8	Yuuba II	57-64	Partial Retirement	Advisors to Gada leaders
9	Yuuba III	65-72	Partial Retirement	Advisors to Gada leaders
10	Gadamoojii	73-80	Partial Retirement	Advisors to Gada leaders
11	Jaarsa	81-88	Sacred grade, retire from secular, political and economic authority	Ritual leaders -enjoy great respect

Adopted from Asmarom (2000) *Oromo Democracy* and Desalegn et al.(2007), *Indigenous systems of conflict resolution in Oromia, Ethiopia*

In addition to generation sets, Borana *Gada* system has a *hiriyaa* system which refers to the age organization as a whole. As it is organized strictly on the basis of age *hiriyaa* differs from Gada age-set or generation class. The *hiriyaa* system runs parallel with Gada generation-sets and complimentary to it. All boys born in one Gada period become *hiriyaa* or age-mates. Among the Borana, the *Hiriyaa* system plays an important military function. Hence, by distributing authorities and responsibilities well across the whole life courses of the Borana, Gada operates as an effective indigenous governance system (Asmarom, 2000; Bassi, 2005).

The structure of Gada governance is “represented as a set of concentric rings with the *Abba warra* at the micro level, and the *Abba Gadaa* at the regional level. At each level there is a designated decision-maker or set of decision makers” (Watson, 2001, p.12). The leaders at each level know their specific duties. Oromo Gada governance system is built in such a way as to enable all members of the society to learn and to carry out their duties at different stages of their lives and careers. Every member of Gada class or age-sets passes through a cycle of functionally differentiated stages. As an integral part of Gada governance system, Borana people have their own indigenous system of managing scarce resources which has been effectively working for centuries. The indigenous governance system has enabled the pastoral Borana to cope with harsh climatic conditions of the area (Asmarom, 1973; Bassi, 2005).

Borana Indigenous Institutions

The concept of institution in general applies “both to structures of power and relationships as made manifest by organizations with leaders, members or clients, resources and knowledge; and also socialized ways of looking at the world as shaped by communication, information transfer, and the pattern of status and association”(O’Riordan & Jordan, 1996, p. 65). Indigenous

institutions are informal institutions which may include “local cultural forms of organization, for example locally elected, appointed, or hereditary leaders and elders, customary rules and regulations relating to access to resources, and indigenous practices and knowledge” (Watson, 2001, p. 6).

In terms of institutions, the Oromo have produced one of “the most remarkable policephalous political systems, complex legislature and judiciary institutions and, by African standards, an elaborate military organization” (Asmarom, 2000, p. 42). Although Borana indigenous institutions are designated informal, “yet the way in which they are made up of rules that are reinforced every eight years, elected councils, or people who have hereditary authority, shows that in many ways they are quite formal”(Watson, 2001, p.18).

Borana indigenous governance system has strong and “functionally interacting institutions which include rules and regulations determining and regulating access to natural resources” (Watson, 2001, p.3). There are different institutions “each charged with different responsibilities including warfare, dispute settlement, law making, and law enforcement mechanisms that are distinctively African in character”(Asmarom, 2000, p. 42). The governance system has interconnected indigenous institutions governing the political, legal, juridical and economic aspects of the people’s life.

Structurally, the Borana have indigenous residential/territorial/ and non-territorial structures that differ from the formal State structure. These indigenous residential designation/units include a number of clans that are structured making natural resource management a central issue. According to Borana indigenous territorial designation, upwards, next to each *warra* (household), the smallest family-based administrative unit is *olla/village/* which may comprise about ten households. At the *olla* level, *Abba olla* will be responsible for

the management of resource utilization. Within the *olla*, there is *kora olla* (*olla* council) which discusses and makes decisions on matters within the *olla*. *Ollas* are grouped into larger residential units known as *ardaa*. *Ardaa* is the general term used to refer to the next territorial level composed of a number of two or more *ollas*. Issues of grazing, water and land for cultivation within the locality are managed by the *ardaa*. *Reera* is the indigenous territorial designation next to *ardaa* and the territorial unit that comes after *reera* is *madda*. At the apex of all will be the Borana wide *Gumii- Gaayo* to which all legislative matter and judicial cases of last resort may be referred (Ani Muir, 2007; Desalegn, Silashi, Regassa and et al., 2007).

Institutional meetings in the forms of assemblies and councils are characteristic features of Borana Gada system. Borana assemblies are composed of clan elders who live in different parts of Borana land. Clan assembly (*kora gosa*) and *Gumii Gaayyoo* (all-Borana assembly) are the most important assemblies among the Borana. Clan assembly (*kora gosa*) is determined on the basis of belonging to the same clan. Every clan member has the right to participate on clan assemblies and every male Borana is obliged to give service to the assemblies. Clan assemblies make decisions on clan matters which are binding and enforced by the clan (E11, 2013).

The sittings of Borana assemblies are under the shade of a tree (*Gaadisa*). What characterizes Borana assemblies is a ritual opening and closing of each assembly with *gaadisa eebbisu* (blessing of the shade). The discussions follow formal procedural rules and decisions are reached by general consensus (E13, 2013, E15, 2013; Bassi, 2005). In Borana institutional set up, although the set of institutions have their specific functions, Gada is an all-embracing institution with the role of custodianship of Borana laws (Boku, 2008). The set of indigenous institutions the Borana have established has played a pivotal role in providing the people “a coherent internal form of governance” (Watson, 2003, p. 293).

Gumii Gaayyo: The Supreme Juridical and Legislative Body.

Among the Borana, *Gumii Gaayyo* is a supreme body with a supreme governing power which is subordinate only to divine rule. It is organized every eight years and made up of all the Gada assemblies of the Borana clans. Legislative power on all matters concerning Borana is vested in the *Gumii Gaayyo*. In addition to legislative power; *Gumii Gaayyo* has political and juridical powers (E11, 11, E12, 2013). Politically, Gumii has the ultimate power to evaluate the performances of Gada leaders and determine whether or not the class in power can continue their term of office. It has the power to impeach Gada leaders. *Gumii Gaayyo* is responsible for enforcement of laws and it has the highest authority in handling issues of war and peace (Bassi, 2005). In its judicial function, *Gumii* has the power to resolve disputes that could not be resolved at lower levels (E11, 2012).

When it meets once every eight years, *Gumii Gaayyo* meets and proclaims new laws, repeals and amends the existing laws. The act of proclaiming laws at the *Gumii* is a “final phase of a wider legislative process taking place through the long debates at all types of assemblies” (Bassi, 1996, p.155). The deliberations of the *Gumii* may be concluded within eight days although it may sometimes take two months. The laws made by *Gumii Gaayyo* are disseminated throughout Boranaland to the wider Borana by word of mouth (Kassam & Gemechu, 1994).



Figure 4: 40th Gumii Gaayyo September 7, 2012 (by author)

During the sessions of *Gumi Gaayyo*, there are pre-*Gumii* assemblies of all the clans who conduct their own separate sessions to resolve matters within their clans and sort out issues to be submitted to *Gumi Gaayyo*. All members of Borana clans are allowed to attend the all-Borana assembly and are entitled to speak and be heard. As a ritual common to all Boran assemblies, *Gumii Gaayyo* opens and closes with the *eebba* of *Abba Gadaa* (Asmarom, 2000).

The *Gumi* Assembly is led by the retired *Abba Gadaa*. Among the Borana, all the retired *Abba Gadaa* are referred to as *Abbooti Seera*/fathers of law/. The retired *Abba Gadaas* are repositories of Borana indigenous knowledge and custodians of Borana *aada-seera*. That is why they remain legal advisors of the *Abba Gadaa* in power. As presiding officers of *Gumii Gaayyo*, they are responsible for proclaiming laws. They oversee the conduct of *Gumii Gaayyo* which has the power to evaluate the performances of the *Abba Gadaa* in power (Bassi, 2005).

A decision made by *Gumi Gaayyo* is a final one which cannot be overturned by any authority in Borana (E11, 2013). Only those cases requiring a final verdict in accordance with the custom *aada seera* are referred to the Assembly. If a case submitted to the Assembly for decision has been given final verdict and if a party against whom the decision is given fails to “willingly submit to the sanction imposed on him Gada leaders can mete out punishment by sending messages to all the fathers of the wells *Abba eela* or *Abba herrega* or *konfi* in Borana barring him from getting access to the wells ostracizing him” (Asmarom, 2000).

Adulaa Council: Executive Body.

The administrative authority in Borana is entrusted to *Adulaa Council* elders who are six in number. Three each are drawn from *Sabo and Gona* moieties. As a legitimate leadership of the Borana, the *Adulaa Council* is responsible for upholding *nagaa* and *aada* Borana /peace and custom of Borana/. The *Adulaa Council* administers all Borana affairs based on laws and customs of Borana *aada-seera*, which is made and modified only by *Gumii Gaayyo*. The *Abba Gada* heads the *Adulaa Council* and with his team of council members, he is responsible for the eight year period (Watson, 2001; Bassi, 2005).

The *Abba Gada* travels throughout Borana and straightens custom (*seera qajeelchu*) and gives decisions on cases of conflicts between *olla*, *ardaa*, or *madda*. In a situation of inter- ethnic conflicts, the *Abba Gada* takes part in making peace. Performance of ritual duties is one of the compulsory tasks of the *Abba Gadaa* and his class. Disagreements that cannot be resolved at lower level may be referred to him and his council for decision (Asmarom, 2000; Bassi, 2005; Watson, 2001).

Among the Borana, the use of water- wells and pasture is administered based on Borana *seera marra-bisaani* /laws of pasture and water/. The uses of water wells are managed by clan councils /*kora gosa*/ which include retired *hayyus* with ritual and judicial authority to judge. There is *Abba Konfi* who is a trustee for each well. *Abba herregaa* is a person who has the authority to coordinate the daily use and maintenance of the water wells (Desalegn et al. 2007).

Borana clans have senior lineage elders/*hayyu* known as *Jaallab* who acts as executive officers. A *jaallab* is an active *hayyu* of a clan nominated by his clan group and legitimized by a senior Gada officer. A *hayyu* is the most senior and respected clan elder holding Gada office in Borana. The authority held by a clan *hayyu* is derived from his position in the Gada system (Bassi, 2005; Helland, 1996). An active *hayyu* has no direct role over local matters. Upon retirement, the rich experience and knowledge of Gada laws makes the clan *hayyu* important in local decision-making. Both in clan and residential framework, the *hayyus* are responsible for the handling disputes of all types including conflicts over water and pasture resources. In the whole Boranaland, the *Abbaa Gada*, with his council members and the *Abbootii seera* as advisors are entrusted with the power to enforce Borana *aadaa seera* and control the proper implementation of the laws. Along with the local *hayyus* they play an effective role in the management of all Borana affairs (E11, E12, 2013).

***Siiqqee*-Institution of Oromo women**

Under Borana Gada system, women don't belong to the *Gadaa* grade of the clan in which they were born and to which they are married. Unmarried women are viewed as *keessummaa* /stranger/ in the clan into which they were born and *halagaa* (non-relative) in the clan to which they are married. Women don't have role in *Gadaa* leadership and cannot be *Abba Gada* or

hayyu in the clan leadership structure and they have marginal role in the justice system. But as a mechanism of check and balance and to counter the male- dominated *gadaa* system, Oromo women have formed a parallel institution of their own known as *Siiqqee* which actively excluded men (Kuwee, 1997, p.119).

Siiqqee is actually a stick but it has institutional role with numerous symbolic importance in Oromo society. *Siiqqee* institution functions hand in hand with *Gadaa* institution and it has given Oromo women a platform through which they could articulate their views and address issues of concern to women (Asafa, 2012). With the help of these parallel institutions, a gender-based boundary has been created between the domains of Oromo male and female the crossing of which is considered as a taboo or violation of *seera Waaqa*/Natural or God's laws/. According to Oromo world view, *Waaqa* has created a cosmic order governed by *safuu* which has to be respected and guarded. Since both men and women respect their boundaries, violations are very rare (Kuwee, 1997). In Oromo society, women had effective means through which they “punish men who offended the rights of any of them and ensure peace and order between males and females” (Areba and Berhanu, 2008, p.171).

Seera Waaqa requires that a balance be struck between the power of male and female. If this balance is not kept, there will be loss of *safuu* which leads to the collapse of society. *Siiqqee* is viewed as a weapon used by women to guard *seera Waaqa*. “The balancing of the domains of women and men and maintaining their interdependence have been preconditions for keeping peace between the sexes and for promoting *safuu* (moral or ethical order) in society” (Asafa ,2012, p.136).

According to Kuwee (1997), using *Siiqqee* as a weapon,

Married women have the right to organize and form the *Siiqqee* sisterhood and solidarity. Because women as a group are considered *halagaa* (non-relative) and excluded from the

Gadaa grades, they stick together and count on one another through *Siiqqee* which they all have in common-----in the strange *gosa* (lineage) where women live as strangers, *Siiqqee* represents the mother and they even address each other as ‘daughters of a mother’. They get together regularly for prayers as well as for other important individual and community matters. If men try to stop women from attending these *walargee* (meetings), it is considered against *safuu* (p. 126).

With the help of Gada and *Siiqqee* institutions, Oromo women enjoyed “control over resources and private spaces, social status and respect, sisterhood and solidarity by deterring men from infringing upon their individual and collective rights” (Asafa & Schaffer, 2013, p.284). When her right is violated, a woman whose right is violated grabs her *Siiqqee*, burst out of the house and screams which is known as *iyya Siiqqee* (*Siiqqee* scream). Other women will then stand in solidarity with the woman whose right has been violated (Kuwee, 1997). If a man violates women’s individual and collective rights, he could be corrected “through reconciliation and pledging not to repeat the mistakes or through women’s reprisal ritual (Asafa, 2012, p.137).

As described by a Borana elder “*Nadheen yoo si dhofte hindhoofttu, yoo si arrabssite hinarrabsitu.*” This means, if a married woman fights you, you don’t fight with her, if she insults you, you don’t insult her (E11, 2012). Women are considered as *wayyu/sacred/* and *muka laaftuu* (soften wood) to describe their liminality. Violation of the rights of women is viewed as breaking a woman’s *Siiqqee* and this is “regarded as killing the woman” (Daniel Deressa, p.39). Normally, if a woman complains that a man has infringed her rights; witnesses are not required in order to punish the man. Since infringing a sacred authority of women would mean violating *seera Waaqa* which would result in *abaarsa*, in order to avoid women’s possible *abaarsa* (curses), men very rarely violate women’s rights. *Abaarsa Siiqqee* may be a sanction on one individual like a husband or may be against a group who has violated women’s rights (Kuwee, 1997).

In Oromo society, women are “symbolically and politically liminal and correspondingly enjoy special sacred power as a class” (Kelly, 1993, p.182). This sacred authority has enabled them to use *Siiqqee* as a weapon to fight any force that threatens the basic rights of married women. Women are considered as sources of life and peace-loving and they use *Siiqqee* as a weapon of *araara*. When a man violates women’s rights, this constitutes a loss of *safuu* where *Siiqqee* rebellion is “initiated to restore the law of God and the moral and ethical order of society” (Asafa, 2012, p.136). Oromo women used *Siiqqee* to bless, to curse, when their rights are violated and to resolve conflicts that range from marital dispute to inter-clan fighting. Among the Guji and Borana Oromo, women play a significant role in peace process (Dejene.N, 2009).

In the main, the purpose of *Siiqqee* is to safeguard women’s rights. In pre conquest Oromo society, the *gadaa* and *Siiqqee* institutions have been in effective use and greatly influenced the Oromo value system. Particularly, *Siiqqee* has enabled Oromo women to maintain *safuu* in Oromo society. It has enabled Oromo women to stand in solidarity and prevent men from infringing upon their individual and collective rights (Asafa, 2012; Kuwee, 1997).

Qaallu institution

Qaallu is the other important institution among the Borana that deals with the ritual aspects of *Gada* system. The word ‘*Qaallu*’ refers to the ritual leader as well as the religious institution. The institution of *Qaallu* is hereditary and as such is held for life as opposed to that of the political office. The *Qaallu* may not bear arms and is excluded from holding any political office (E11, E12, 2013; Bassi, 2005). Along with the spiritual and ritual ceremonies; the *Qaallu* is empowered to oversee the election of Gada leaders. The *Qaallu* is in charge of overseeing the

legitimate basis of *gada* system and the transfer of power (Hinnant, 1978). It is the *Qaallu* institution which recognizes and gives blessing to the *Abba Gadaa* (E15, 2013).

On the whole, as discussed in this sub-section, the Borana people have a well-structured governance system which is like a pyramid with clan assemblies and councils at the base and the *Gumi Gaayyo* at pan-Borana level. According to many who have written on Borana Gada governance system, the Borana have a strong institutional structure, with good linkages between the institutions from the grass roots level up to the *Abba Gadaa*. The Gada leaders at every level are entrusted with duties which they are expected to discharge (Bassi, 2005). According to Helland, with the help of their indigenous governance system and institutions the Borana have been able to work out and solve “practical and organizational tasks of considerable complexity, and have had to live with the consequences of their choices in the past” (1998, p.69).

Relationship between Borana Indigenous Gadaa Governance System and the Formal Ethiopian Governance System

Before Boranaland was incorporated into the Ethiopian Empire, the indigenous Gada governance system operated independently without competing system. But after the incorporation of Boranaland into the Ethiopian Empire, the Ethiopian formal governance system has been superimposed on Borana indigenous governance system. In terms of integrating Boranaland into the Ethiopian nation- state and in terms of changing Borana indigenous Gada institutional and judicial landscape, the 1975 Land Proclamation had considerable effect (Bassi, 1996; Helland, 1996).

It was the 1975 Proclamation which established *Kebele* Peasant Associations (KPAs) and laid down a solid legal basis for State intervention and control in Boranaland. After their

establishment, the KPAs became the basic unit for all administrative purposes and introduced new resource management regime in place of the indigenous resource management system (Helland, 2001).

In total disregard of the peoples' pastoralist way of life and their clan-based structure, the KPAs established mere territorial- based administrative structure like farming areas. The newly introduced territorial-based structure combined several adjoining local units into one making the traditional resource-based structures irrelevant. That has created a situation where the traditional *madda* boundaries were redrawn by splitting one *madda* into several parts merging these with parts of different *maddas* (Helland, 1996). Ultimately, the newly established territorial based KPA administrative structure super-imposed on the indigenous Borana Gada System formally assumed authority over the administration of water wells and pasture which are the two most important areas of jurisdiction that have traditionally been under the jurisdiction of *Gada* leadership. The immediate effects of the creation of the KPAs system were:

- a. Severe restriction of access to grazing areas outside *Arda* though in the same traditional *madda* due to new boundaries,
- b. Loss of grazing areas left behind to replenish during transhumance since these could no longer be secured as they became accessible to incomers from different traditional *maddas*, and
- c. Increased violation of grazing and water management rules, aggravated by declining formal support for traditional institutions, and a conflict of authority between traditional decision-makers and the relatively young chairmen of the KPAs (Kamara, 2004, p: 393).

Eventually, since the newly established boundaries restricted mobility, communities who have lost valuable grazing areas failed to accept and honour the new boundaries. This gave rise to new waves of disputes between users of arbitrarily partitioned resources. Subsequent to the

establishment of KPAs, although the traditional Gada structures and the newly established government structures coexisted, with strong State coercive support and resources at their disposal, the KPAs have succeeded in becoming a strong challenge to the indigenous Gada system (Helland, 1998; Kamara, 2004).

As the KPA leaders are composed of relatively young members with little knowledge of the indigenous Gada governance system and values, they are more loyal to the State. This government -imposed management regime and disrespect for indigenous management structures by way of staffing all influential formal positions in the administrative system by those loyal to the government goes all the way upwards to Borana Zone level. In legal terms, this disrespect of the State for indigenous institutions and governance resulted in mutual mistrust between the Borana and the Ethiopian State. The scope of authority of indigenous Borana Gada institutions which used to give decisions on all matters concerning Borana people have been significantly reduced (Helland, 2001).

But in practice, from the time of conquest until the fall of the *Derg* regime in 1991, both Borana indigenous governance system and the formal governance system could still operate in parallel relatively peacefully (Schlee, 1994; Shongolo, 1994). The local administrators recognized the role of the traditional structure and “actively encouraged them to solve disputes that were within the ambit of the traditional system” (Bassi, 2005, p. 14). The division of competences between the indigenous system and the state system was given recognition by the leadership of both systems during the time of Abba Gadaa Jilo Aga (1976-1984). The continuation of Borana indigenous governance system was tolerated even during the *Derg* regime (E11, 2013).

After the departure of Mengistu, for a brief period, particularly from May to November 1991, although it was a period of statelessness, the indigenous justice system was fully activated and disputes were resolved by the council of elders/*kora jaarrolee*/ based on their indigenous *aadaa Seera*/customary law/. As there was no need to harmonize Borana law with State law, the Borana *Gada* governance system filled the power gap left by the departing Government (Shongolo, 1994). According to Gunther Schlee, “nobody seemed to miss the State very much, since the State has been experienced throughout its presence in the area since the conquest by Menelik in 1899 mostly as predatory institution anyhow” (1994, p.18).

Writing about that episode of 1991 and concerning Borana experience with the Ethiopian State in general, Abdullahi Shongolo stated that the Borana did not feel the urgent need to bring back the State in their area. In his view, “the Boran have lived without State for most of their history, their experience with statehood has not always been pleasant” (1994, p.56). In spite of this, in November 1991, after the new regime consolidated its power in the area, the peaceful co-existence between the two systems and their respective authorities came to an end. The relationship between Borana indigenous authorities and the Ethiopian State became edgy with the Borana being identified with Oromo Liberation Front (OLF), which was the main opponent of the new Government in the area (Schlee, 1994).

In their ambition of national integration, the Empire State has marginalized the Borana pastoralists in social, economic and political terms. As the national policy and approach to administrative structures pursued by the successive governments were biased in favor of agriculture or settled farming, there was no room for the particular interests of pastoral Borana to be articulated and entertained (Helland, 2001). The State’s “denial of influence and voice to the legitimate political system of the Borana has no doubt exacerbated the strong trend towards

increasing dependency and clienttleship which has been created by agencies operating on behalf of the Borana communities”(Helland, 1998, p.69).

Traditionally, the Borana don't associate themselves with the Ethiopian State and its “culture”. The strange culture introduced by Ethiopian State is referred to as *aadaa mangisti* (the culture of the government) or *aadaa katama* (culture of the town) among the Borana. They consider it as an alien system responsible for the weakening of their indigenous Gada governance system. To the extent possible, the Borana kept their own Gada leadership autonomous and avoided State offices and responsibilities by which they safeguarded the survival of their indigenous governance system (E11, E12, 2013; Bassi, 2005).

Borana indigenous institutions are still functioning and have strong influence in the daily lives of the people. As an indigenous governance system, the essential feature of Borana social system is the ensuring of *nagaa Borana* (the peace of the Borana) through an orderly running of public affairs and the nonviolent settlement of disputes and conflict (E15, E13, 2013). Those who have written on Borana Gada governance system maintain that had it not been for the indigenous governance system, managing and maintaining the scarce resources and sustaining Borana pastoral system could have been difficult. But with the help of their indigenous governance system, the Borana have been able to mobilize resources, organize large groups of people over prolonged periods of time, and “make orderly and legitimate decisions on access to and utilization of the wells” (Helland, 1996, p.137).

But in recent studies, a gradual weakening of Borana Gada system and its indigenous institutions has been reported (Bassi, 1997; Boku, 2000; Kamara, 2001; Oba, 1998). Borana indigenous leadership is increasingly being made irrelevant or is becoming “a second- rate parallel structure with little influence over the major issues” in Borana society (Helland, 1998,

p.69).The root cause of this institutional disempowerment is attributable to the conquest of Boranaland by the Abyssinians and the subsequent imposition of alien State institutions over indigenous Borana institutions (Boku, 2008, p.2).The KPAs that was introduced in 1975 are still being viewed by Borana elders as an institution established for undermining the authority of the indigenous structures and for weakening the indigenous governance system (Watson, 2001). As a consequence of this, there still exists problematic relationship between Borana indigenous Gada governance system as a whole and Ethiopian State-based system (Schlee, 1994).

Chapter 5: Borana Indigenous Justice System

In this Chapter, Borana indigenous justice system which encompasses the law, institutions, structures and operation of the justice system will be explored. These are examined so as to provide the framework in which the indigenous dispute resolution system operates.

Borana Conception of Law and Justice

Indigenous people define law as a way of life. This conception of law as a way of life makes it a concept that one can comprehend through experience. In any society, there are sets of norms and mechanisms that people use to govern their social relationships. These sets of norms that people use to manage conflicts are generally referred to as law. They provide general directions as to how individuals and communities should behave towards each other (Driberg, 1934; Melton, 2004).

Indigenous justice systems are based on holistic world view of the indigenous peoples. It is the totality of the sets of norms prescribing correct ways of behaving. Indigenous people refer to the totality of normative systems prescribing correct ways of behaving as law with no distinction between civil and criminal law (Ayinla, 2002; Driberg, 1934). The foundation of indigenous justice systems is holistic philosophy and where law is viewed as a way of life and justice as part of life process (Melton, 2004). African indigenous law comprises all those rules of conduct which regulate the behavior of individuals and communities, and which by maintaining the equilibrium of society are necessary for its continuance as a corporate whole. The law consists of positive rules where the penalties are directed towards a readjustment of the *status quo* (Elias, 1956).

Among the Borana, the totality of Borana normative system is described by two Oromo words *aadaa/custom/* and *seera/law/* which together means *aada-seera* which means Borana customary laws. *Aadaa-seera* refers to a sacred and profane set of laws governing behavior and maintenance of peace and order in Borana society (Watson, 2001). Borana elders say “*Booranaaf aadaan isaa jireenya isaati Booranni aadaa gate jireenya gate.*” This literally means “for a Borana, his custom is his way of life, when a Borana abandons *aada*, he abandons Borana way of life” (E12, E15, 2013). It is the totality of the set of norms referred to as *aadaa-seera* that guides individuals’ and groups’ behaviors towards each other in Borana. As a way of life, a Borana comes to know and understands *aada-seera* through his daily experience (Bassi, 2005; E11, E13, 2013).

Among ordinary Borana, the terms *aadaa* and *seera* are used interchangeably. According to Borana elders, drawing clear line of demarcation between *aadaa* and *seera* would not be easy. But still, of the two, as explained by Borana elders, *aadaa* seems to be more fluid and broader than *seera*. *Aadaa* refers to a way of life that can be reflected through and by one’s daily behaviour and experience. Indicating the breadth of *aadaa*, the Borana say “*Yoo aadaan hinjirre seerri hinjiru*” which means if there is no custom there will not be law (E13, E18, 2013). In its broader sense, *aadaa* is understood as the embodiment of Borana indigenous religion, norms, customs and practices which guides their way of life. The norms regulating social relations, family relations, natural resource management food and dress are viewed as integral parts of *aadaa* (E12, 2013; Bassi, 2005).

More particularly, *Seera* can be defined as “that specific category of norms, expressed verbally” (Bassi, 2005, p. 105). Borana elders view *seera* as constituting more specific norms with narrower scope and having more binding character than *aadaa*. *Seera* constitute special

category of norms that serves as a basis for deciding cases where there are disputes. *Seera* are authoritative rules formally made by *Gumi Gaayyo*. As they are rehearsed every eight years on *Gumi Gaayyo*, Borana *seera* are discernible to everyone (E17, E15, E18, 2013; Bassi, 2005).

As a set of norms, Borana *aadaa-seera* prescribes acceptable ways of behaving and provides ways of dealing with unacceptable behaviors. *Aadaa-seera* regulates Borana social life and mutual relationship between elements of the social and cosmic orders. Among the Borana, the breaking of Borana *aadaa-seera* is seen not only as disrespect for Oromo values, but it is also viewed as lack of respect for the law of *Waaqa*. The Borana believe that *Waaqa* is the source of truth and justice. In their view, there is strong correlation between respect for *aadaa*, *Waaqa* and *dhugaa*/truth or justice/. The Borana say “*Waaqi dhugaa dhale*” which means God created or /gave birth to/ truth. They say “*namnni aadaa lakkise, dhugaa lakkise, namnni dhugaa lakkise Waaqa lakkise.*” This literally means, “A person who abandons custom abandons truth and a person who abandons truth abandon *Waaqa*” (E11, E15, 2012; E18, 2013).

The foundations of Oromo conception of justice is the harmony and solidarity between human beings, nature and *Waaqa* (Workneh, 2001). For the maintenance of justice and for the promotion of social harmony, law is considered the strongest tool among the Borana. The rights and obligations of every Borana from birth to death have been defined by *aadaa-seera*. The operation and relationships between Borana indigenous institutions are governed by the *aada-seera*. Borana elders argue that their *aadaa-seera* has helped them to maintain the social harmony among the people (E12, E15, 2013).

Nature and Categories of Borana *Aadaa-seera*

In indigenous African societies, laws are reflections of the cultural values of the people. The justice systems are guided by unwritten laws, indigenous practices that are learned through experiences and through the teachings of elders (Ayinla, 2002; Melton, 1995). Among the Borana, the laws are collection of unwritten rules. But the laws are not arbitrarily made nor can they be changed to suit personal needs of individuals or groups. The laws are made by the sole legislative body, *Gumii Gaayyo* with a view to regulate the complex relationships of the people with each other and nature (E11, E12, E15, 2013).

Borana indigenous laws are reflective of the cultural values of the people which are embedded in the Gada system. As the laws are reformulated and applied on the different levels of Borana assemblies, they are not forgotten. The *hayyus* can easily recall whether or not there is a law applicable to a certain case. As it can be modified by the people every eight years, Borana *aadaa-seera* is dynamic by its nature and responsive to the changing needs of the people. The Borana have laws for everything that embraces all animate and inanimate beings (Bassi, 2005).

Borana laws regulate all aspects of the people's daily life and interactions. The laws do not have classification into criminal and civil laws. Both civil and criminal cases are handled by the adjudicators. Borana *aada seera* serves as a guide for the people's relation with natural environment. The jurisdiction of Borana *aadaa-seera* is limited to Borana communities that are within the domain of the Gada governance system (Ibrahim Amae, 2005; Bassi, 2005; Leus & Salvadori, 2006).

Under the broader *aadaa-seera*, Borana justice system has specific categories of norms regulating specific relations. The specific categories are determined based on the particular

relations regulated by that specific law (Dinsa Lepisa, 1975). The categories of Borana *aada-seera* are known as *Seera Yaayyaa shanani* (the five *Yaayya* laws). The first one is *Seera Namaa* (law of human beings). Under this category of law are included laws of children (*Dabballee*), adult men, women, marriage, and laws of *hayyu*, laws of *Gadaa* leadership and administration, laws of married women (*Siiqqee*). Laws related to mutual assistance, social protection/ security is known as *buusa gonofa*. There are laws regulating payment of *gumaa* in case of murder. Laws of *guddifachaa/moggaasuu* are also included under this category (Asnake, 6411 ALO [2005]).

The second category of laws is *seera hori*/cattle, sheep, goats, camels/. These laws govern cattle management including watering, grazing, and milking cows. How calves and the strong ones are taken to grazing and water are governed by *seera horii*. This category of law deals with cattle husbandry and breeding in general. The third category of laws is known as *Seera gola* for horses/*fardaa*/, mules/*gaangee*/, donkeys/*harre*/.

Among the Borana, horses have ritual importance and are respected animals. They are considered as the “vehicles of gada authorities” (Gollo Huqaa, 1996, p. 42). The Borana say, “*Farda malee Baalli hinfuudhani*”, which means, *Baalli*/Gada power/ cannot be transferred without horses. Horses are also used during wars and for hunting. Because of their special place in Borana society, horses have a special category of law known as *seera fardaa* which regulate the use and treatment of horses and imposes severe penalties for mistreatment of horses. If any person beats and kills a horse, he will pay 30 head of cattle like for the death of human beings. The fourth category has got to do with stars and counting of time and is referred to as *seera Yaayyaa Babboo Gaalessa*. *Seera alloo fi aloola* is the fifth one which has got to do with the environment, plants/*biqiltoota*/, trees/ *mukkeen*/, forest/*bosona*/ and wild animals (*bineeyyi bosonaati*) (Asnake, 2005; Tabor Wami, 2014).

Asnake Hirko has stated the value of *Yaayyaa shanan* as follows.

Yaayyaa shanan akkaataa Gadaan mare marmaaru fi Oromoon ittiin bulaa ture, Seera uumaa keessatti waa'ee Urjiilee fi waan qoollo keessa jiran, waan Dachee keessaa fi irra jiran, Gumaa namni wal ajjeese akka itti baafatan, Buusaa Gonofaa, seera Aloo fi Aoolaa, akkasumas Akkaataa Oromoon mirga lubbu qabeeyyi fi kan lubbu hinqabnellee tiksuu, qabeenya waloo fi dhuunfaa akkamiin akka tohatu fi nama haala adda addaan of hindandeenye gargaaru bal'inaan ibsan (2005, p.13).

When translated,

The subject matters covered by the laws of five *Yaayya*, include Gada intervals and governance, law of nature relating to stars and the universe, things found on the earth and underneath. Issue of payment of *gumaa* in case of homicide, social assistance, protection of the environment and living and non-living beings, protection of communal and private property are embraced by *Yaayya shanan*.

Yaayyaa shanan in general deals with all relationships of human beings with each other, the environment and nature. The rules that guide every Borana in the use of natural resources and in dealing with wild animals and tree are *Seera aloo fi aoolaa*.

In the Oromo jural system (*seera*), all environmental rules, propounded to protect the soil, vegetation, wild and domestic animals, water resources, high places of worship (such as certain rocks, hilltops, and mountaintops), and stone burial mounds, as well as those that define people's relationship to each other in the sharing of these natural resources, are known in Oromo as the laws of the inside and the outside (*aloof aloollaa*)” (Kassam & Gemechu, 1994, p.86).

Among the Borana, there are rules on what to kill, when and how to kill. According to Borana *aada-seera*, when domestic animals are given water during the day, before departure, water is filled into the trough used for cattle so that wild animals may drink it. This is done so that the wild animals may not go to areas where people live in search of water. The Borana have strict rules regarding the categories of trees to be cut and not to be cut and when to cut. A Borana cannot simply go out and cut down any tree without restraint (E15, 2013). For instance, since it

will never regenerate, the cutting of a young juniper procera tree (*gaattira*) is prohibited, but the cutting of eucalyptus trees which can regenerate is allowed (Dejene Gamachu, 2007).

The Borana have rules regulating the use of land. Next to *Waaqa*, the Borana give great respect to *dache* /earth/ land/. Borana *aada seera* prohibit overgrazing of land, drying up water spring and land deforestation. The Borana say “*lafa qullaa hindhaaban*” which literally means you don’t leave land bare/ naked. Except for water wells, digging ground or tilling the soil was unacceptable among the Borana in the past. Even today, the elders say, when a Borana goes to Liiban which is a ritual place with a spear; he makes sure that the tip of his spear does not get in touch with the ground (E15, E11, 2012).

Among the pastoral Borana, certain fields of activities of the people are strictly regulated by Borana *aada-seera*. In view of the fact that they are important and scarce, the Borana have specific laws to regulate the utilization of certain natural resources. These vital and scarce natural resources are water wells/*eela*/ and pasture/*marra*/. These resource -specific laws adopted to regulate the use of these scarce resources are known as *seera marra bisaani* (Bassi, 2005).

The deep water wells known as *eela* are vital sources of water which are few in number. The Borana have put in place effective regulative mechanism for the management of the use of this resource. Through the *seera marra bisaani* they have adopted and effectively implemented, the Borana have managed to prudently use and maintain these scarce water wells for centuries. These environment-friendly indigenous natural resource management and laws have enabled the Borana to survive under the harsh climatic conditions (Bassi, 2005; Desalegn et al, 2007).

Along with laws dealing with the utilization of the scarce natural resources, the Borana have laws regulating sanctions for wrongful acts. In all the fields of law, infringements of the relevant *aadaa seera* have specific sanctions, which generally take the form of fines. Fines or

compensations are generally paid in head of cattle but nowadays, fines are also being made in the form of money (Asmarom, 2000; Bassi, 2005).

The Borana Oromo consider their *aada-seera* as the strongest tool for the safeguarding and maintaining peaceful life. Borana elders claim that with the help of their *aadaa-seera*, they have managed to effectively and sustainably regulate their individual and collective life including their relationships with the environment and nature. The prevailing view among Borana elders is that the people obey their *aadaa-seera*, not for fear of punishment but because of the supreme value they attribute to the laws in maintaining *Nagaa-Boorana* (E11, E12, E15, E13, E18, 2013).

Borana Indigenous Laws and *Nagaa-Boorana*

According to Oromo holistic view of cosmic order, *Waaqa* has placed everything in a well-balanced order. In their view, it is only by being in harmony with each other and with nature that they get the blessing and protection of *Waaqa*. They all believe that any human act that disturbs the cosmic and social order is an infringement of the laws of *Waaqa* which would bring danger to the wrongdoer and his kins (Bartels, 1983; Dejene, 2007; Tena, 2007).

In the context of human relationship, Oromo holistic view has significant role in maintaining social peace and harmony. Having given recognition to interconnectedness of lives of human beings, it assumes the existence of reciprocity and check and balance. The existence of *Siiqqee* and *Gadaa* as parallel institutions gives recognition to the interconnectedness between male and female domains and maintains check and balance. *Seera Waaqa* (laws of *Waaqa*) requires that this balance between the male and female domains be maintained. The *Siiqqee* of the married woman and the *horooro* of the married man are “symbolic regulators of a healthy

and balanced relationship of power between female and male Oromo for as long as they live” (Kuwee, 1997, p. 121).

Nagaa-Boorana is the governing philosophy of Borana social relations. *Nagaa-Borana* refers to the orderly running of all relations, interactions and the non-violent settlement of disputes and conflict. The maintenance of *nagaa-Boorana* is the core value that guides the actions of both the spiritual and political institutions in Borana. The concept of *nagaa* is the strongest symbol of Borana identity. *Nagaa* is a pervasive and sustained concern in the daily life of every Borana. As observed by many writers on Borana, the daily blessings given by Borana elders are prayers of peace (Asmarom, 2000, Bassi, 1994; Helland, 1996; Mamo, 2008).

The Oromo Gada system ascribes great value to the rule of law. In their long history of self-administration, one important value that has been maintained by the Borana is respect for the rule of law. Under Oromo indigenous Gadaa democracy, law is regarded as something which stands above all and no one is above the law. They strongly believe that social justice and equal benefit from natural resources cannot be maintained in the absence of rule of law (Dirribi, 2011; E11, E12, 2013).

As stated by Asmarom “the Oromo are one of the most orderly legalistic societies in black Africa and many of their laws are consciously crafted rules, not customarily evolved habits” (2000, p. 29). The social harmony and collective identity of Borana people is ensured by their *aadaa-Seera*. Borana elders say “*Seerri Boorana, nagaa Boorana to’achuuf jal’ataa daangessuuf tolfame*” which means Borana laws were made so as to constrain those who may possibly go against socially accepted norms and in order to maintain Borana peace (E11, 2012; E18, 2013).

From spiritual perspective, the Borana view their *Waaqa* as the source and provider of peace. When a wrong-doer violates *aadaa-seera*, he does not only disrupt *nagaa Borana* which is extremely valued by the Borana, but he would also offend *Waaqa* who is the God of peace. As a consequence, the wrong-doer faces not only public condemnation but also possible punishment of *Waaqa*. This fear of possible condemnation of the community and *Waaqa*'s punishment has helped to curb crime among the Borana (E15, 2012). In Africa, it is this religious nexus which “gives African law an authority sufficient to dispense with mechanics of enforcement” (Driberg, 1934, p.238).

One very strong moral bond that unites the Borana is the concept of *Boorantitti* reflected in “peaceful well-being, unselfishness and respect for a common law” (Gufu, 1996, p.120). In Borana social life, “the ideology of *Borantitti* demands that all conflicts between Borana should be solved peacefully and the maintenance of internal peace is a strongly expressed ideal” (Helland, 1998, p. 64). Every Borana grows up with full awareness of the supreme value of the ideology of *Boorantittii* and *Nagaa-Boorana*. Borana *aada-Seera* serves as the strongest tool for the safeguarding and maintenance of *Boorantittii* and *Nagaa-Boorana*. There is a strong belief among the Borana that any act that disrupts Borana interconnectedness and harmony poses a danger to *nagaa-Boorana* and erode the ideology of *Boorantitti* (E15, 2013).

The Borana have developed strong moral standards which helped them to cultivate and maintain the ideology of *Boorantittii* and regulate their behavior towards each other. As an individual, in his daily interactions, every Borana should refrain from saying words that spoils his/her relationship with others. The common saying among the Borana is, “*nageenyi fuula arrabnni abba oole oolti*”. This literally means peace depends on what we verbally speak during

our daily interactions with others. If a person makes a statement or speaks a word that spoils his relation with others in his daily interaction, there will not be peace and harmony (E15, 2013).

Borana conception of *nagaa* is holistic, relational and collective. Relationships of harmony among members and with the environment are central features in Borana conception of peace and justice. Among the Borana, *nagaa* is viewed as a collective value and disruption of this value will have collective harm. The Borana believe that a certain wrongful act disrupts the social harmony within a community. In their view; re-establishment of the disrupted peace would require collective response (Bassi, 2005; E15, 2013).

Community members in Borana are socially tied together by kinship relations in that everyone is connected to one of the Borana clans by which he identifies himself. Within his own clan, everyone has obligations toward one another. Failing to discharge one's obligation towards a clan or fellow Borana would spoil the mutually supportive relation established by *Boorana aada-seera*. From spiritual viewpoint, committing wrong against a *Booranatitii* would amount to committing wrong against *Waaqa*. That is why Borana *aadaa-seera* is viewed as an effective tool for the maintenance of *nagaa-Boorana* (E18, 2013).

Borana Dispute Resolution System: Institutions, Structure, Process and Outcome

Institutions and structure

The notion of institution “extends beyond organizational form, rules and relationships into more fundamental social and political factors that determine how people think, behave and devise rules through which they expect everyone else to play” (O’Riordian & Jordan, 1996, p. 65). In view of the fact that conflicts are unavoidable in all human societies, every society will necessarily have a mechanism of dispute resolution. In addition to laws, institutions are essential

elements in any dispute resolution system. Borana Gada governance system has established effective and structured institutions with their own authorities and responsibilities.

For the implementation of Borana *aadaa-seera* which is made by *Gumii Gaayyo*, there are indigenous residential administrative structures and institutions starting from *Adulaa* Council at the apex and goes down to the *olla* level thus making the institutions accessible to the people. There are lower executive officers recruited from each clan known as *jaallab* who represent the clans at Gada and clan assemblies and see to it that laws are observed by all members. These are active clan elders with authority to judge */mura/* on certain disputes (E18, 2013). If there is unresolved problem in the locality, the *jaallab* will present the case to the *hayyus* of the concerned clan (E17, E15, E11, 2013).

Clans and lineages are important institutions in Borana society by way of regulating water resources from the nine deep well clusters known as *tulla saglan* /nine wells/ which provide water during the dry season. There are well councils/*kora eela*/ for overseeing the overall management of the wells. These councils have the authority to discuss on any violation of the rules of water -use and maintenance when the case is referred to them (E11, 2012; E15, 2013).

Those who have the authority to settle disputes between litigants in Borana are generally referred to as council of elders/*kora jaarrolee*/.The litigants may choose members of the council of elders who settle their disputes. The essential quality in determining membership to the council of elders is the wisdom and knowledge of Borana *aadaa-seera*. *Hayyus* at all levels have the power to mediate and settle cases. Cases requiring a final verdict in accordance with the *Boorana Aadaa- seera* are referred to *Gumii Gaayyo* which is the supreme judicial body (E11, E17, E18, E15, 2013).

Dispute Resolution Process

As regards possible causes for disputes, since land and water resources are communally owned particularly in pastoral areas of Borana, there is little that leads to inter-Borana disputes. In view of the fact that rights over the use of water wells and pastures are communally administered by clan representatives and elders make disputes relating to these resources are very rare (OIE3, 2013). Occasional disputes relating to water and pasture are always resolved within a short time (E11, E15, 2013).

The indigenous dispute resolution process among the Oromo is generally known as *Jaarsummaa*. ‘*Jaarsa*’ refers to elders and ‘*jaarsumma*’ to the process of settling disputes by elders by way of reconciliation or negotiated settlement (Areba & Berhanu, 2008; Tarekegn & Hannah, 2008). *Jaarsumma* deals with all kinds of disputes ranging from simple quarrel to the most serious criminal case like homicide. In the process of *Jaarsumma*, the elders mainly aim at bringing about restoration of the severed relationships between the parties (E11, E15, 2013). On account of its reconciliatory process and restorative outcome, the *jaarsumma* process is by and large referred to as *araara*. Retired *hayyus* are the key players in the *jaarsumma* process in all localities. In their adjudication authority, the *hayyus* at different levels have jurisdiction over both criminal and civil matters. They use unwritten *aadaa-seera* as a basis for resolving disputes or making *araara* between the disputants (Leus & Salvadori, 2006).

Among the Oromo in general and the Borana in particular, litigations are detested practices. When disagreements arise between individuals, they are resolved by elders as quickly as possible within the kinship of the disputants at the lowest possible level like household/*warra*/ or village/*olla*/. The Borana say, “*Warra nama hinqabne dubbiin ollaatti yaati, warra ollaa hinqabne dubbiin Reeratti yaati.*” What this means is, where there is no elder/*jaarsa*/ in a

household, a problem goes to *olla*, and where one has no *olla*, a problem goes to *Reera* (E13, 2013). Among Borana Oromo, the role played by elders in resolving disputes is critical. Regarding this critical role of elders, the Borana say “*lafa jaarsi jiru dubbiin hinjirtu*” which literally means where there are elders, there will be no dispute. If disputes are frequent in a certain area, the Borana say “*maali lafti sun jaarsa hinqabu?*” which literally means, “Doesn’t that land/area/ have elders?” (E11, 2012).

The meeting place where the elders sit when they adjudicate cases is referred to as *Gaadisa*/shade/ which is. Disputes are brought before open-air courts (*gaadisaa*) usually under a *xaddacha*/acacia/where cases are discussed by all those attending (Kassam & Gemechu, 1994). As every Borana believes that *Gaadisa* is a dwelling place of *Waaqa*, it is considered as a place where only truth is entertained. The saying among the Borana is, “*Gumiin gaadisa teessu dubbi dhara hinfuutu/hindubbattu.*” Which means an assembly sitting under a shade never entertains and deliberates on falsehood (E11, 2013). For this reason, no Borana who appear before the elders dares to speak a lie before the *kora jaarrolee*. In their entire dispute settlement process, the Borana aim at finding the truth. The Borana say “*dhugaan kan Waaqaati, Waaqatu dhale*” meaning truth is from *Waaqa* (E13, 2013; EFGD2, 2013).

As a rule, procedurally, a dispute */falmmii/* has to be submitted and entertained at the lowest possible level before it goes to the next higher level. The *kora jaarrolee* /council of elders/ is structured hierarchically from lowest *olla* level to highest level in Borana. Disputes submitted to the *kora Jaarrolee* at each level are adjudicated based on *Borana aadaa- seera*. Family disputes are resolved by the closest relatives or sub- clan elders at the household */warra/or olla* level (E11, 2013).

When it comes to the process of adjudication itself, a dispute brought before an assembly for adjudication normally passes through three major phases. These are namely; introduction, discussion and decision. The process starts with the complainant/*himataa*/ submitting his case to the elders. The elders allow both parties to submit their complaints and defenses orally. A person who has attained the age of 15 can bring a case before elders for hearing. A woman can also take her complaint to the *kora jaarrolee* and even to the *Gumii Gaayyo* (OIF3; OIF4, 2013). Except variation in its degree, every dispute will be subjected to the required level of investigation (E11, 2013, E15, 2013)

Before starting the adjudication process, there will always be *eebba gaadisa*. After the blessing, the complainant will be allowed to submit his/her case. When the complainant presents his case, the elders say to the defendant, “*Abbo sihimatanii caqaffadhu*” which means, “listen to the complaint being made against you.” After hearing from the complainant, the elders give the chance to the defendant to respond to the accusation made against him. The elders say to the defendant “*Afaanuma keetiin ijibbaadhu, kan mormitu yoo jiraate mormmadhu, dhugaan afaan warraati dhugaa dubadhu*” which means, “if there are things you deny, say it, tell the truth, truth comes from the mouth of the one being blamed”(EFGD2, 2013).

In the whole process of adjudication, the elders aim at discovering the truth/*dhugaa-baasu*/.They say to the defendant, “*Dhugaa dubadhu, yoo dhugaa dubbatte namaan duuta, yoo dhara dubbatte garu Waaqaaan duuta. Dhara dubbatte Waaqaaan du’u keerra dhugaa dubbatte namaan du’u sii wayya*” which means, “Tell the truth, if you tell the truth you will be killed by man but if you lie, you will be killed by God. It is better for you to tell truth and be killed by man than lie and be killed by God” (EFGD2, 2013).

In all disputed cases before them, the council of elders make sure that both parties have exhausted their submissions by saying “*Kan isinirraa hafe jira?*” which means, “Are there things left?” After hearing from both parties, the elders say to each other “*dubbiin kun walitti qajeemo gargar gore.*” Which means “are the statements of the parties in agreement or in disagreement?” If there was admission on the part of the defendant (*dheete*), the elders will proceed to the verdict /*mura*/ based on the admission of the defendant and the relevant Borana *aadaa-seera*. In such cases, the elders say to the defendant, “*kun dubbii ragaa itti gaaffatan miti, afaan keetiin dheete, afaan abbaatiin kan murtaa’u.*” Meaning “an admitted case does not require evidence, you will be judged based on your admission.” In such a case, the defendant will be fined what is fixed by Borana *aada seera* (EFGD2, 2013).

In case of denial (*yoo mormmate*) by the defendant, the elders will ask the complainant to produce evidence/*ragaa*/. When the witnesses appear to give their testimony, the elders instruct the witness to tell the truth by saying “*Gaadisi kun Waaqa, waan Waaq si agarsiise hin’argine hinjedhin, waan Waaq si dhageesise hin dhageenye hin jedhin, dhugaa dubadhu.*” This means, “this shade is where Waaqa dwells, don’t say I haven’t seen what God has shown you, don’t say I haven’t heard, what God has helped you to hear, tell the truth.” The elders say to the witness “*dhugaan kan Waaqaati, Waaqi sidhale si duuba jira, si arga, dhugaa dubbadhu.*” This means, “Truth is from God your Creator who is at your back and sees you, tell the truth.” In this regard, one proverb among the Borana is “*Dhugaa Waaqa hindhokssani, qullaa lafa hindhokssani*” which means one cannot hide truth from God as one cannot hide her /his nakedness from the earth when excreting (EFGD2, 2013).

Among the Borana, false testimony is viewed as a dishonorable act which brings about loss of respect in society. For the Borana, the worst crime are lying and false testimony, “*dharaa fi*

sobaan dhugaa ba'uudha/.” Besides, spiritually, both lying and giving false testimony are considered as sinful acts which will trigger God’s wrath resulting in some kind of evil or misfortune to oneself, home or relatives. The belief among the Borana is, by giving false testimony, a person invites curse in to his home which would result in some kind of misfortune. Their belief is, you assist a person in paying his debt not by false testimony, “*Nama idaa kaffalti gargaari malee sobaan dhugaa ba'uun hingargaarani*” (E15, 2013; E13, 2013; E16, 2013).

Having heard the disputants and having made the necessary inquiry, the council of elders will pass on to the discussion phase and analyze the facts deeply. The elders may summon the parties to ask additional questions to make things clear if necessary. If the defendant, having already denied, the evidences produced by the plaintiff have not proved the guilt of the suspect, the elders will declare the defendant innocent. But if the evidences prove the guilt of the suspect, the elders will give the appropriate verdict/*mura/* based on the relevant Borana law governing the case (E11, 2013).

After the verdict, depending on the level at which the case was first seen, a party dissatisfied with the decision may take his appeal to the next appropriate level, the final being *Gumii Gaayyo*. At every appeal level, the elders to whom the appeal is submitted will ask the appellant, what are you dissatisfied with /*Maalitti quufu dhabde?!*” (E16, 2013). Borana elders say, “*Dubbiin akka ol deemteen sitti jabaatti.*” which generally means a party who fails to respect an appropriately given sanction with no good reason and takes the case to higher levels will face harsher penalties as he goes higher (E11, 2013). That's why defendants usually comply with the decision given at the initial level. In the rare cases where a litigant refuses to willingly carry out the *adaba* imposed upon him for no obvious reason, Gada leaders may bar the unruly person from getting access to water wells in Borana (E11, E12, 2013).

Outcomes of Some Criminal Cases

Among the Borana, there are two justice systems equally claiming the loyalty of the same people and trying to assert their authorities on the people. As a consequence of the existence of two competing justice systems in Borana, a single criminal is being handled by both systems in parallel. In other words, a criminal case already settled under Borana indigenous justice system may as well be seen under the formal justice system. The cases presented in this study have been collected from elder- informants, offenders¹, victims or their relatives through interviews. This sub-section has looked at the outcomes of offenders whose cases have been settled out of court (1a-6a) and that of offenders whose cases have been handled by both systems separately (1b-3b).

Offenders

Case 1a:- In the year 2009 a homicide crime was committed in Dirre District of Borana, Dubuluq Kebele by Lubo Xadacha who is a Borana from Dambitu clan. He killed Didaa Xuune who was also a Borana. Lubo was arrested and put under detention by the police and was accused for killing Dida. The relatives of the killer immediately went to the local elders through whom they presented their *araara* request to the relatives of the victim. The request was accepted by the family of the victim and the case was resolved by the elders through *araara*. Based on the *araara*, the offender paid 30 head of cattle. In this case, the relatives of the offender approached the relatives of the victim immediately before the police could gather evidence and pre-empted that process. Those whom the police produced as witnesses before court of law

¹The interviewed offenders were in two categories. In one group are those offenders whose cases have been handled by court of law and who have been put in prison. In the second group are those who have resolved their cases out of court and live in their community.

refused to give evidence. The suspect, having been kept under detention for a year and half was released because of lack of evidence (E11, August 2012).

According to the information I obtained from Borana Zone Justice Bureau, when there is no sufficient evidence to prosecute a suspect, based on Proclamation No. 6/1994 of Oromia National Regional State and Article 122 of the Ethiopian Criminal Procedure Code, the suspect will be released and the file will be closed (JOI22, JOI15, 2013). Ultimately, in resolving the case out of court through *araara*, the offender has avoided incarceration and enjoyed the benefit of being reintegrated into the community.

Case 2a:- There was another murder committed in Dirre district in 2012. The criminal was Anna Sarmole who killed his wife while beating her as result of which he was arrested and detained by the police. Anna regretted for what had happened and elders from his clan approached the clan of his wife for *araara*. Elders have also been sent to the police and requested to resolve the case through *araara*. The elders have succeeded in taking Anna's case back from the hands of the police and the *araara* was made between the relatives of the deceased and that of Anna. Having fulfilled the cleansing ritual requirements, the killer then paid 30 head of cattle to the relatives/clan/of the deceased and the case was resolved out of court successfully (E11, August 2012). In this case it was found out that Anna had no intention of killing his wife. Besides, the case was between close family members where the incarceration of the killer could have harmed his family and children. That was possibly the reason why the *araara* request was readily accepted by the police and the relatives of the deceased.

Case 3a:- In August 2012, there was an inter-ethnic conflict between the Borana and the Garri around Moyale town. During the conflict, a murder was committed in the town where Yoya Xume, a Borana from Daacitu clan mistook a Borana young boy for an enemy and shot

him. The victim was Bona Lamu from Digalu clan. Bona was a student who just took the Ethiopian National Entrance Exam and was in preparation to go to university. According to my informant, the case was not even reported to the police. Considering the fact that the killing was found out to be *dagu/accidental/*, the case was settled out of court through *araara* with full participation of the two families even with no *gumaa* paid or received (OIY1, 2012).

Case 4a:- In 1991, in Aero district of Borana, ONP2 from Digalu clan shot and killed Goba Wariyo, an 8 year old boy looking after camels. Following the fall of the Derg regime and change of Government, there was instability and robbery at the time in Aero district. While he was guarding the area from non-Borana cattle rustlers, the killer accidentally shot the boy in a sheltered bush. Based on Borana *aada-seera*, the families of the offender approached the relatives of the deceased through clan elders for *araara*. The offer was accepted by the relatives of the deceased and the case was finally resolved through *araara*. Consequently, the elders decided that the offender had to pay 30 head of cattle considering the case as *qakkee*. The victim's family accepted 28 head of cattle and the necessary ritual purification was made and the case was settled through *araara*. As stated by ONP2, "*waliin sooranne waliin dhugne sirnni araara eega dhumatte booda garaan walitti nuhammaattellee nu fayyite*". This means "after eating from the same bowl and drinking from the same cup, the purification ritual has healed the wound created as a result of the crime." According to ONP2, the *araara* was helpful in avoiding revenge killing */haalo/* and in restoring harmony (2014).

As narrated by ONP2, when others suggested that she take the case to court, the mother of the victim said "*kan du'elle du'aan dhabee kan jirus maalifan hidhaan dhaba?*" which means "I have lost my son due to death, why should I lose who is alive by imprisonment?" She viewed

araara as more productive and corrective than putting the offender behind bar for so many years by alienating him from his family and community.

Case 5a:- A fight broke out between ONP3’s family members and V5’s family members in Yaabballo town in 2012. In that fight, ONP3’s young boys beat V5 and caused to him serious bodily injury. ONP3’s family members originally came from Wollo and are ethnically Gurage and Amhara. According to V5, after he was beaten in group the police arrived at the scene and arrested ONP3. The case was taken to court by V5’s family. But after the incident, elders were sent to V5’s family by ONP3’s family and proposed to settle the case out of court through *araara*. Since the elders failed to take with them the ritual object *daraara* and sheep which elders are expected to take with them when they go for *araara* request, V5’s family was reluctant to accept the proposal.

The *araara* process begun when the elders came back having fulfilled what was necessary under Borana *aada-seera*. Before proceeding with the reconciliation and so as to resolve the case fairly, the elders from both sides wanted to know the scale of the injury suffered by V5. Offenders’ family took the responsibility of covering all the hospital and transport expenses and sent V5 to Hawasa and ONP3 was released. After knowing the medical results from Hawasa Hospital, elders from ONP3 gave a sheep (*hoola buula*) to V5’s family to help him recuperate. At the end of the *araara*, the written reconciliation agreement was sent to the court with the confirmation of the elders who took part in resolving the case (V5, 2014).

When asked about the reconciliation and its result, ONP3’s wife, expressed satisfaction with the outcome. She expressed her appreciation of the outcome saying “ከፍርድ ቤት ባህላዊ ይሸላል፡ የፍርድ ቤት ስርዓት አስቸጋሪ ነው። ችግሩን በባህላዊ መንገድ በዕርቅ መጨረሻችን ባለቤቱ እንዳይታሰርና ቤተሰቡ እንዳይበተን ከማድረግ በተጨማሪ ከማንተዋወቅ ቤተሰቦች ጋር ዘመዳሞች እንድንሆን አድርጎናል” which literally means “settlement out of court is better than

that in court. Court procedure is difficult. By resolving the case through *araara*, not only have I avoided the imprisonment of my husband and dispersal of my family, but we also became like a family with the victim and his family” (ONP3, 2014).

Case 6a:- ONP1 is a Borana from Maxxari clan who in 2004 killed Bona Sirbu from Dambitu clan. As the two families had very strong attachment (*jaalala*), the offender and the deceased went out together in search of the wild animal which having eaten three cows of the family of the deceased had escaped. While in the jungle hunting for the animal, they spotted the animal and went in different directions. Thinking that he got the animal, the offender shot the victim. Immediately after the incident, when elders from the clan of the offender approached the families of the victim for *araara*; they said since *Waaqa* has taken the deceased’s soul, nothing could be done and expected from the offender. As the two families had close relationship, the *araara* request was readily accepted by the family of the deceased declined to accept the *gumaa*.

But the police got report about the incident and arrested the offender and took him to Nagelle town where he has been detained for 60 days. When the police came to the area for investigation, both families said to the police “*lubbu Rabbitu baase*” meaning the life of the deceased was taken by God. When the two families requested the release of the offender stating that there was no problem between the families, the offender was set free. In the offender’s view, the outcome of the *araara* process was the restoration of harmony between the two families (ONP1, 2014)

When looked at, all the above presented cases (1a-6a) are similar in the sense that all have been resolved through the *araara* made between the parties based on Borana *aada-seera*. The *araara* processes involved relatives from both sides. In almost all the cases, the offenders have paid *gumaa* to the relatives of the victims as a sanctions/*adaba*/ for the harm they have caused. In

return, the offenders avoided incarceration and got the opportunity of being reintegrated into their communities and managed to live in harmony with the victims' relatives.

Now, having looked at the outcome of those cases where the parties have settled their cases out of court, let us look at those cases where the same criminal cases have been handled by both systems separately. The explanations about the outcomes of the justice processes have been obtained from offenders through interview from offenders who were in Yaaballo prison at the time of my field work².

Case 1b:- This offender in Yaaballo Prison (OYP15) was a prisoner at the time of the interview. He was convicted for killing Tuuna Bari. This prisoner is a Borana from Karrayyu clan whose age was 27. He was convicted and sentenced to five years imprisonment by the court. OYP15 claims that the killing was accidental/*dagu*/. In addition to that, *araara* was made between the two families whereby 30 head of cattle and one sheep were given to the victim's family. The *araara* was made before the court gave the sentence in the absence of the offender. According to the offender's account, when the written reconciliation agreement made between the two families was submitted to the court with a view to seek the release of the offender, the judge rejected the request of the families (OYP15, 2013).

Case 2b:- In another case, OYP16, a Borana from Moyale district in Mattu village was accused of killing Waru Mayu and was convicted. He was sentenced to 12 years imprisonment by the Zonal High Court. In addition to that, based on Borana indigenous justice system, reconciliation was made where he has paid 30, 000 Ethiopian Birr and 30 head of cattle. But having made the required *araara*, when the agreement document was submitted to the court, the

² Here the prisoners interviewed were more than 20 in number. But since the cases as handled by the two systems are essentially similar in their outcomes, only a few of the cases are presented.

judge rejected it by stating that the agreement has no relevance in court of law (OYP16, August 2013).

Case 3b:- In another case, OYP25 whose age was 56 was accused of killing a woman. He was convicted and sentenced to 18 years imprisonment. He claimed that he knew nothing about the incident at the time, there was a contention as to whether he was normal. According to him, he was taken to mental hospital in Addis Ababa where he was given some medicine and was told that he was normal. According to my own observation, the person had a kind of disorder in his speech. But all the same, at last, although he has submitted a letter from his Kebele to the regular court that *araara* was made, the court refused to accept it (OYP25, 2014).

In all the cases (1b-3b), although the disputes have been dealt with under Borana indigenous justice system subjecting the offenders to sanction, the same cases have all been adjudicated by regular courts as a result of which the offenders have been punished by incarceration. The disputing parties had no freedom of choosing justice system of their preference. They could neither enjoy the benefits nor avoid the weaknesses of the systems.

In all the cases of the offenders we have looked at, in one category were offenders who by resolving their cases through *araara* have paid only *gumaa* and succeeded in avoiding imprisonment. We have also looked at another category of offenders who have been subjected to the sanctions of both systems. The next sub-section will look at the outcomes of some cases as presented by victims or their relatives.

Victims

Case 1c:- V7 and V8³ are two brothers whose father was killed by a car being driven by Teklu Dawit. According to the two brothers, after the incident, elders from the killer's side came to the deceased's family to ask for *araara* by saying “*nu maara*”. As it is not customary to refuse *araara*, the elders request was accepted. The two sides have elected elders and formed a council of elders to handle the case. The case was settled out of court through *araara*. The offender took responsibility of covering all the expenses for the funeral, building gravestone on the burial place and other expenses required for visitors coming for mourning (V7, V8, 2014).

According to the two brothers, the *araara* aims at healing the wound caused by the act of the offender and in restoring the harmony that has been disrupted by the offender's act. They said, “*Araara kana irraa kan ka'e Obbo Taklun maatii isaa waliin jiraachu danda'e jira, oso inni hidhame ta'e maatii isaatu rakkina keessa seena ture.*” Due to the reconciliation, Taklu (the offender) is able to integrate and live with his family. But if the case was not resolved through *araara* Taklu's family could have faced problem. According to V8, “*Araarri jiraachuun maatiin lammeen akka isaan walsodaataa hinjiraanne taasisa*” The reconciliation has removed the feeling of insecurity and animosity between the two families (V7, V8, 2014).

In V7's view, if the case were taken to court, what the family gets may possibly be the incarceration or punishment of the offender. But the two brothers said, “*Hidhamuun isaa abba keenya nuti dhabnne nuu hinkaasu.*” which means, the offender's imprisonment will not bring back their father whom they have lost. As stated by V7, “*adabbiin hidhaa mootummaa seeratu cabe jechuudhaan seera isaa cabjsiifacchuuf qofa kan kennamuu yoo ta'u maatii lammeenuuf*

³ V7 and V8's family is ethnically Burji.

garu homaa hingargaaru.” This literally means, imprisonment does not have any benefit for the victim and the offender, it is a punishment imposed on offenders for violating State law.

In V7 and V8’s views, the outcome of punishment is incapacitation of the offender which deprives the family of the offender its bread winner. In their view, imprisonment aims at ensuring the mere observance of State law. They said “*Seerri mootumma, Nama tokkoof murtteesa, Nama tokkotti murtteesa, aadaan garu lammeenu ilaalti.* This means in State courts, cases are decided for one party and against the other party but under customary law the outcome is negotiated where the interests and needs of both parties are considered. They viewed Borana justice process and outcome as restorative and user-friendly (V7, V8, 2014).

Case 2c:-V1 lives with his neighbor Halu Goba in Yaaballo town. The two families had disagreement concerning a stink coming from the goats Halu’s family was keeping. The case was taken to their Kebele, while the case between the families was awaiting decision, one day; a fight broke out as result of which four members of Halu caused severe bodily injury to V1. V1 accused Halu in court of law, but Halu’s family sent elders to V1 and requested *araara*. According to V1, since rejecting such request is against Borana custom, he accepted the reconciliation offer. According to the agreement all the expenses required for the treatment of V1 at Hawasa Hospital were paid by the offender. In addition to that, */horii buula/a* sheep to be slaughtered and eaten to recuperate was given to the victim by the offender. Finally, the written reconciliation agreement made between the two parties was sent to the court along with the testimony of the elders after which the case was dropped (V1, 2014).

Case 3c:- V4’s husband, Aero Dida was killed by Godana Qilxxu. The two were together at a certain *eela* watering cattle. In V4’s view, Godana killed her husband with full intention. He said he would kill Aero and did exactly what he said, “*siin ajeesa jedhee eeggate ajeese.*” For this

reason she had dissatisfaction with the 8 years imprisonment imposed on Godana Qilxxu. But even then since both the offender and the victim belonged to the same clan, elders from the offenders' family have proposed *araara* which was accepted and as a result of which the two families have settled the case through *araara*. The victim's family received 18 head of cattle and the cleansing ritual was done by slaughtering a sheep where the two families ate and drank together/*waliin sooratan/* symbolizing restoration of harmony. Under Borana indigenous system, even in case where an offender is imprisoned, *araara* would still be necessary to avoid revenge between the families (V4, 2014).

Case 4c:- Malicha Kutu has killed V3's brother Bati Bule 10 years ago. According to V3, the killing was intentional. Malicha was convicted and sentenced to 6 years imprisonment by court of law. In V3's view, since Malicha has killed his brother intentionally, he should have been sentenced to life imprisonment. But here again, *araara* was made between the two families and the offender paid 27 head of cattle as *gumaa* (V3, 2014).

In these cases (1c-4c), the interviewed victims or their relatives have acknowledged the importance of *araara* in avoiding possible future revenge. But with respect to those offenders who have committed crime of homicide intentionally; the victims supported incarceration. This view of victims is generally compatible with that of the broader Borana people who detest intentional homicide. Although *araara* would still be necessary, the prevailing view was, if those who intentionally killed others are allowed to escape incarceration merely by paying *Gumaa* and *araara*, it may possibly encourage the rich to intentionally kill any person.

Nature of sanctions under Borana indigenous justice system

The Borana strongly believe that the whole of their unwritten laws, norms, and ethical values (*safuu*) embedded in the Gada indigenous system serve as a device for determining right from wrong and prescribe measures to be taken in cases of infractions of these rules. Of all wrongs, those against human life or body, intentional and accidental killing, attempted homicide, harms to human body, injuries to human honour, wrongs against family and morals are considered crimes disruptive of *Nagaa Boorana*. Among the Borana, intentional killing, rape and theft are highly detested and they are often referred to regular courts. The Borana consider the intentional killing of a Borana by a Borana an unpardonable sin. The belief is, in spilling Borana blood, a Borana will make himself impure (*xuraa 'a*) leading to deprivation of *Boorantitti*. Actually, whether pre- meditated or accidental, killing of a person is a serious offense known among the Borana as *qakke*. *Qakkee* is categorized into “*qakkee nama du'ee*” and “*qakkee nama jiru*” Meaning *qakke* of the dead/killed/ and *qakkee* of those who are living but have suffered serious bodily injury (E15, 2013)

The Borana have strict rules against individuals who contravene their indigenous law. They have their own forms of *adaba* imposed on violators of their laws. For example, in serious crime like homicide, the sanction imposed on the offender is fixed in Borana *aada-seera*. In the past, the Borana had death penalty which was called *hamaa mudaa muddi* for serious and detestable wrongful acts. The Borana have relinquished long ago their power to impose death penalty to the State (E11, 2012).

The common practice among the Borana is that offenders admit and ask for pardon rather than denying the crime. In a person commits crime of homicide, where there is admission, since there will be little dispute on the facts of the case, the elders who take part in the *jaarsumma* will

just advise the killer to pay the fixed 30 head of cattle as *gumaa* to the victim's family. For serious bodily injury (*waldhoosu*), the amount is 15 head of cattle (E11, 2012; E15, 2012). *Gumaa* is an indigenous institution which is part of the Gada System used for settling blood feuds between persons, families, groups, clans, communities (Dibaba, 2012). But the payment of the *gumaa* is always preceded by the offender's remorse and his approaching the victim's family through elders for *araara*.

As regards sanctions, the fundamental belief among the Borana is that justice cannot be achieved by means of counter-violence or punishment. In their view, as it tries to correct injustice by doing injustice, incarceration would make things worse. The Borana say "*Haaloon haaloo hinbaaftu*" which means vengeance cannot end vengeance. They say "*haaloo nagaatu baasa*" which means only peace will bring an end to violence (E15, 2013; E11, 2012). The main concern of Borana Gada leadership is to maintain peace which involves mediating disputes and imposing sanctions that are restorative by their nature (Bassi, 2005; Asmarom, 1973; Tena, 2007). The juridical practice of the Borana mainly aims at the maintenance of social and personal harmony "rather than at the punishment of an offender" (Bassi, 1996, p.154). The

Borana do not have institutions such as police, prison and any other coercive apparatus to force the society. Borana is a clan-based society where every clan member enjoys certain benefits and privileges. Under Borana indigenous justice system, based on the principle of collective responsibility, clan members are collectively responsible for the harm one of their members cause to a victim. If one member of a clan disregards his obligations towards his clan and fellow Borana by repeatedly disobeying Borana *aada –seera*, the clan will withdraw all the benefits and privileges the habitual offender enjoys.

Among the Borana, an individual who disturb *nagaa-Boorana* by repeatedly infringing Borana *aada-seera* is considered as a person lacking the character of *Boorantitti* (Gufu, 1996). Such a person is outlawed by his clan and deprived of his status where he can no more claim clan protection. The clan to which such an offender belongs disowns him and discontinues all further responsibility for his criminal actions. If a person has violated rules having to do with the use of water resources, he will be punished by exclusion from using that water resource/*eela*/ which is used collectively by all clan members. The habitual offender will be deprived of access to these collectively used water resources and excluded from all vital social supports (E11, E15, 2013). I have personally witnessed one such exclusion during the 40th *Gumii Gaayyo* in August 2012. The summary of what has taken place at the 40th *Gumii Gaayyo* presented hereunder.

Exclusion/Abaarssa/Case at 40th *Gumii Gaayyo*

At the 40th *Gumii Gaayyo*, the case of a person who has raped a girl and defied the authority of the Gada was brought before the *Gumii* and he was cursed. The young person named Tarri was from Dirree district, Magaaddo village. This person has raped a girl as a result of which she became pregnant. As reported by the *Abba Gadaa* Guyyo Goba on the Assembly, the perpetrator of the crime was summoned by his clan elders and the *Raaba Gadaa* to be questioned but he refused to appear. He was also summoned by the police and failed to show up. Finally, when the case was brought to the *Gumii*, the *Gumii* summoned him three times; but he failed to appear.

The act of Tarri was described by the *Abba Gadaa* as a detestable and disruptive of *Nagaa Boorana*. He considered the act as an unacceptable under Borana *aadaa-seera* which required the decision of the *Gumii*. After hearing the case from the *Abbaa Gadaa*, *Gumii* members

discussed on the issue and finally decided to exclude Tarri from *Nagaa Boorana*. Since having known about Tarri's criminal act, Tarri's father has failed to advise his son to respect the law; he was also excluded from *Nagaa Boorana*. With regard to the punishment imposed on Tarri's father, according to Borana *aadaa-seera*, if a person harbors a criminal or advises him not to appear before elders, his act is considered against the law for which he will be punished.

Based on the exclusion declared by the 40th *Gumii Gaayyo*, Tarri and his father will not be looked for if they are lost; they will not be buried, if they die. No one will marry their daughters nor does any person give them his daughter. They will be deprived of the right to use water-wells/*eela*/belonging to Borana clans. No one should enter their houses and sit on the seats they provide. The *Gumii* declared that the exclusion will apply to any Borana who violates the exclusion imposed on Tarri and his father. If any person violates the exclusion by allowing them to use a well -water, that person will also face the same exclusion.

Among the Borana, the formal way of depriving a disruptive person his *Boorantitti* identity is by excluding him from *Nagaa Boorana* at *Gumii Gaayyo*. As a result of the exclusion, the law-breaker will be excommunicated from the community where every Borana will withhold greetings and blessings from him. Most importantly, the habitual offender will be deprived of all social privileges and ritual support required from the whole Borana. In their justice system, the Borana bring habitual law-breakers into line simply by withdrawing all the social privileges, benefits and ritual support required from the whole Borana including the daily greetings, blessings and the prayers of the Borana (E11, 2012). By being excluded from *nagaa Boorana*, Tarri and his father have been deprived of *Boorantitti* and all the privileges and benefits derived from it. Offenders like Tarri from whom the rights and privileges of *Boorantitti* are withdrawn are considered as *nyaapa* /enemies/. In May 2014, during my last field visit, I was told that Tarri

had asked for forgiveness and accepted the punishment imposed on him. This had resulted in the restoration of the rights and privileges he has been denied.

Certainly, in a situation like that of Borana where everything required for livelihood including water is collectively used and administered through clan system, a habitual offender who may possibly be subjected to such withdrawal cannot survive. In that context, the kind of sanction imposed on Tarri on the 40th *Gumii Gaayyo* can be considered a very severe punishment. In pastoral Borana, even a basic work like the extraction of water from the deep traditional wells requires the cooperation of numerous pastoral units. For a Borana in pastoral areas, withdrawal of social support and exclusion from access to dry season water wells means the impossibility of carrying out the traditional pastoral activity (Bassi, 1994).

Concerning sanction, when a crime is committed against a Borana, the belief among the Borana is, apart from the material punishment imposed on them based on *aadaa-seera*, the clan to which the perpetrator belongs will also be disposed to spiritual retribution from *Waaqa*. In the context of the pastoral way of life of the people, Borana *aadaa-seera* has put in place *adaba* that are effective by way of inducing obedience and enabling members of the society to maintain a strong sense of discipline. Such sanctions have been able to inflict fear on the people and the fear has induced obedience to the law (Baxter, 1978; E15, 2012). According to Professor Asmarom, “how deep the sense of order is among the Borana can be gleaned from the fact that homicide within their society is virtually unknown” (2000, p.27).

The Borana say “*Gosti sodaa kaffalti yakka irra of eega, wal’eega.*” This means the clans restrain themselves from committing crime for fear of paying *gumaa* (E11, 2013). The Borana view their forms of sanctions as constructive and restorative (Ibrahim Amae, 2006; Watson, 2003; Dejene, 2007; E11, E15, 2013). Under Borana indigenous justice system, women as a

collective also have their own sanction flowing from *Siiqqee* rights. When a woman's right is violated by a man and the woman seeks the support from fellow women, then the matter becomes "of serious concern to the whole community and collective action is required both on the part of women and on the part of men" (Kuwee, 1997, p.127).

***Araara* Ritual under Borana Indigenous Justice System**

Where a serious crime like homicide takes place, the common practice among the Borana is, the perpetrator will immediately report the incident to his near relatives and he will be kept at a certain temporary sanctuary. No Borana clan gives shelter to a culprit or a Borana who has spilled Borana blood with a view to hide him from justice. A culprit will be given a temporary sanctuary until the victim's relatives are approached and *araara* process begins (E11, E15, E13, E12, 2013).

The *araara* ritual commences by the family of the offender, with the help of elders, immediately approaching the relatives of the victim and asking for *araara* so as to avoid revenge. For this ritual, the elders from the offender's side take with them *ijibaata*, *hoola dheeta*, *daraara*, *qumbi* and ask for *araara*. The offender or his relatives say to the victim's relatives "Abba, *numaara*, *ni wallaale hoo'a daraara*." This means "have mercy, we are guilty, receive tobacco and coffee /*daraara*/" The offender is expected to personally face the victim or relatives he/she has hurt and takes full responsibility for the injury caused to the victim. The reconciliation rule requires that the wrong-doer verbally express his remorse to the victim's relatives. Without the offender's genuine remorse, and pleading for forgiveness by saying /*numaara*/, the process of *araara* itself cannot be initiated (E11, E17, E13, 2013).

According to the belief among the Borana, the act of spilling human blood or killing would cause not only make the killer's hands unclean, it also triggers *Waaqa*'s anger which cause His punishment on the offender, his descendants and clan. The impurity (*xuraa'umma*) resulting from the spilling of human blood can be cleansed only by ritual purification. The blood of the slaughtered sheep will wash away the blood of the deceased from the hands of the offender (*harka xuraa'e ququlleessa*). The relatives of the victim and the offender eat together from the same bowl "*warri lammeen waliin sooratu*". The act of eating from the same bowl will remove the feuds (*warra gumaa*) between the relatives of the victim and the offender thus bringing the reconciliation process to its consummation. This ritual process is necessary to heal the personal and social harmony disrupted by the wrongful act (EFGD2, 2013; E11, 2013; V2, 2014; E12, E13, 2013).

Under Borana indigenous justice system, the payment of *gumaa* addresses the material aspect of the problem only. But the spiritual aspect, meaning, genuine remorse and request of pardon by the offender and forgiveness by the family of the victim are the most indispensable features in the whole process of the *araara*. What makes the reconciliation process complete is addressing the spiritual and emotional aspects through the ritual practice (E15, E11, E12, E13, 2013).

After making genuine remorse and the reconciliation, the offender will ask the victim's family to reduce the amount of the *gumaa*. For example, in the case of crime of homicide, if the fixed number of *gumaa* is 30 head of cattle, the number of head of cattle received by the victim's family will usually be less than the 30 fixed by the law. In Borana culture, a Borana has no interest of receiving /*gumaa*/ because taking it may lead to some misfortune. They say "*horii dhiigaati, namaa hinhortu, gumaa nyaachuun gumaa baasisa.*" Which means, since it is a blood

money, the cattle don't breed, besides taking *gumaa* may result in paying *gumaa*. In their justice process, the Borana are interested in the reconciliation and restoration of peace/*nagaa Boorana*/ that has been disrupted by the wrongful act which would in effect give Borana indigenous justice system restorative and healing character (E15, E11,E13, 2013).

Chapter 6: Users' Appraisals of the Processes and Outcomes of Borana Indigenous Justice System

In the preceding Chapter, we have examined Borana conception of law and justice, the mechanism of dispute resolution, the processes and the outcomes of the justice system. In this Chapter, views of offenders, victims, Gada elders and justice officers about the processes and outcomes of Borana indigenous justice system are explored with a view to determine the extent to which the justice system is user-friendly, restorative and healing. The Chapter looks into the potentials within Borana indigenous system which may be harnessed in advancing justice that is user-friendly and responsive to the needs of the people. In order to understand and appreciate the performances of the justice system, verbal accounts of the performances of the justice system has to be obtained from the people. The following part of the study presents the merits and demerits of Borana indigenous justice system as viewed by offenders, victims, Borana elders and justice officers.

When a certain crime is committed, the main actors at the time of the crime and afterwards are the perpetrator of the crime, the victim who suffered harm as a result of the crime committed and their families. Community members whose peace and social harmony has been disrupted as a consequence of the crime are also the concerned parties. In the context of Borana where two justice systems are involved in handling criminal cases, the police, public prosecutors and courts are also actors in the justice process. As the principal parties directly affected by the crime and its consequences, views of offenders and victims have been sought by way of interview and focus group discussion and presented first after which views of Gada elders and justice officers are considered.

Views of Offenders

When considering views of offenders, the plural legal landscape and the unregulated relationship between the two justice systems operating in Borana have to be taken into account. Owing to this, the offenders whose views have been sought are categorized into two. On the one hand, we have those who are in prison, on the other; there are those who, having settled their cases out of court through reconciliation and have been reintegrated into their communities.

From the two groups, let us first look at the views of those offenders who were in Yaabballo Prison at the time of data gathering for this study. Although they have settled their cases based on Borana indigenous system, the cases of this group have been taken to court of law and the offenders have been sentenced to different years of imprisonment. For this category of offenders, the co-existence of the two systems had harmful consequences by way of subjecting them to double sanctions/punishments. So, the major complaint of the prisoners was about their subjection to double sanctions for the same offence (OYPFGD1, 2013).

When asked whether or not they could have avoided the sanction imposed under Borana indigenous justice system, the prisoners replied that if there is no *araara*, vengeance would follow. In order to avoid possible future revenge, *araara* based on Borana indigenous justice system would still be necessary even after release. That was why all the prisoners had to pay some number of head of cattle as *gumaa* in addition to the imprisonment. The prisoners had no objection to some kind of punishment for the crime they have committed under either system. They viewed subjection to double sanctions for the same offence objectionable and unjustifiable (OYPFGD1, 2013).

Although they have acknowledged that *araara* is the most important feature of Borana indigenous justice system, the prisoners were critical of the way *araara* has been applied in the

particular cases of offenders in prison. In their view, *araara* as applied to them lacked its original spirit and value. Usually, the *araara* process starts immediately after the offence has been committed. But offenders are arrested and put in custody right at the time of the commission of the crime or immediately after. For this reason, they will have no way of taking part in the reconciliation which starts immediately. The *araara* has been made in their absence where the fixed number of head of cattle were collected from the offenders' family and given to the victims' families. The reconciliations have been made only between relatives of the victims and the offenders. From the prisoners' viewpoint, since they were the ones who committed the offences, reconciliation made in their absence would not bring about the intended result. It does not bring about full harmony between the two families and does not succeed in the prevention of possible *haalo* (OYPFGD1, 2013).

In the offenders' view, genuine *araara* would require that the offender physically be at the place of reconciliation and give his/her genuine personal apology and be forgiven by the family of the deceased personally. What is more, for a proper *araara*, they said that all the spiritual, material, personal and communal aspects have to be dealt with conclusively. But in the kind of reconciliation made in the offender's absence, the culturally indispensable spiritual, psychological and emotional involvement of the offender will be lacking. In the prisoners' view, in its outcome, a reconciliation made in the absence of the offender leaves the key problems unresolved and thus fails to satisfy the needs of both families and that of the community seeking restoration of harmony disrupted by the criminal act (OYPFGD1, 2013).

There were many among the offenders who went further and complained about the emergence of practices that are incompatible with Borana *aada -seera* and its restorative values. According to the offenders, in the past, relatives of victims rarely received the whole 30 head of

cattle fixed by the law for homicide crime. There was an inbuilt system of institutional pardon where relatives of victims received reduced number of head of cattle out of the total of 30. Provided that the offender publicly expressed his/her genuine apology and asked for forgiveness, victim's relatives took only nominal amount of the fixed *gumaa*. But nowadays, as explained by the prisoners, the tendency being noticed within the indigenous system is the growing interest of victims to receive more number of head of cattle than the amount they used to receive under Borana *aada-seera*.

As stated by the prisoners, in the past, the belief among the Borana was that if the full amount of *gumaa* was received, the receiver and his/her relatives will be afflicted by some kind of misfortune. But nowadays, this belief is being eroded and there is a growing trend among the victims' families to take the full amount of head of cattle in serious criminal cases. Although very few, there are also emerging cases where, having received the full amount of *gumaa* some relatives of victims seek incarceration of the offenders before the regular courts (OYPFGD2, 2013).

Under the condition of their imprisonment, the prisoners had the view that the number of head of cattle given to the victims' families as *gumaa* could have sustained the life of members of their families for a substantial part of the time they stay in prison. The prisoners viewed the payment of a number of head of cattle by their families and clan as a collective punishment for the crime they have committed as individuals. According to some of the prisoners, the payment of head of cattle has impoverished their families, exposing some of the members of their families to hunger and begging (OYP16, 2013; OYP21, 2013).

One of the offenders interviewed in Yaabballo Prison who has been subjected to the sanctions of both systems was OYP21. He explained the difficult situation offenders like him

were in saying “*Aadaan nu lakkifnne seerri mootumma nu lakkifnne*” which literally means both customary and State laws have not spared them. As neither system freed them from punishment, they became not the beneficiaries but victims of both systems (OYP21, 2013).

Here it is important to consider the complaints of offenders in Yaaballo Prison involved in crimes involving non-Borana. As regards inter-ethnic killings, the sanction of paying 30 head of cattle is executed by joint forces of the local government executive authorities and traditional authorities based on the joint agreement made between the different ethnic groups in Borana and its surroundings in the year 2007. The joint agreement was made with a view to stop the escalating inter-ethnic conflicts in and around Borana.⁴ But as explained by the offenders, during the process of implementation of this sanction, these local authorities often demand from the offenders extra number of heads of cattle in excess of the number fixed by the law saying that it will be used to cover the expenses required for executing the sanction. As a result of this, offenders under this category complained of shouldering extra burden than those who pay the maximum of 30 head of cattle or less for intra-Borana cases (OYPFGD1, 2013).

Regarding the rehabilitating role of the prison and its setting, the prisoners viewed the prison rather as a center where they have been informed about various methods of committing different crimes from their inmate. Besides, the longer an offender was kept in prison and the more distanced he was from his family and community, the more he learnt from his inmates which, in their view is unlikely to reduce recidivism. According to the prisoners, long years of alienation from their family and community appeared to make reintegration very difficult when they are released (OYPFGD2, 2013).

⁴ Allona Peace conference was held on 24th and 25th of April 2007 among the Borana the Guji and the Gabra, organized by Ethiopian Red Cross Society.

In the prisoners view, the harm resulting from their being kept in prison goes far beyond the prisoners themselves and harms their innocent children and families whom they could have supported had they been with them. To the extent that significant amount of resources and budget are allocated for the feeding and keeping the offenders in prison, they viewed the social cost of incarceration as considerable social cost. Imprisonment has been viewed as a destructive type of punishment by this category of offenders (OYPFGD2, 2013).

During the focus group discussion, the prisoners acknowledged reintegration of offenders into the community as one of the most cherished values in the process and outcome of dispute resolution under Borana indigenous justice system. But owing to the fact that the formal justice system gives no recognition to the indigenous system and its jurisdiction over criminal matters, as offenders, they could not enjoy the advantage of reintegration provided by the indigenous justice system. The prisoners described their situation as helpless before the authorities of the two rival systems and thus made vulnerable to double punishment (OYPFGD1, 2013).

As stated by some of the interviewed prisoners, there have been increasing numbers of rich or powerful individuals who have used both systems opportunistically and escaped justice. As revealed during the FGD with the prisoners, although corruption has been common only within the formal justice system in the past; corruption was on the increase within the indigenous justice system. The prisoners have mentioned specific cases where wealthy and powerful individuals bribed officials of the formal justice system and succeeded in settling homicide cases out of court and the offenders been set free. Where the rich can freely opt for any of the two systems that fit his/her interest, poor offenders become victims of the rivalry between the two systems. According to the prisoners, irrespective of what Borana *aada-seera* provided the wealthy and the

powerful have ways of improperly using or avoiding any one of the systems as they think fit (OYPPFGD2, 2013).

Overall, all the interviewed prisoners have expressed their displeasure with the outcomes of the parallel and unregulated operation of the two justice systems in Borana. They attributed their being tried twice for the same offence and the consequent subjection to double sanctions to lack of mutual recognition between the two systems operating in Borana. In their view, since both systems are capable of asserting their authorities on them, they had no power of defying the systems. Neither did they have opportunity of freely opting for justice system of their own preference nor disregarding the other. Only the powerful and wealthy offenders or victims have the power to opportunistically manipulate both justice systems and get outcomes favorable to them. The interviewed prisoners stated that the outcome of the justice processes under both systems is becoming more and more disagreeable to poor offenders and victims. In their view, the poor who lacked the means of resisting or bribing the authorities of the two rival systems have become defenseless against the double sanctions imposed by the systems (OYPPFGD2, 2013).

When we come to the views of those wrongdoers who have resolved their cases out of court through reconciliation, they have described the process and outcome of Borana indigenous justice system as being responsive to the needs of those affected by the wrongful act. According to the wrongdoers, the system has provided them with an opportunity of solving their own problems in their own ways. In particular, as it has enabled them to reintegrate into their communities, the wrongdoers have expressed their satisfaction with the outcome of Borana indigenous justice system.

According to ONP2, when someone suggested to the mother that she takes the killer of her son to court, what she said was, “*Kan du’elle sila du’e hindeebi’u kan ajeese haahidhamu jedhee gaafachuun caala garaa maatii walitti hammeessa malee faaydaa hinqabu*. This means, her son has already died and he will not come back. Seeking incarceration of the killer does not have any benefit; it would rather increase animosity and worsen the already damaged relation between the two families. To ONP2, this statement of the mother of the boy who was killed by him meant a lot to him which made his remorse great.

The commonly shared view among those offenders who settled their cases out of court through *araara* was that Borana indigenous justice system aimed at finding out truth/*dhugaa baasu/*. As to why he preferred *Borana aada –seera* over the formal justice system ONP1 said that “*Seerri aada dhugaa dubbadhu jedha, seerri mootumma garu haali jedha*.” This in short means, under Borana indigenous justice system, the offender is required to tell the truth but under the formal justice system the offender is advised to deny/*mormi jedhanii gorsu/*. In their view, this search for truth is a valuable heritage of Borana indigenous justice system is worthy of respect and nurturing (OYPFGD2, 2013; OYP16, 2013; ONP1, 2014; ONP2, 2014).

In the offenders’ view, more than the *gumaa* which takes care of the material aspect of the harm, the ritual part of the reconciliation (purification ritual) was considered as an important element in the healing of the injury that has been caused by the offence. In their view, *araara* is the best option for stopping animosity and the cycle of *haalo* between the families of the offender and the victim. They all viewed the restorative and healing outcome of the Borana indigenous justice system as more constructive than incarceration. They said “*haaloon haalo qofa fiddi*” which means revenge breeds only vengeance. Another important aspect of Borana

indigenous justice system which the offenders considered valuable was the reintegration of offenders into their communities (ONP1, ONP2, 2014).

In general, as one can gather from the interviews made with both groups of offenders, when assessed independently, the process and outcome of Borana indigenous justice dispute resolution mechanism is well-regarded. Both groups of offenders viewed the justice system responsive to the needs of all those affected by the offence committed. The offenders viewed the payment of *gumaa* to the victim, the consequent *araara* between the two families and the reintegration of the offender into the community as user-friendly. If the reconciliation made under Borana *aada-seera* was to be given recognition and system operated effectively, the offenders welcomed the continued existence of the justice system (OYPFGD1, 2013).

Finally, all the offenders have expressed their concern about general weakening of social systems and the increasing abuse of power resulting in lack of trust for the systems. They have raised their main concern about the increasingly diminishing role of Borana indigenous justice system in the handling of criminal cases which tend to deprive offenders of the opportunity of reintegration into their communities provided to them by the justice system (OYPFGD1, 2013).

Views of Victims or Relatives

In the context of this study, by victims, we mean those persons who as a result of a criminal offence lost their family members and those who have suffered serious material or bodily injury. In the case of those whose family members have been killed, the relatives of the deceased have been interviewed but in the case of those who have suffered bodily injury, the victims themselves have been interviewed. One dominant view shared among all the victims is that Borana indigenous justice system allowed them to take part in the dispute resolving process. All the

victims appreciated the indigenous justice system mainly because the dispute settlement was inclusive in its approach and the process took the form of dialogue and the outcome was consent based and restorative (V5, V1, V4, 2014).

One of the victims interviewed was V1, a Borana who has suffered bodily injury as a result of being beaten by Halu's family members. He stated that Borana indigenous justice system has values which the formal justice system lacks. According to him, the indigenous dispute resolution mechanism involves all the concerned parties and the outcome is user-friendly. As a victim, he could see no gain from the imprisonment of the offender. He said "*haaloon haalo qofa fiddi malee nageenya waliini hinfiddu.*" This means, retribution will breed only hostility, it does not bring social harmony. As stated by V1, "*araarri qaama seeraa mootummaafille hojii salphisti.*" which means settling cases out of court will reduce the case load on regular courts, which in his view is a social benefit.

Concerning the merits of reconciliation V5 said, "*Hidhaan jaraa maal naa buusa? Araara filachukoo namoottan duratti wal hinbeekneen maatii tokko na taassise jira.*" Which literally means "what do I get from the incarceration of the offender? For me, in opting for reconciliation, I came to be a family with the people I never knew before." According to ONP2, the victims' family said "*kan ajeese haahidhamu jedhanii mana seera mootumma gaafachuun diinumma caala jabeessa.*" This means taking the case to State court and requiring the incarceration of the offender would deepen animosity between the two families.

As regards crimes committed by offenders intentionally, views of victims differ from cases where crimes are committed by offenders accidentally. In cases where perpetrators have killed victims intentionally, relatives and families of the victims inclined to favor the offenders' incarceration. Intentional homicide is considered a disgraceful act among the Borana. For this

reason, a Borana who intentionally spilt Borana blood (*dhiga Boorana dhangalaase*) doesn't have forgiveness. He will usually be handed over to the government or banned from the community (E11, E12, V4, V3, 2014).

As reflected in the interviews made with the relatives of victims or victims, *araara* has been viewed as helpful to both offenders and victims. Victims are paid *Gumaa* and offenders will have the opportunity of being reintegrated into their communities instead of incarceration. The victims emphasized the crucial role of the purification ritual in the reconciliation process. In their view, *araara* cannot be considered complete without the cleansing ritual. According to V5, his family was reluctant even to talk with ONP3's family when the elders first came to their place without fulfilling things ritually required for reconciliation. But they have accepted the request for reconciliation when the elders came back and asked reconciliation according to Borana *aadaa seera* (V5, 2014).

In general, the victims viewed Borana indigenous justice system and its *aada-seera* as friendly to both to victims and offenders. The processes and the outcomes are responsive to the needs of wrongdoers, victims and the community. It is victim-friendly in the sense that victims take part in the justice process and paid *gumaa* for the harm or loss suffered as a result of the wrong committed against them. The victims viewed the response offender-friendly as well because after having paid *gumaa* for the wrong they have committed, Borana *aadaa-seera* allows the wrongdoers to integrate into their communities (V5, 2014; V7, V8, V1, 2014).

Views of Gada Elders

Borana elders assert that their *aadaa-seera* is made by Borana people and as such reflects their worldview and cultural values. Since the people are familiar with the laws and they are expression of the people's cultural values, they are respected. Among the Borana, their *aada-seera* is considered as a guardian of *nagaa Boorana*. In their view, their *aadaa seera* has enabled them to maintain *nagaa-Boorana*. According to the elders, Borana justice system has worked well without the need for prisons and the police.⁵ In terms of maintaining law and order, user-friendliness of the justice process and outcome, Borana elders stressed that their *aadaa- seera* has generally been effective. In the elders' view, the outcome of any justice process should be judged in terms of its user- friendliness or responsiveness to the needs of users (E11, 2013).

With regard to sanction, the elders affirmed that they have effective penalty imposed on a person infringing *aadaa seera Borana*. In their view, the main purpose of their sanction is not to punish the offender but to maintain *nagaa Boorana*. In the elders' belief, punishment can be justified only if it brings about the intended result. The payment of *gumaa* by the offender to the victim is viewed as a constructive way of applying punishment. *Gumaa* is considered as a victim- friendly response which makes the offender accountable for his wrongful act. According to Borana elders, the offender's reintegration into his community is a healing response which re-establishes the harmony disrupted by the crime (E11, E15, 2013).

In the whole process of ritual purification or restoring harmony, genuine remorse and request of pardon by the offender and forgiveness from the victim or the relatives are the most essential elements. Rather than the payment or the being paid *gumaa*, great importance is attached to the ritual cleansing. As explained by the elders, the killing of a human being causes

⁵ From what I have gathered from the police in the area and the justice officers, in those districts where the IJS is functioning well, very few crimes are reported. In the entire Borana Zone, there is one Prison at Yaabballo, the Zonal capital.

God's anger which may follow with severe punishment on the perpetrator and his clan. In order to get forgiveness from God and be spared from His possible vengeance, the cleansing ritual is considered obligatory among the Borana (E11, E15, E13, 2013).

According to the belief among the Borana, if the spiritual aspect of a dispute is not dealt with through purification ritual, the reconciliation will not be considered complete. The cleansing ritual will address the spiritual and emotional aspect of the disharmony created by the act of the offender. Even if a criminal case has already been submitted to regular court and the offender has been imprisoned, reconciliation has to necessarily be made after the release of the offender so as to reestablish/restore harmony among the families affected (E11, E13, E12, E15, 2012).

Borana elders claimed that their indigenous justice system does not harbor recidivists; rather it detests them more strongly than the formal justice system. The elders confidently argued that their system has an inherent mechanism of punishing or excluding habitual offenders from the usual protection given to a law-abiding clan member. The elders said "*Gosti sodaa kaffalti yakka irra of eega, wal'eega*" which means, for fear of collective payment of *gumaa*, every clan makes sure that its members refrain from committing crime. Since habitual offenders not only disrupt *Nagaa Borana* but they also drain resources of the clan, a clan withdraws its support from such disruptive member and clan elders often refer the cases of such persons to the regular courts (EFGD1, 2012).

According to Borana elders, their justice system does not leave offenders unpunished but it applies constructive punishment in order to restore the disrupted social harmony. They claimed that their system imposes an effective penalty on those who infringe Borana *aadaa-seera*. In their view, their penalty does not aim at removing the offender from the society, but to reintegrate him into the society. Borana elders consider the removal of offenders from their

community as a destructive way of applying punishment. As it removes and distances the offender from her/his community, incarceration does more harm than good. For the elders, incarceration is simply a vindictive measure devoid of any restorative value. But reintegration of the offender into her/his community has more productive outcome than locking him/her behind bars for years (EI3, EI5, EI1, 2013).

The displeasure among Borana elders is that Ethiopian State has unjustifiably disempowered them by depriving them of the opportunity to resolve their criminal disputes through *araara*. As explained by Borana elders during the FGD, the successive regimes in Ethiopia have been building their own structures with a view to displace the Gada governance system. Their indigenous justice system has been devalued and foreign legal system has been imposed which in the elders' view has jeopardized Borana way of life (EFGD2, 2013).

Abdullahi Shongolo (1994) has reported that Borana people have expressed their displeasure concerning State intervention into their traditional authority as regards election of Gada Councilors (*hayyu*) during the 1988 Borana *Gumii Gaayyo*. In that episode, those who were defeated in the elections made based on Borana governance system sought government intervention in opposition to Borana *Raaba-Gada* Council who were in charge of the election. The request for intervention was entertained by the government positively as a result of which several candidates, who have not been in any Borana Gada councils, were brought to the people by government authorities to be elected. Borana elders took the act of intervention by the government as an act of undermining and weakening their Gada governance system and their indigenous justice system (E12, 2013).

According to Borana elders, the government's ever-increasing intervention has brought about certain trends that are irreconcilable with Borana *aada-seera* and its Gada system. As

stated by the elders, in the past, only wisdom, competence, truthfulness, experience and respect for laws were the main criteria for becoming a *hayyu*. A potential *hayyu* was observed over many years and there are several stages for becoming a *hayyu*. Being a *hayyu* was a process that started from birth and it is the clan that chooses the *hayyu*. In their view, a leadership not based on competence, firstly doesn't have deep knowledge of Borana *aadaa-seera* and its values. Secondly, as its loyalty to Borana indigenous laws and values of the people is less, it can easily be co-opted by State functionaries. With the increasing intervention of the government, some personalities have been emboldened and exploiting this undermining of Gada system by way of trying to be *Abbaa Gadaa* or *Hayyu* not based on competence as it was in the past but based on their wealth (E12, E11, E13, E15, 2013).

Regarding natural resources governance, in the past, the use and regulation of valuable resources has been based on indigenous *Seera marra bisaani* (water and pasture laws). Nowadays, the young Kebele leaders often act as water well (*eela*) and pasture use supervisors. Besides, some of the newly introduced government development policy like resettlement and private farming which are unknown among the pastoral Borana is considered disruptive of their pastoral life (E11, E12, E15, 2013).

Borana elders consider Borana Gada governance system as the custodian of Borana cultural values and beliefs which they want to maintain. For them, the ongoing government cooptation of their leadership endangers the survival of Gada governance System and its institutions. As a result of the cooptation, Borana indigenous values and beliefs embedded in Borana Gada system are increasingly being undermined. The elders said, "*Akka amma jirutti egereen aadaa Boorana nama yaadessiti*" which means if things continue the way it was, the future of Borana cultural values would be disturbing (E12, E15, 2013).

Among the Borana people who want to preserve their indigenous Gada governance system, the growing trend where Borana *Abba Gadaa* increasingly become more friendlier to the government than to Borana Gada cultural values and the people is being viewed as a danger. As stated by the elders, the government is engaged in cooptation of Gada leadership and is trying to use the leadership for the promotion and implementation its own interests. Besides, as part of government structure, Kebele Associations draw their *abba ganda* and committee members from younger men who have little or no knowledge of Borana indigenous world view and values (E11, E12, E15, 2013).

Under Borana Gada system, Gada leaders are expected to represent and promote the interests and cultural values of Borana people but nowadays, the leaders are increasingly becoming detached from the people. As stated by a prominent Borana elder “*Korri sabaa si’anaa akkuma walgahii mootummaati*”. This means Borana assemblies are becoming like meetings of governments. The ongoing efforts government authorities have been making to co-opt Borana Gada leadership has created uneasiness among concerned Borana elders (E11, E12, E15, 2013).

In general, Borana elders regard the process and outcome of their justice system as restorative and user- friendly. The elders want the State justice system to leave limited room for their indigenous justice system so that some criminal cases may be settled out of court. In their view, the functional and widely accepted Borana indigenous justice system should not be barred from handling criminal cases if the people prefer it and if that does no harm to others. Regarding the potential of the justice system, the prevailing view among Borana elders is that it can be an effective means of maintaining peace among the Borana if it is maintained. In their view, in the absence of inconsistency with human rights or harm to others, their indigenous justice system

should continue functioning. Among the Borana, the intervention being made by the government is being viewed as a violation of their freedom to use their indigenous justice system. Concerning their view of the formal justice system, they attributed the strength of the formal justice system merely to the power imbalance between the State and the indigenous Borana Gada governance system. According to Borana elders, the people have no power to disobey the formal justice system since it has the support of state coercive apparatus (E13, E12, EFGD1, 2012).

On the whole, the interviews made with Borana elders has revealed that offenders, victims of crime and the people want the survival of Gada governance system and its institutions. The indigenous justice system has been viewed by the elders as an effective tool for the maintenance of *nagaa Boorana*. Borana *hayyus* have also expressed their concern about the growing intervention of government authorities by way of co-opting Borana Gada leadership. Borana elders consider the government's cooptation of their leadership as a strategy of weakening Gada System, its values and institutions with a view eventually displace their indigenous justice system (E11, E12, 2013).

Views of Justice Officers

In order to have sufficient understanding of the potentials of Borana indigenous justice system, we need to know views of justice officers who have a role in the criminal justice process and outcome in Borana. In the context of this study, justice officers refer to interviewed officers from the judiciary, public prosecutor, the police and prison system of the study area. Concerning the potential of Borana indigenous justice system, the justice officers have views divergent from Borana elders. Let us look at the views gathered from these officers so as to determine where it differs or converges with those gathered from others.

One of my interviewees from the justice officers was JO1 who was the president of Borana Zone Justice Bureau. Referring to the existing practice concerning the handling of criminal disputes, JO1 explained that both systems handle criminal cases independently based on their respective laws and procedures. As explained by JO1, the relationship between the two systems is undefined and unregulated. According to JO1, even with the legally declared exclusive monopoly of regular courts over all criminal matters, in practice, almost all criminal cases are being handled by Borana indigenous justice system. The fact that a certain criminal case is being handled in a regular court has not as yet stopped the indigenous justice system from handling the same case (2012).

The justice officers have acknowledged the fact that Borana people prefer to settle their disputes including criminal disputes through *araara* based on Borana *aadaa seera*. If a case reaches court of law somehow without the disputant's knowledge or will, the possible witnesses usually fail to show up or withhold the necessary evidence from court when they are forced to appear. In such cases, what the court will eventually do is to wait for some time and then close the file (JO7, JO1, JO2, JO3, 2012).

According to JO1, familiarity with the indigenous laws, institutions and the procedure is the major reason why the Borana prefer their indigenous justice system. In regular courts, the applied laws and the procedure used are unfamiliar to the people. According to the officer, accessibility, participatory process and the restorative outcome of the *araara* may as well be other possible reasons. As stated by the officer, in most instances, from among the Borana, a few of those who opt to go to court are those who think the prosecutor or the police may not have evidence to prove their guilt and make them punished. In so doing, they want to escape the

possible punishment resulting from finding of truth under the indigenous justice system ⁶(JO1, 2012).

Regarding types of crimes usually settled out of court and those submitted to regular courts, JO1 stated that cases of bodily injuries, accidental killing (*dagu*) and crimes between family members are usually settled through *araara* based on Borana *aadaa seera*. But as theft and rape are detested crimes among Borana people, these offenses are often referred to regular courts. As stated by JO1, as a pastoralist society with communal rights over the most important natural resources, theft and other crimes relating to resources are infrequent in Borana. The very few of the theft crimes are committed by those who are destitute and are in urban centers (JO7, JO6, 2013).

The interviewed justice officers have acknowledged that families of offenders including victims most often request regular courts to discontinue the proceedings and release the offender by accepting the *araara* made out of court. But in the officers' view, where the law has not given to the indigenous justice system the authority to handle criminal matters, there is no way of accepting decisions given based on indigenous laws. Even if a case has already been settled out of court by the parties through *araara*, the court has to proceed with the trial and give its independent verdict based on the formal law. Based on the formal law, a case can be dropped only where there is lack of evidence or in case provided by law (PO2, JO1, JO2 JO7, JO6, 2012).

The police and the public prosecutors have also acknowledged that disputants occasionally submit request to the police and the prosecutors to withdraw the case to resolve the case through *araara* before trial begins or after the commencement of the trial. However, based on the

⁶This view of the justice officer is shared by Borana Gada elders.

criminal law of Ethiopia, the officers stated that they have no legal authority to entertain such requests (PP1, PO2, 2013).

In the process of investigating into criminal cases, police officers from Borana Zonal Police Bureau stated that they have their own independent structure going to the local levels through which they obtain information about crimes in society. With the help of this structure, even before victims report the case to the police, the police may receive information about the occurrence of a certain crime. As soon as it received information even without formal complaint, the police will start investigation. With the exception of upon complaint crimes, the police should start investigation as soon as it gets information because it is a matter of State concern. Failure to do that will make the police responsible (PO2, 2013).

According to the police officer interviewed, a police may arrest the possible suspect immediately and in the process of the investigation there is a possibility of getting evidences. In addition, others who are summoned to the police station at this early stage may sometimes give their testimony. At this stage, a reconciliation agreement may be made between the families of the offender and the victim and presented to the police with a view to request withdrawal of the case. The police cannot accept such request but proceeds with the investigation. The police may discontinue the case if there is no sufficient evidence to prove the case before court of law. According to all the interviewed officers, where families of the offender and the victim have settled their case out of court through *araara* and where they want the defendant to be released, the common practice among the Borana is not to give testimony to the police or to courts. Particularly if the *araara* resumes and becomes complete before the witnesses give their testimony at the police station, both the offender and the witnesses can possibly escape any

trouble. In such cases, the file will be closed for lack of evidence and the defendant will be released after being kept in detention for some time (JO3, JO1, JO7, PO2, PP1, 2013).

In view of the fact that Borana indigenous justice system does not have coercive apparatus to enforce its decisions, when asked whether there have been requests from the indigenous justice system officials to assist them in enforcing their decisions, JO1 explained that the indigenous justice system has its own mechanism of enforcing decisions. Such requests rarely come, but when that happens, it usually goes to the Zonal administration and security bureau. But when such requests come, those involved in the enforcement of the decisions usually try to exploit the situation and request more head of cattle than decided by the elders. When such cases of payment in excess of what has been fixed occur and the case is brought before court of law, the court usually orders the return of the amount taken in excess (JO1, 2012).

JO1 remembered one case where an offender requested the regular court to cancel decisions given based on Borana indigenous justice system with a view to reclaim the 30 head of cattle the clan has paid as *gumaa*. The offender was trying to exploit the possibility of cancellation of the payment of *gumaa* made based on the indigenous justice system. According to JO1, this was a dilemma for the court because on the one hand, the 30 head of cattle was paid on the basis of agreement. On the other hand, the court had to find out whether the taking of the property was lawful. But since the *gumaa* was paid by the offender's clan based on collective responsibility; his attempt was opposed by the clan as a result of which he discontinued the case (2012).

As regards the possible areas of crimes where the two systems work together, they stated that the two systems generally operate independently with one exception. This has got to do with cases involving inter- ethnic conflict. In the year 2007 a joint agreement known as Allona Conference was made between the different ethnic groups in Borana and its surroundings to

apply Borana customary sanctions of paying 30 head of cattle for any killing or violence between ethnic groups. Based on this agreement, local authorities of both systems undertook to enforce jointly the sanctions or force the perpetrator to pay the 30 head of cattle in the event of any killing or violence between ethnic groups (E11, JO1, 2012).

But as explained by the justice officers in Borana, in view of the existing uneasy and undefined relationship between the two systems, they encountered difficulty in implementing the joint agreement. What became apparent since then proved the difficulty of involving the two strange bed-fellows in implementing this task. First of all, in the application of the customary sanction, instead of the established principle of collective responsibility of the clan, the agreement opted for individualization of crime which got little acceptance from the people. Secondly, the joint enforcement undermined the recognized ritual aspect of the dispute settlement. Thirdly, in the process of enforcing the payment of the sanction, the local executive authorities have exploited the situation and collected more than what is fixed by the law. This has given rise to discontent among the defendants. The victims and their relatives also complained that certain number of head of cattle is withheld by these local authorities from the amount that should have been given to them (JO1, E11, OYP9, 2013).

The experience in Borana has shown that there have been many cases where disputants made agreements and requested the withdrawal of the cases after the trial has begun or before it commenced. But except for upon complaint crimes, the regular courts have refused to accept the requests made by the parties. The justice officers contend that Borana indigenous justice system is acting without legal authority to handle criminal cases. According to the belief of these officers, the State has exclusive authority to punish the offender (JO1, JO7, PO2, 2013).

The officers acknowledged the existence of rivalry between the two systems which is causing confusion among the users of the system. The officers have witnessed families of offenders and victims requesting the release of offenders by recognizing the *araara* made based on Borana indigenous justice system. But in view of the fact that the formal criminal justice system has given the exclusive authority of handling criminal matters to State courts, such requests have been rejected. The officers generally welcomed the user- friendliness of the process and outcome of Borana indigenous dispute settlement system but doubted its viability as a system. They acknowledged the restorative quality of Borana indigenous justice system (JO3, JO1, 2013).

Overall, in this Chapter, an attempt has been made to explore views of Borana elders, offenders, and victims concerning the user-friendliness of Borana indigenous system and its criminal dispute resolution. From Borana elders' perspective, their *aadaa-seera* is viewed as an effective means for the maintenance of *Nagaa-Boorana* and for this reason they want their Gada governance system and their justice system to continue. They consider the penalty their justice system imposes on wrongdoers as a constructive form of applying punishment. In addition to rejection of their justice system, the elders have also stated their serious concern about the persistent government intervention in the form of co-opting their Gada leadership with a view to weaken Gada governance system.

In the case of offenders, as it has been seen, they have been categorized into those whose cases have been handled by both systems independently and those whose cases have been settled out of court through *araara*. Those offenders whose cases have been resolved out of court through *araara* have appreciated the process and the outcome of Borana indigenous justice

system. They have said that *araara* has enabled them to avoid incarceration and be reintegrated into their communities and live with the victims' families and the community in harmony.

But to those offenders whose cases have been subjected to trials by both systems separately, Borana indigenous justice system has been viewed as an additional means of punishment. As they have been imprisoned and also forced to pay *gumaa* to the victims or their relatives, they considered themselves as victims of the parallel existence of the two systems. The *araara* being made in their absence is not considered a genuine and effective *araara* in the eyes of these offenders. Besides, these offenders view the *gumaa* paid to the victims' families by their families and clan as a collective punishment that has impoverished their families. In short, this category of offenders viewed themselves as victims of the competition between the two systems operating independently in Borana.

The victims considered Borana indigenous justice system as victim-friendly because it has addressed their needs. In the victims' view, the *araara* offered tangible benefits to victims of the crime and offenders. Offenders are made accountable for the harm they have caused to victims by way of paying *gumaa* to them or their families. But as revealed in the study, there were relatives of victims who insisted that offenders who committed intentional homicide be incarcerated even where *gumaa* has been paid and reconciliation made. With the exception of this, all other victims expressed their satisfaction with the outcome of Borana justice system which in their view focuses on healing and restoring the damaged human relationship,

Overall, as it has been revealed in this part of the study, Borana elders, offenders, victims of crime and justice officers are aware of the existence of two rival justice systems. They also know that both systems operate independently as rivals with undefined and unregulated relationship. Particularly, to those offenders who have been subjected to double sanctions, the

existence and independent operation of the two systems have brought harms to them. In their view, the larger Borana people will continue to be vulnerable to the adverse effects of the rivalry between the systems which is double punishment for the same criminal act. The victims on their part have viewed the co-existence of the two systems as having potential benefit by providing users with option to choose a system they prefer if Borana justice system were to be given recognition.

Chapter 7: Discussions on the Findings

In this Chapter, the restorative and healing potentials of Borana indigenous dispute settlement mechanism as revealed in the findings will be examined. Users' appraisals as revealed in the study are examined with a view to determine the extent to which Borana indigenous dispute settlement mechanism is restorative and healing. In the last part of the Chapter, the possible challenges of using Borana indigenous justice system along the formal Ethiopian criminal justice system will be discussed.

Restorative Potential Embedded in Borana Indigenous Justice System

Regarding restorative values and practices, previous findings in the literature about restorative practices show that in indigenous African societies, the existing worldviews are based on the principle of the survival of the whole community of human beings and nature. For the survival of all, mutual cooperation, interdependence, and collective responsibility are vital (Driberg, 1934). In a similar manner, the study findings revealed that Borana world view gives more importance to the community than the individual. Interconnectedness of all life and holistic approach is central in Borana world view. The maintenance and ensuring of *nagaa Boorana* is the main objective of Borana justice system (E15, 2013).

Borana conception of law and justice has been shaped by their holistic and collectivist world view which has made Borana indigenous justice system holistic and collectivist in its approach. This approach has made Borana conception of crime and the response to the problem of crime divergent from the individualistic and retributive theory on which the formal Ethiopian criminal justice system is based. Borana people's conception of peace goes far beyond settlement of personal disputes between individuals and extends to broader *nagaa Boorana*. In its

individualistic and retributive approach, the Ethiopian formal justice system mainly aims at the establishment of the guilt of the individual offender for violating State law. In its outcome, the offender is alienated from his/her family and community and kept in prison for the duration of the incarceration.

Crime/wrongful act/ among the Borana is understood as an offence whose principal victim is the party injured by the wrongful act and the community whose harmony is disrupted. Based on Borana collectivist approach, when a person commits an offence, the pre-existing friendly relationship between the perpetrator of the act and the victim will change to unfriendly relationship or disharmony. The offender will be in a situation of animosity with the victim, the victim's families and Borana community. For the Borana, a curative response that can change this relationship of disharmony or animosity to relationship of harmony and friendship is *araara*. The objective of *araara* is to mend the broken personal and social relationships and restore the harmony which pre-existed the wrongful act (E15, E13, 2013)

In indigenous African societies, the laws are corrective and restorative by their nature. Where the maintenance of social equilibrium is the governing principle, crime “consists in the disturbance of individual or communal equilibrium, and the law seeks to restore the pre-existing balance” (Driberg, 1934, p. 231). Among the Borana, the single most important finding that has come out is that they have made holistic and collectivist approach their governing principle in dealing with any problem-solving including settlement of criminal disputes. The main objective of Borana indigenous justice system is the maintenance and ensuring of *nagaa Boorana* and the sanctions are directed towards restoration of the harmony disrupted by the wrongful act. Where personal relationships and communal harmony are disrupted by a certain wrongful act, the law interferes with a view to restore the pre-existing harmony.

The holistic approach to dispute settlement among the Borana assumes that the harm resulting from the criminal act affects the spiritual, material, personal and communal harmony. Based on its holistic philosophy, the outcome of Borana justice system is healing the wounds caused to the victim and repairing the broken personal and communal relationships. In responding to problems of crime, in addition to the victim and the offender, Borana *aada-seera* allows the community to be involved in determining ways of restoring the disrupted harmony.

Among the Dinka of South Sudan, in cases of homicide, along with payment of compensation, cleansing rituals are made with a view to “establish a permanent peace between the two sides involved in blood feud” (Makec, 1988, p. 36). Similarly, under Borana indigenous justice system, making things better for all parties in the future is of prime importance. The cleansing ritual associated with payment of *gumaa* aims at addressing the spiritual aspect of the restoration of harmony. Based on its holistic philosophy, the outcome of Borana justice system is healing the wounds caused to the victim and repairing the broken personal and communal relationships.

When one talks of Borana collectivist approach, it may sound as if individuals have no place under the Borana justice system. In a clan-based Borana pastoral society, the attribute and value an individual will have is shaped within and by the cultural values of the larger society. Even in the context of disputes between individuals and its resolution, the personal harmony is inseparable from the collective *nagaa Boorana* which is the ultimate and collective concern of every Borana.

Sanctions in Africa are meant to achieve the restorative objective of African law (Makec, 1988). In Africa, penalty is “directed towards a readjustment of the status quo” (1934, p.233).As revealed in the study, the way sanction is viewed and applied under Borana indigenous justice

system is different from that of the formal criminal justice system. Among the Borana, as much as possible, the belief is that sanction has to bring about constructive outcome to the parties directly affected and to the community. The Borana judge the merits of a certain sanction based on its constructive outcome. To be constructive, the outcome of a justice process has to be responsive to the needs of victims, offenders and the community. In view of the fact that it inflicts further retributive suffering to the offender incarceration is a destructive kind of punishment which is vindictive in its nature. The State's act of putting the offender behind bars is seen as a kind of regulated vengeance which does not help the re-establishment of the pre-existing harmony.

The main differences between African law and Western law hinges on the nature of sanctions imposed for the observance of the laws and the existence of law enforcement agencies backed by facilities like prisons and cells necessary for custodial sentences (Makec, 1988). Under the Western law, prisons and a police force are viewed as necessary features that give law the required validity. In their view, in the absence of these institutions of sanction, there can be no valid law. But according to Makec, "the validity of the law does not lie in the sanction. Sanctions are only aimed at compelling people, through fear, to obey the law but not to give it validity" (1988, p.46). In view of its non-retributive and non-custodial approach to sanction, Borana indigenous justice system did not develop the kind of penal sanctions in the West which would require the creation of the necessary coercive institutions and the machinery for its observance.

As opposed to the Western retributivist approach where punishment of the wrong-doer is the main focus, the principal aim of African law is compensation for the wrong or restitution (Elias, 1956). Under Borana justice system, the commission of a certain wrongful act would result in collective responsibility whereby the clan of the offender assumes responsibility for the

harm caused to the victim. Based on the principle of collective responsibility, the whole clan will pay *gumaa* for a wrongful act committed by a member of the given clan. The principle is based on the assumption that peace can be maintained through collective engagement. The principle has an inherent mechanism of punishing or excluding a habitual offender from the usual protection given to a law-abiding clan member. The importance of this principle according to Borana elders is, in order to avoid this collective liability; every clan member refrains from violating Borana laws and also sees to it that other members of the clan respect the laws.

Since repeated commission of crime by an individual would follow with repeated payment of *gumaa* which deplete clan resources, the clan's collective measure would be excluding a habitual offender/ recidivist by depriving him of all the benefits and privileges derived from clan membership. They use *abaarsa* which is a moral condemnation directed against a disruptive person. The effect of *abaarsa* is possible deprivation of clan and Borana privileges and benefits until he restores his status by making the necessary remorse in public. For a clan- based, pastoralist and collectivist Borana society; the principle of collective responsibility has played more deterrent role than prisons and the police (E11, 2013).

The Borana also claim that *gumaa* as a form of punishment combines educative and restorative features which are of mutual advantage to all the concerned parties and to the community. In terms of being responsive to the needs of all the stakeholders, *gumaa* is more constructive than incarceration. As stated by Borana elders and the interviewed offenders in Yaabballo Prison, after having been kept in prison for years; offenders usually encounter difficulty in reintegrating into their community. In actual fact, whatever the intended or declared objective may be, if a certain punishment results in ruining an offender and the life of others associated with him/her, it will not be constructive.

When one looks at the Ethiopian formal criminal justice retributive approach from the perspectives of the victim and the community, the system leaves the harm caused to the victim unrepaired and the disrupted personal and social relationship in disharmony. Under the formal criminal justice system, crime is considered as an exclusive business of the State with no role for the parties directly affected by the criminal act. The system encourages offenders to deny the offence. In its sanction, the system detaches offenders from any contact with the victim thus denying them the opportunity to express remorse for their wrongful acts.

In its outcome, the formal criminal justice system isolates offenders from the rest of the population and does not hold them accountable to the victim and other people who truly matter. It excludes victims and the community in the processing of their own cases. This is one of the main reasons why victims are dissatisfied with the formal justice system. This inadequacy of the formal justice system is not present in Borana indigenous justice system.

As revealed in the study, under Borana indigenous justice system, the cultural, spiritual, psychological and emotional needs of all the concerned parties are addressed during the reconciliation process which has made *araara* agreeable to all parties affected by the offence. The laws aim at the restoration of trusting relationship among the members of the society whose harmony has been disrupted. In the process of resolving criminal disputes, all those affected have full control over the process and outcome. Those involved in the justice process are provided with a range of opportunities and the outcome is often negotiated and restorative. In particular, the system gives greater role to victims of crime and community members and holds offenders directly accountable to the people they have harmed.

On the whole, inclusiveness, community involvement, reconciliation and healing outcome are the main restorative features that have come out in the study. The justice process involves the

victims, offenders and the community and it mainly aims at restoring the pre-existing *nagaa Boorana* disrupted by a wrongful act in its outcome. Hence, in view of this, one can conclude that the core restorative values are embedded in Borana indigenous justice system.

Borana Indigenous Justice system from Human Rights Perspective

In order to know Borana view of justice and human rights, one needs to understand the social setting within which a Borana is placed and interacts. The concept of justice is “derived from what the society considers to be fair and just in light of the overall context, and not what is fixed in advance by law” (Penal Reform International, 2000, p. 28). In Borana social setting, Borana justice system is more communal than individual in its approach. The restoration of victims and the reintegration of the offender into the community is the goal of Borana justice.

As a rule, one needs to assess the merits of a system from the perspective of its users. In the same vein, the human rights aspect of Borana indigenous justice system has to be examined from the perspective of Borana people who use the system. As a matter of right, in as far as justice can be processed and delivered in a way that does not violate human rights of others; a certain people who want to use their justice system should not be deprived of their right to access justice from indigenous justice system. The use of indigenous justice system by itself is not incompatible with international human rights standards.

The issue of the rights of Borana people to make use of their own justice system has to be seen in light of the relevant international human rights instruments. Pursuant to Art 27 of the ICCPR and Arts 1 and 4 of the United Nations Declaration on the Rights of Indigenous Peoples adopted in 2007, a person has the right to enjoy his own culture in community with others. Based

on these human rights normative framework, the right of people to maintain their cultural identity and make use of their own justice systems and institutions is justifiable.

The right to use one's own justice system may also be looked at from the perspective of the fundamental right of access to justice. Access to justice is defined as "the ability of people to seek and obtain a remedy through formal or informal institutions of justice and in conformity with human rights standards" (UNDP, 2005). Based on this definition, the right to have access to justice goes beyond mere access to justice and includes the right to have access to justice of one's own choice. Hence from human rights viewpoint, to the extent that it does not violate the rights of others, the contention of Borana elders to maintain their cultural identity and use their indigenous justice system appears to be sound.

Borana indigenous justice system maintains the rights of all stakeholders to voluntarily take part in the justice process and discuss on all the issues relevant to the case and arrive at restorative outcome favorable to all which makes it human rights friendly. The core principle of Borana justice system is empowerment of victims, offenders and the community. All those affected by the crime resolve their problem in the way they think fit. Most importantly, because of the system's cultural relevance to the ways of life of the people and its responsiveness to the people's needs, there is a sense of ownership on the part of the people. To the extent that it deprives those affected by a crime the right to resolve their problem, the formal justice system not only deprives them of their freedom to opt for justice system of their own choice; it also violates their fundamental rights of access to justice.

Borana elders have the view that they have the right to opt for justice systems of their own choice so long as that it is not opposed to human rights of others. The idea of human rights and dignity is not new to the Borana; it is part of their daily life embedded in their cultural values.

Borana elders considered the exclusion of Borana indigenous justice system from exercising the traditional criminal jurisdiction as infringement of their collective and individual rights.

In view of the fact that Borana indigenous justice system, the rules and procedures derive their authority from practices and beliefs embedded in the way of life of the people, one may wonder how the justice system treats non-Borana. As revealed in the two cases of V7 and ONP3, one victim and the other offender, despite the fact that Borana *aada-seera* is rooted in the culture, beliefs, values and traditions of the Borana considered earlier, both expressed their satisfaction with the process and outcome of Borana *araara*.

Another issue of debate in the context of Borana Gada system in general and the justice system in particular is the extent to which women are given protection. In the past, Oromo women had *Siiqqee* institution which functioned hand in hand with the Gadaa system and served as a weapon by which Oromo women fought for their rights. According to Kuwee, in pre-1880s Oromo society, the two institutions have greatly influenced the Oromo value system. They have helped to maintain *seera Waaqa or safuu* (Oromo moral and ethical codes) in Oromo society.

Regarding the rights of Oromo women, when a man violated a woman's right, it was considered a loss of *safuu* or violation of *seera Waaqa* which could give rise to a *Siiqqee* rebellion so as to restore *safuu*. Oromo women had several ways of enforcing their *Siiqqee* rights. The sanctions were applied stage by stage. The sanctions ranged from mild to severe depending on the seriousness of the violation. They could range from *abaarsa* (curse), *iyya Siiqqee* (scream), and then to *goodaana Siiqqee* (trek) (Kuwee, 1997). If a man violated women's individual and collective rights, he "could be corrected through reconciliation and pledging not to repeat the mistakes or through women's reprisal ritual" (Asafa, 2012, p.137).

Under ordinary circumstances, within the family context, when there is a dispute between a woman and her husband, members from the clan of the husband and the wife come together and resolve the case (OIF3, 2013). A woman who has a complaint can appear before elders' assembly and submit her case (OIF4, 2013). The practice is when assemblies including *Gumii Gaayyo* are in session, if a woman brings her case to the assembly, it will be entertained immediately before any other case. If a husband mistreats his wife and a complaint comes from the wife, he will be reprimanded. If the husband continues to mistreat her, the clan would put her in custody of one of the husband's brothers to control the property in which case, the husband cannot sell any property or expect any obligation from his wife (OIF2, 2012).

From what has come out during the interviews and the FGDs with the offenders in Yaabballo prison, the prisoners viewed their subjection to double punishment as a violation of their rights. In view of that, there is a need to look at the issue of whether or not the prisoners have actually been subjected to double jeopardy as they claimed. According to Article 14(7) of the ICCPR 14(7) "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country." This is based on the principle of *ne bis in idem*, which prohibits a person from being tried or punished twice for the same offence (Nowak, 2005).

In the context of Ethiopia, Article 23 of the 1995 FDRE Constitution also prohibits double jeopardy. But the problem in the case of Borana is the non-recognition of the indigenous justice system and its punishment as a valid punishment. As a rule, punishments become double only where two separate authorities acting in accordance with the law of a given country give sanctions/punishments on the same person on the same subject matter. In other words, an

accused person who has finally been convicted or acquitted in accordance with the law and penal procedure of a country is subjected to an additional punishment on the same subject matter.

But in the case of an offender who has already been convicted and punished by way of incarceration, the additional payment of 30 head of cattle seems to be more than compensation for the civil remedy. Besides, as there is no classification of wrongs into criminal and civil among the Borana, punishment works for both. In the strict sense of the word since the loss may not be equal to the payment, all the 30 head of cattle cannot actually be considered compensation. One can obviously see significant degree of disproportionality between what is paid and the loss suffered by victims. Most importantly, the payment of *gumaa* is understood and meant to be punishment among the people of Borana.

In general, when seen in light of the relevant international human rights instruments and the need to make justice systems responsive to the needs of the people, the arguments raised by Borana elders require serious consideration. Neither does the system's restorative outcome nor does its constructive application of punishment incompatible with the international human rights requirements.

Divergent Views on the Potential of Borana Indigenous Justice System

Because of the co-existence of two rival justice systems and the consequent conflicting impacts of the systems on the people, the assessment of the research participants about Borana indigenous justice system has not been uniform. The experiences of victims of crime, offenders, elders and justice officers have not been the same. Concerning the processing and outcome of Borana indigenous dispute resolution, even amongst the victims and offenders, there have been differences. Owing to the fundamental difference between the approaches pursued by the two

systems in addressing problems of crime and its consequences, the assessment of the justice officers has been different from that of the victims, offenders and elders. Certainly, one's view concerning a certain system will depend on one's perspective and how one has been affected by the system.

Based on how they have been affected by the system, offenders themselves had two different views. For those offenders who have been subjected to incarceration under the formal criminal justice system, the sanction they have been subjected to under Borana indigenous justice system was an additional punishment. They considered themselves as victims of the two systems. One may question whether the payment of *gumaa* constitutes punishment. Ordinarily; punishment is understood as a criminal remedy and compensation is a civil remedy given to the victim to restore the damage or loss caused to him by the offender's act.

In its broader meaning, punishment refers to "a penalty imposed for wrongdoing with the intention of expressing the community's disapproval of the wrong doing. It may as well refer to the entire process of criminalizing and penalizing conduct" (Johnstone & Van Ness, 2007: 635). In that broader sense, punishment may refer to anything that is unpleasant, burden, or an imposition of some sort on an offender (Daly, 2000; Zernova, 2007). Punishment under the formal criminal justice system is distinguished by its focus on "the infliction of suffering on a person in order to satisfy vindictive emotions or passions" (Murphy, 2003, p.17).

Among the Borana, the payment of *gumaa* to victims of crime and the required cleansing rituals is understood and meant to be punishment. As it is a form of social sanction made in the form of social and moral pressure made to ensure compliance with *Boorana aada-seera*, the payment of *gumaa* can regard as punishment. From that perspective, the claim that the offenders have been subjected to double punishment is valid.

One also needs to know that there is no category of civil and criminal remedy under Borana justice system. Since all wrongs are considered harmful to the victim of the wrong and the society, penalties are provided for all wrongs without classification into civil and criminal. As regards the practice in Africa, “a Dinka court does not bother to analyze or express whether the case before it is a criminal case or a civil case, nor does it expressly state that its decision constitutes either a penalty or a civil award of damages” (Makec, 1988, p. 37). But in many indigenous African societies penalty is directed “towards a readjustment of the status quo” (Driberg, 1934, p.233).

Among the Borana, the principle of collective responsibility is considered an inherent and effective mechanism which has enabled the society and its members to be law-abiding. But from the perspective of some interviewed offenders in Yaabballo prison; the *gumaa* that is paid as a collective by their families or clans for the crime they have committed as individuals was considered a collective punishment. This view seems to depart from the dominant Borana collectivist approach. What explains this divergence may possibly be the relative weakness of Borana indigenous governance system which has not been able to protect them from the punishment imposed on them by the State. This seems to have been dictated by the relative power-imbalance between the two systems. Since they could not avoid incarceration by the State, the offenders want to avoid the payment of *gumaa* if possible. But the reality is, except that it is relatively weak, Borana justice system and their *aadaa-seera* is still functioning. The State has not, as yet, succeeded in displacing Borana Gada governance system and its indigenous justice system (EFDG1, 2012; OYPFGD1, 2013).

According to the current practice among the Borana, where the offender is in custody or prison, *araara* is made between the families of the victim and that of the arrested or incarcerated

offenders.⁷ But for the reconciliation to be effective, the offender need to take part in the process and give her/his genuine personal apology and receive forgiveness from the family of the deceased in person. If the main objective of reconciliation is to restore the harmony between the offender and the victim, there is a need for full restoration of the material, spiritual, personal and communal aspects that have been disrupted by the act of the offender. Reconciliations made in the absence of offenders cannot fully restore the disrupted personal and social harmony.

Borana indigenous justice system is credited for enabling offenders to reintegrate into the community. But under the existing Borana criminal justice system setting, this does not apply to those offenders who have been incarcerated. The fact that *araara* has been made between the two families has not helped in reducing their term of imprisonment. Hence, for this category of offenders, the opportunity to reintegrate with the community is not available. But if we take the case of those offenders who have settled their cases out of court through reconciliation, they have been full beneficiaries of Borana indigenous justice system. The inclusive and voluntary reconciliation process has given this group of offenders the opportunity to approach their victims and express their remorse. As they have avoided incarceration and reintegrated into their community; the group would certainly be comfortable with the process and outcome of Borana justice system.

As it was the case with the offenders, the victims or relatives are categorized into those whose cases have been settled out of court and those whose cases have been dealt with by both systems separately. Those whose cases have been settled out of court consider their participation in the justice process as an important attribute of Borana indigenous justice system. The participatory and consent based reconciliation process has enabled the victims, the offenders and

⁷ Here, the immediate *araara* made between the families of the victim and the offender in the absence of the offender is intended to avoid retribution. But reconciliation in its full sense in which the offender takes part would still be necessary and made after his release.

the community to negotiate and agree on solutions that satisfy the needs of all. The victims viewed the future harmonious relation between the families of victims and offenders as more valuable than imprisonment which focuses on the past. Under future- oriented response to crime, where mending the disrupted relationship is the main focus, the outcome will be mutually beneficial to all those affected by the crime.

From what has been gathered from those who have lost their relatives, the dominant view was that incarceration of offenders cannot bring back the deceased. But *araara* has helped in restoring the disrupted relation and maintained the harmonious relationship between the parties. Insisting on the incarceration of the offender has been viewed as a destructive move which aggravates the already damaged relationship between the families and generates more feuds between both families. Hence, when seen from the perspective of the future relationship of harmony between the two families; reconciliation would obviously be a constructive option for the parties. As expressed by V5, in consenting to the proposed *araara*; he and his family have succeeded in establishing a strong bond with the family of the offender (2014).

With regard to the *araara* being made in the absence of the offenders, relatives of victims acknowledged the shortcomings of the reconciliation. The elders viewed the reconciliation being made in the absence of offenders as a necessary immediate move meant to avoid possible revenge between members of the families of the victim and the offender. Borana elders strongly believe that reconciliation cannot be complete without the final spiritual reconciliation ritual in which the offender physically takes part. That ritual takes place after the release of the offender where the concluding and important reconciliation ritual is made thus making the reconciliation complete.

Concerning the necessity of imprisonment of offenders, there were two views among the relatives of victims. Where a crime is committed intentionally, victims considered imprisonment compulsory. Among the Borana, intentional homicide is an unpardonable offence. Victims had the view that offenders who intentionally commit murder should not be allowed to escape imprisonment by mere payment of *gumaa*. If those who have intentionally killed a person were to be allowed to settle their cases out of court, it would encourage those who are bent to kill and wealthy to escape incarceration by paying compensation (OYPPGD1, 2013; V4, 2014, E17, 2013). But for a crime committed unintentionally/accidental killing/, imprisonment will serve no constructive purpose (V7, V8, V1, V5, V4, 2014).

Under Borana indigenous justice system, since *gumaa* is paid by the clan of an offender, every clan makes sure that its members comply with the laws so as to avoid the payment. In terms of material costs, repeated crimes of a habitual offender will be “too great a strain on the resource of the clan” (Driberg, 1934, p.239). Besides, the *abaarsa/godhabsu* ritual which deprives an unruly person the privileges and protection available to law-abiding Borana serves as an effective restraint. Owing to the inbuilt system of collective responsibility, Borana *aadaa seera* are obeyed by every Borana. The non-retributive and non-custodial sanctions have also been serving the Borana very well without the need for coercive institutions like police and prison.

Offenders in Yaabballo prison have raise about the issue of double punishment. The elders are aware of the subjection of offenders to double sanctions but they attributed the problem to the forcible introduction of alien Ethiopian formal criminal justice system despite the fact that Borana indigenous justice system is functioning well. Borana elders attribute the problem of

double punishment to the failure of the formal justice system to give recognition to Borana dispute processing and its outcome.

The interviewed justice officers in Borana Zone have clearly stated that Borana indigenous justice system has no role in handling criminal disputes. In their response to crime and its consequences, the justice officers uphold and promote retributive approach. For them, incarceration is viewed as a means of evening the score based on the theory that the offender deserves punishment for violating State law. It will also have deterrence effect on potential offenders. For this reason, the goal of the formal criminal justice system is not the restoration of the disrupted personal and communal relationships but punishment of offenders which makes it essentially punitive. Due to its retributive approach, the system disregards the needs of victims, offenders and the community. The cost incurred by the State for the custody of growing number of prisoners is significant. This social cost seems to have no place in the approach.

Concerning the issue of double punishment, the justice officers interviewed stated that the authority to punish offenders for criminal offence is under the exclusive jurisdiction of the formal criminal justice system. From the officers' viewpoint, there is no double punishment. The payment of *gumaa* may be considered a civil remedy. This view of the officers is strongly opposed by Borana elders and the offenders who viewed *gumaa* as a kind of punishment tailored to the needs of those affected by the criminal act. Among the Borana, every act that disrupts the social harmony is seen as a wrong. For this reason, when a certain wrong is committed, the *gumaa* paid by the wrong-doer combines both the punishment and the civil remedy aspects. When looked at from the standpoint of users of the systems, there is clear subjection to double punishment which makes the expressed dissatisfaction of the offenders justifiable.

The difference between the two systems is rooted in their underlying philosophical approaches. Where Borana indigenous system is based on a collectivist assumption, the formal criminal justice system is based on an individualistic assumption. Under indigenous justice systems the aim is not punishment of the offender but “reestablishing the harmony and the balance in the community and reintegrating the individual into the society” (Engstrom, 2009, p.22). The Borana consider their non-custodial sanction as a constructive way of applying punishment because other than addressing the needs of the victim, the penalty enables the offender to reintegrate into the society.

Overall, regarding the effectiveness of Borana indigenous justice system in maintaining social peace among the Borana, all those interviewed have recognized its merits. But the effective functioning of the indigenous justice system and the desire of Borana people to maintain their system has been disregarded by the State. Gada system itself, which is an overall governance system and a storehouse and custodian of Borana *aadaa seera* and values, is being discouraged. The State is continued to undermine the merits of indigenous dispute resolution in the area of criminal justice. The indigenous administrative system and its justice System is being gradually weakened and displaced.

One criticism leveled against the indigenous justice system was that it leaves offenders unpunished or allows them to escape justice. But the system does not leave offenders unpunished but applies punishment in a constructive way so as to restore the disrupted social harmony. The penalty does not aim at removing the offender from the society as it is the case in formal criminal justice system, but it reintegrates him/her into the society. In a pastoralist, collectivist and clan – based society like Borana, the kind of sanction being imposed would be more effective in inducing obedience and preventing crime. Being deprived of the privileges and benefits available

to clan members is a severe punishment to an individual. In many indigenous African societies, a curse or ostracism is an important form of sanction (Driberg, 1934; Elechi, 2004).

But the problem being encountered among the Borana is, in view of the unregulated rivalry between the two systems operating in Borana and the resulting double sanctions of the systems, the outcomes of the systems have become oppressive particularly to the offenders. Irrespective of their choice, the people are being subjected to the authorities of both systems. Borana people are not using the formal justice system willingly; they are using it simply because they cannot defy the government.

Based on the findings of the study, there is no legally regulated relationship between the two competing systems in Borana. There is no defined linkage between the two justice systems, their institutions. Although legal pluralism is a practical reality in Borana, there is reluctance to formally acknowledge this fact. The State's reluctance to recognize Borana indigenous Gada governance system, laws and institutions is being seen among the Borana as an act meant to discourage the system and gradually displace it. But all the same, among the Borana, there is still a strong desire to preserve their Gada governance system and they anticipate the continuation of their *aadaa-seera* for generations (OYPFGD1, 2013).

The effectiveness of a justice system is measured by the extent of its response to the needs of the users. In terms of performance, based on its principle of collective responsibility, the clan-based Borana justice system seems to have worked well in disciplining its members. Every clan member has been kept within the bounds of the norms of the society because of the fear of being deprived of his social connection which is a severe kind of punishment. In pastoralist Borana, every member wants to sustainably maintain the support of his clan. The Borana Gada elders

have strong desire to retain control over this indigenous justice system which has helped them maintain *nagaa-Boorana*.

Borana Restorative Values from Social Work Perspective

What has been revealed in this study shows that Borana Oromo has indigenous helping services that are based on their indigenous world view, beliefs and values. When looked at from the perspective of social work core values, the respect and inherent dignity of victims and offenders are embedded in Borana indigenous justice system. The goal of Borana indigenous justice system is to restore the dignity of victims and offenders by reinstating them into respectful and harmonious relationship which makes the system essentially compatible with core values of social work profession and mission.

Based on its holistic and collectivist approach, Borana indigenous justice system puts the community at the center of its dispute resolution process. It pursues community-based approach in social problem solving which also applies to problem of crime. The most important value under Borana indigenous justice system is maintaining social harmony. As it gives importance to harmonious relationship, its response to crime is not punitive but restorative. As it provides the offender with the opportunity of being within his/her community, the response is humane and re-integrative (Hand et al, 2012). Hence in terms of social benefits to victims, offenders and the community, compensating the victim and reintegrating the perpetrator into the community are more productive than incarceration. According to Borana elders, *nagaa Boorana* can enduringly be maintained by restoring pre-existing relationships and harmony, which makes it compatible with social work values.

In the context of response to problem of crime, as revealed in the study, among the Borana, relationship is understood as more than a relationship between the offender and the victim. The harm sustained by the victim is viewed as a social harm extending to the victim's clan and the wider Borana people. For this reason, the justice system aims at maintaining both the personal and social relationship. These values embodied in Borana indigenous justice system are congruent with the core social work values like social justice, importance of human relationships, dignity and worth of the person (IASSW, IASW, IFSW, 2012).

In its response to wrong- doing, Borana indigenous justice rejects retributive approach and pursues reconciliation through which the damaged relationship between the offender and the victim is mended. Living in harmony with all beings is the guiding principle of Borana indigenous justice system which serves as the basis for healing and mending damaged personal and communal relationship. In Borana indigenous justice process, respect is given for the dignity and worth of every person involved in the justice process and the outcome is the restoration of the personal and social harmony disrupted by the criminal act. How harms sustained by the victims can be healed and how the offender finds redemption and is reintegrated into society are questions of paramount importance for social workers (Van Wormer, 2008).

The study has revealed that Borana Oromo have indigenous helping practices to help those in need of support which have been working effectively in the society. In view of this, a social worker need not try to impose her/his own method but take part in the already existing indigenous helping schemes. In Borana social setting, the indigenous helping practices which have been proved to be effective are well suited than the western –based social work practices. For example, Borana is a pastoralist society where there is an established clan- based system of mutual assistance/*buusa gonofa*/ and mutual responsibility. Based on this, a clan member has the

right to seek assistance when in need and seek protection when a wrong is committed against him/her. The study has revealed that the values embedded in Borana indigenous justice system are consistent with social work's holistic and strengths- based approach. Its responsive approach to the needs of victims, offenders and the community makes the system compatible with the social work need-based approach. In its response to crime, it aims at repairing the damage caused to the victim and in restoring the relationship disrupted by crime.

The implication this would have on a social worker is that this principle of the maintenance of social harmony should serve the social worker as a guide in his/ her social work practice among the Borana. Actually, to engage in any kind of social service or intervention fruitfully, a social worker is expected to have an in-depth understanding of their clients' world view. If a social worker who intends to be engaged in social work practice among the Borana, understands the cultural values of the Borana people, it will enable him/her to develop his/her cultural competence and establish successful work relationships with the people. Without having full knowledge of the context of Borana society, a social worker cannot do a successful social work practice responsive to the needs of the people.

African criminal justice aims at healing and renewing the physical, emotional, mental, and spiritual well-being of the victim. "It also involves deliberate acts by the offender to regain dignity and trust, and to return to healthy physical, emotional, mental, and spiritual state. These are necessary for the offender and victim to save face and to restore personal and communal harmony" (Melton, 2004, n.p). One of the primary assumptions of Afro centric social work is that individual identity is conceived as a collective identity. The other strong assumption is that the spiritual aspect of humans is just as legitimate as the material component (Schiele, 1997).

This collectivist approach pursued by Borana indigenous justice system is fundamentally different from the individualistic approach of the West. As it has developed in Western context, modern social work has liberal roots where individualism is given more emphasis than collectivism. But the approach pursued under Borana justice system to address social problem is based on the people's indigenous world view and knowledge. The Western-based individualistic social work approach has difficulty in welcoming "non-western and Indigenous world views, and traditional forms of helping and healing" (Gray, Croates & Bird, 2008, p. 1). As it is rooted in Borana indigenous beliefs and cultural values and gives priority to collectivist interests, Borana indigenous justice system negates Western liberal values.

According to Mel Gray, there are two conflicting movements within the international social work practice. On the one hand, there is an ongoing cross-cultural dialogue to shape a "new form of social work" while on the other there is a tendency "to hold onto some form of common identity (universalism)" (2005, p. 231). From the perspective of indigenous people like the Borana of Ethiopia, the quest is for responsive and culturally relevant social work practice. The people need a kind of social work practice consistent with their collectivist values.

Borana people are predominantly pastoralists and lead a communal way of life. The people have their own ways of addressing social problems including problems of crime. They have a body of indigenous knowledge, cultural norms, values and helping practices that they have been using. Along with the clan-based helping practice known as *buusa gonofa*, care for the aged is situated within the clan and with regard to wrong-doers, the Borana give little importance to custodial punishment and help in correctional settings. All disputes, including family disputes are handled within the same clan and out of court setting. Without mastering these characteristics and the body of Borana indigenous knowledge and the helping practices, one cannot be an

effective social worker in Borana. “The acquisition of culturally specific knowledge, values and skills lead to an understanding of other perspectives and cultures which can then be used by the social worker to understand the client’s cultural frame of reference” (Gray, Coates & Bird,2008, p.3).

There are a deep-seated collectivist values and the accompanying common belief, cultural values and clan networks among Borana Oromo. This collectivist value of the people has to be respected so as to make social work practice in the society responsive to the needs of the people. In this collectivist Borana social setting, what makes a social work practice effective and responsive will be its capability to exploit the potential strength of Borana indigenous justice system. Hence in dealing with problem of crime and its consequences in Borana, a social work practice with collectivist lens will be more appropriate.

Legal Pluralism and the Impacts of Rivalry between the Justice Systems

Legal pluralism takes the forms of weak legal pluralism and deep legal pluralism. In the case of weak legal pluralism, there are different legal orders with the same sources of authority. Weak pluralism does not extend to plurality of institutions and processes and limited to plurality of substantive norms (Griffiths, 1986). In Borana, there is deep legal pluralism where different legal orders coexist with different sources of authority. The two systems in Borana have their own laws, institutions and governance system. The personnel involved in the management of the two systems are separate with little overlap. Deep legal pluralism and weak legal pluralism have different effects and give rise to different strategies for dealing with indigenous justice systems.

Legal pluralism may be productive or destructive depending on how it is applied. To make legal pluralism productive, there is a need for an effective and practical ways of implementing it

by way of establishing a well-regulated working relationship between the systems. The details of and mechanisms of how the justice systems can function in parallel in a regulated manner has to be worked out. The structural and functional relationship between the two has to be clearly defined. The details of how cases can be referred from one system to the other, and the nature of relationship with the police and State courts have to be specified. Having defined the relationship and competences of the two systems, the basis for determining the validity of decisions given under Borana indigenous justice system should be consistency with the Constitution and human rights standards.

In a normatively pluralistic society like the Borana where the rival justice systems are competing for the control and allegiance of the people, each system makes all its efforts to defend its authority against the other thereby generating tensions between the systems (Tamanaha, 2008). Among the Borana, the indigenous norms and institutions have been competing with the State institutions in controlling and influencing the behavior of people. These have been creating uneasy relationship between the formal criminal justice system and the indigenous justice system since Menelik's conquest of the area.

When two systems compete and especially when there is no mutual recognition between them both systems will claim jurisdiction over the same matter. Each system attempts to undermine the authority and legitimacy of the other. In the process of competition, when the actions of one system results in the loss of the authority/of power of the other system over what it considers to be its legitimate sphere, hostility will develop. Having a clear definition of each system's jurisdictions will help in avoiding jurisdictional conflicts between the systems. But in the absence of effective regulation and definition of relationships between the competing systems, the rich and informed may resort to forum shopping and opportunistically exploit the

situation in their favor. With no capacity to access regular courts, the poor and the marginalized are restricted to whatever the indigenous justice system may possibly deliver (Forsyth, 2007; Hinz, 2007; Juma, 2006).

From what has been revealed in the study, the unregulated rivalry between the two systems has made the people vulnerable to the sanctions of both systems. The Borana are wary of the imposed State justice system which is undermining their values and laws and in so doing is jeopardizing their way of life. As a consequence of lack of mutual recognition between the two systems operating in Borana, there are tensions and competitions between the two systems. Borana elders have expressed their serious concern about the uncompromising attempts on the part of the State justice system to have exclusive control of what has traditionally been under their jurisdiction.

As revealed in FGD made with the offenders in Yaabballo prison, rather than being responsive to the needs of the poor and marginalized, the rivalry has come to favor more and more those who are capable of resisting or manipulating the authorities of the systems. As a result, the offenders expressed their disappointment with the performance of both systems. Owing to the rivalry between the systems, neither of the two systems is functioning as it should be thus giving rise to disorder which in their view favor the powerful and the rich.

In general, when one looks at the legal landscape in Borana, it has remained pluralistic from the time of conquest. Irrespective of the introduction of the formal Ethiopian criminal justice system in the area, Borana people continued to have and still have their own indigenous laws and institutions that co-exist with the formal justice system albeit without formal recognition. This situation has created for the rich the opportunity for forum shopping but the poor have no means of resisting or manipulating the authorities of the two systems. As revealed in the study, the

people have no clear idea as to how these confusion and uncertainties can be brought to an end. If the unregulated rivalry between the justice systems remain unchecked, perhaps for an unspecified time to come, criminal cases continue to be tried under both systems and offenders be punished twice for the same offence.

Possible Challenges of Using Borana Indigenous Justice System along the Formal Justice System

Having established the restorative potentials embedded in Borana indigenous justice system, it may be appropriate to examine the possible challenges which may be faced if the indigenous system is allowed to operate along the formal justice system. What has come to be known from the study is the fact that the rivalry between the two justice systems has put the Borana in a difficult situation. It has also been seen that despite the fact that the formal justice system has been legally given exclusive monopoly of handling criminal cases and the authority to punish offenders, in practice, Borana indigenous justice system has managed to survive and function productively.

Borana *aadaa-seera* regulates every aspect of the lives of the people and there are institutions for settlement of disputes whose jurisdiction extends to criminal matters. The justice system is still operating in Borana along with and independent from the State structure. The fact that the system is still playing significant role in regulating the day-to-day lives of the members of Borana society shows its relevance. Borana people still attach great value to their indigenous system's *araara* and its restorative outcome which has helped them to preserve *Nagaa Boorana*.

Despite this fact, Borana justice system along with its normative values and practices have been made irrelevant without prior assessment of the potential of the system in total disregard of

the feelings of the users of the system. Before making or declaring a certain functioning indigenous social system and institution irrelevant one needs to make a very careful study of the merits and demerits of the system. Borana indigenous justice system has been made irrelevant without properly exploring its merits.

Borana elders view this total dismissal of the widely accepted and well -functioning indigenous justice system as a serious threat to their way of life. In actual fact, dismissing the indigenous justice system that is compatible with cultural values of the people as irrelevant demonstrates lack of sensitivity to the needs of the people. “Human beings are happier, more productive and more likely to make positive changes in their behavior when those in positions of authority do things *with* them, rather than *to* them or *for* them” (Wachtel & McCold, 2004, p.1). In Ethiopia, indigenous justice systems and laws have been made irrelevant based on the assumption that the Western -based formal criminal justice system is superior to indigenous laws. Actually, the fact that the users of the system still feel that the system provides justice responsive to their needs shows the contemporary relevance of Borana justice system. Besides, in practice, Borana indigenous justice system is still operating in parallel with the formal criminal justice system and still has wider acceptance which has made the attempts made to displace it unsuccessful.

In the current Borana situation where both systems are capable of asserting their authorities on the people and the people have no freedom of choosing one from the competing systems, the effect will be the continuation of the destructive rivalry between the two systems with the consequent vulnerability of the people to the risk of sanctions of both systems. The significant role being played by Borana indigenous justice system in resolving criminal disputes need to be acknowledged. Surely, there are challenges associated with recognition of legal pluralism.

Without proper regulatory mechanism, virtually in all countries with plural legal systems, conflicts between the competing legal systems are unavoidable. When formal and informal systems and institutions complement each other they promote stability and consistency in collective life. But when these systems and institutions are unable to get along with each other; social instability is likely to prevail, due to increasing uncertainty and disorientation, which necessitate increased incentives or coercion to make people follow prescribed rules (Olsen, 2007).

The consequences of the problematic relationship between the formal justice system and the entrenched Borana indigenous justice system to the users of the systems have to be properly addressed. If the common objective of both justice systems is being user-friendly and responsive to the needs of the people when addressing the problem of crime and its consequences, both systems can jointly work towards achieving that objective. The formal justice system has to stop undermining the well-functioning Borana indigenous justice system where it actually lacks the capacity to provide an effective and accessible justice.

In the context of the existing Borana normative landscape, there is a need to make both systems user –friendly and avoid the destructive impacts of the rivalry between the two systems. The study confirms previous findings that two systems can co-exist and function in a user-friendly way when there is an established institutional linkage. The linkage has to be legally defined and regulated by way of determining the ranges of criminal matters to be handled by each system. The possibility of either the indigenous justice system or the formal justice system being manipulated by the powerful at the expense of the marginalized will be reduced by well-regulated linkage between the two systems (Forsyth, 2007; Penal reform International, 2000; Tamanaha, 2008).

In a way, this approach assumes that both justice systems have relevance which would require that the concerned authorities of both systems acknowledge the adverse effects the rivalry between the two systems is having on Borana people. This would mean that the two systems need to operate harmoniously. It would require giving Borana indigenous justice system some space in the area of resolving criminal disputes by altering the current exclusivist approach. In other words, the current mutual suspicion and competition between the two has to be changed into mutual support and cooperation. This would mean changing the *de facto* legal pluralism into *de jure* legal pluralism. If this happens, the relationship between the systems will change into regulated relationship. The formal recognition of legal pluralism in Borana will facilitate the people's opportunity to enjoy their right of access to justice of their choice. Pluralism can serve not only as an effective means of preserving and respecting Borana laws, but it also enables the people to make use of the restorative potentials embedded in the justice system.

An effective regulation of the relationship between the two systems by way of defining the jurisdiction of each system would help in avoiding the confusion which the people may have in determining the appropriate jurisdiction for each criminal case. The possibility of either the indigenous justice system or the formal justice system being manipulated by the powerful at the expense of the marginalized will be avoided by a well-regulated linkage between the two systems. But the challenge will be devising how the two systems can operate together by way of determining and agreeing on the ranges of criminal matters to be handled by either system.

By adopting *Seera marra-bisaanii*, the Borana have been able to establish an effective and peaceful use of scarce natural resources like the *eela* /water wells/ and pasture. The laws are environment-friendly and appropriate for Borana pastoral land where natural resources are scarce and the climate is harsh. Earlier research findings also indicate that Borana justice system

can operate and in fact has been operating in the areas of crime not effectively governed by state law. The justice system has been more effective in regulating and resolving disputes relating to resources (Helland, 1996; Boku Tache & Irwin, 2003; Desalegn et al., 2007; Watson, 2001).

As revealed in the study, among the Borana, intentional killing, rape and habitual offending are detested. The rights and privileges of *Boorantitti* are withdrawn from those Borana who commit these serious offences and thus turn them into *nyaapa* /enemies/. In the past, those who committed intentional homicide or rape could face capital punishment known as *hamaa mudaa muddi*. The Borana have relinquished their authority to impose death penalty and acknowledged the jurisdiction of the formal justice system over death penalty and other serious crimes. The interview has also revealed that the Borana favor that cases of intentional homicide be handled by court of law and the offender be incarcerated.

In view of this, arrangement can be made where courts may divert or leave the handling of certain homicide cases to the indigenous justice system under exceptional circumstances. For the majority of lesser serious crimes the indigenous justice system may possibly be more appropriate and effective. Joint understanding may be made where in principle cases validly decided under the indigenous justice system should not be seen all over again in regular courts unless by way of appeal.

The reality on the ground in Borana society seems to dictate that so long as the current pastoralist and clan-based social structure remains intact, the Borana indigenous justice system appears to remain relevant for the society. In addition, as expressed by the participants of the study, if Borana indigenous system were to be allowed to operate as it was in the past, the system will address the problem of crime and its consequences in a constructive way. From human rights perspective, so long as justice can be delivered in a way that does not violate individual or

collective rights of others; there is no issue of irreconcilability that can be raised against the use of indigenous justice system.

Finally, as stated by Helland (1998), it is difficult for Borana laws, indigenous justice system and institutions “to survive without the *Gada* nor that the *Gada* will retain its importance in their absence or in a situation where they are seriously weakened or made irrelevant” (p. 53). So when considering about recognition of Borana indigenous justice system, along with that, one also needs to consider recognition of Borana *Gada* governance system which is a major challenge to be reckoned with.

Chapter 8: Conclusion and Implications

Conclusion

In this dissertation, the aim was to assess the restorative potentials of Borana indigenous justice system which may deliver restorative and healing criminal justice to the people. The study has revealed that there are two justice systems coexisting in Borana both of which differ in their underlying philosophies and approaches to problem of crime. While the formal criminal justice system upholds individualistic and exclusivist approaches, Borana indigenous system is essentially collectivist and holistic in its approach.

Regarding response to problem of crime, the approach used in the formal criminal justice system is retributive which is essentially vindictive. But under Borana indigenous justice system, the approach pursued is restorative and healing. As revealed in the study, owing to their divergent approaches and absence of mutual recognition, the two systems compete for the allegiance and control of the people. The effect of the rivalry between the systems has been subjection to double sanctions for the same offence.

Borana indigenous Gada governance system is well-structured and all-embracing by way of effectively integrating cultural, political, judicial and administrative functions. The study has revealed that Borana indigenous justice system is still functioning with wider acceptance. The formal justice system has been striving to undermine the indigenous justice system without having adequate capacity to provide an effective and accessible justice to the people. The formal justice system has not, as yet, succeeded in displacing Borana indigenous justice system in practice. But with the support of its police, justice officers and prison, the formal justice system has been able to enforce its sanctions on the people. Owing to the existing power- imbalance, Borana indigenous governance system has no power to defend the people against the sanction imposed by the State.

As revealed in the study, in the current Borana normative landscape, there is a functioning indigenous territorial administrative structure compatible with Borana pastoral way of life that go down to the village level. In particular, the study has revealed that the Borana have created Borana *aadaa-seera* appropriate for the use and management of the scarce natural resources. The *aadaa-seera* has enabled the people to survive the harsh climatic conditions of the arid area by providing them with effective laws and institutions for regulating the use of scarce natural resources. Virtually, the peoples' social, economic, political cultural practices, environmental and spiritual well-being are still being regulated by Borana *aadaa-seera*. In the context of criminal dispute resolution, the disputes are being resolved out of court through *araara* which takes place with the participation of all those affected with restorative outcomes.

From all that has been revealed in the study, we can conclude that the Borana have been able to create rules, institutions and structures appropriate for their pastoral way of life. In its performance, Borana indigenous justice system has been functioning well so far in maintaining *nagaa Boorana*. With the help of their indigenous governance system, the Borana have been able to maintain social order and mobilize resources, organize “large groups of people over prolonged period of time- to make orderly and legitimated decisions on access to and utilization of all wells” (Helland, 1996, p. 137). Hence, where the relevance, user-friendliness and restorative character of Borana dispute resolution process and outcome has been acknowledged by the research participants, there seems to be no valid reason to exclude Borana justice system from operating along the formal justice system.

Implications

Implications for social work practice.

This study has revealed that the Borana have their own indigenous ways of responding to problem of crime and its consequences which is essentially restorative and healing. The people have helping practices which fully rests on their indigenous values, norms and cultural beliefs. For an effective social work practice among people with indigenous culture, knowledge and values, understanding the unique reality of the society and developing an approach that includes the perspectives of the people is necessary(Tamburro, 2013).

For the Borana, *nagaa/peace/* is considered a collective treasure and indivisible which belongs to all Borana. This approach has been shaped by human relationship-focused and holistic world view of the people. Borana criminal dispute resolution system gives due respect to individual dignity of both the offender and the victim. Mutual survival, interdependence and collective responsibility are the core values in Borana world view. Among the Borana, crime is viewed as a social harm and the response is expected to be social and collective. This harmony-focused and human relationship – center Borana response to crime makes it an ideal approach in social work practice. In the context of criminal dispute, helping a victim, an offender and the community in settling their own disputes and restoring the harmony that has been disrupted by a criminal act is a professional duty of a social worker. The finding suggests that the helping philosophy and practices among the Borana differs from the individualistic mainstream Western model social work. The knowledge of these unique values and practices embedded in Borana indigenous world view will help a social worker who wants to be engaged in social work practice among the Borana to be fruitful in his/her work.

The implication of this is that knowing and applying these user–friendly indigenous social work practices is of crucial importance. In the context of dispute resolution in the area of crime, understanding the people’s indigenous way of solving problem of crime makes social work practice among the Borana culturally relevant and responsive to the needs of the people. The study’s implication is that among the Borana, in the process of resolving criminal disputes, the appropriate approach in social work practice should be the one based on the indigenous knowledge, values and beliefs of the people. As stated by Tamburro, “to think that Indigenous knowledge and abilities to solve problems that have existed for thousands of years have no place” (2013, p. 118).

The implication of the finding for social work education is that social work educational programs need to determine what indigenous knowledge, skills and practices will prepare social work students to be culturally competent among societies like the Borana. In order to make social work practice among such people responsive to the needs of the society, the people’s perspectives should be integrated into social work education. Students need to be equipped with “the knowledge, skills and values that will support and enhance their ability to work in partnership with Indigenous peoples” (Tamburro, 2013, p.2).

Research implications

One important finding that has emerged from the study among the Borana is the existence of restorative and healing potentials embedded in the indigenous justice system which has not been sufficiently explored in previous studies. The study has revealed some of the important virtues of Borana indigenous justice system that enabled the people to maintain *nagaa Boorana* for centuries. This indicates that the diverse indigenous knowledge, values and practices that have

been in use in the area of criminal dispute resolution for centuries in several parts of Ethiopia have been thoughtlessly overlooked. This study has shown the need and importance of making more studies to find out the potentials of other indigenous justice systems in Ethiopia.

The study has revealed the merits of making use of indigenous knowledge, laws and institutions when solving problems of crime and its consequences. The current study was meant to explore the restorative potential of Borana indigenous system within the scope of criminal justice. The wider and full potential and opportunities offered by Borana indigenous governance system as a whole will require further study.

The approach in the study was tailored and was meant to determine the merits of Borana justice system only. The findings of the study and the conclusions drawn from this study cannot be generalized so as to be applied to all other indigenous justice systems. In fact, putting all indigenous justice systems in Ethiopia in one box and label them as one would be incorrect.

Policy Implications

The practice among African State-builders including Ethiopia has been their failure to connect constitutional systems with existing indigenous laws and values. During its long years of existence, the persistent Ethiopian State policy has been building a centralized nation State with one legal system. The successive Ethiopian rulers have attempted to create a monistic normative system upon a society which is characterized by plurality of normative systems. No effort has been made to explore the potential contributions of the various indigenous justice systems which may possibly make Ethiopian criminal justice system more responsive to the needs of the diverse people of Ethiopia.

As stated by the research participants, as a complete governance system with its own legislative and judicial institutions Borana Gada system has been providing the people with a kind of justice responsive to their needs. As shown in the study, the uncompromising pursuit of monistic criminal justice policy and the total exclusion of Borana indigenous justice system have created feelings of bitterness and disempowerment among the Borana. The Borana have a strong desire to maintain their socially and culturally appropriate indigenous dispute resolution mechanism. When seen from the perspective of the Borana, the indigenous justice system has been playing effective role in resolving disputes and maintaining peace and harmony. The Borana want the State to support the existing Borana indigenous Gada governance system and its institutions.

Recognition of customary laws implies not just the reinforcement of the laws themselves but also of the power relations and institutions through which they are developed, transmitted, exercised and enforced, it is essential to examine plural legal systems from both political and legal perspectives (Marcus Colchester, 2011, p. 25).

The Borana claim that they have a strong set of indigenous institutions that is capable of providing them with a coherent internal form of governance. Their indigenous governance system is appropriate for their pastoral way of life and for effective management of the use of the scarce natural resources which in their view would justify formal recognition. The fact that indigenous justice systems are more restorative, accessible and still more favored should not be disregarded. By dismissing a well-functioning Borana indigenous justice system and imposing uniform legal system, Ethiopian State will not be able to gain the trust and support of the people who want the system to be maintained. The diversity that needs to be respected will be wiped out which constitutes violation of the rights of those who want their distinctive identities to be maintained.

The formal justice system has been given the exclusive authority to handle all criminal cases, but in practice, State courts are inaccessible to the people and are under capacity. Ethiopian State seems to be reluctant to acknowledge these limitations and lack of the necessary resources or capacity to extend justice services to the rural poor. In giving a space to indigenous justice systems, the Ethiopian State will reduce the work load of the courts and prisons. What is more, recognition of the role of indigenous justice system will be one means of enhancing access to justice.

From human rights perspective, the demand for recognition of indigenous justice system has to be looked at as an integral part of the claim of indigenous people's movement for self-determination as distinct people. In the situation of Borana, *one-size fits-all* approach does not work. The Ethiopian legal system has to engage the indigenous justice systems constructively by being reflective of the diversity in Borana and capture the needs and interests of the society. One important characteristic of Borana indigenous justice system is that it operates in a society which is communal or collective in its nature. The role of communal indigenous land tenure system and the clan-based social system in keeping the Gada system intact has to be stressed. Among the Borana, the indigenous institutions "provide structures in which people are used to discussing matters and which have a degree of continuity" (Watson, 2001, p.18). It is important to recognize that "Gada subsumes all these other institutions in an integrated worldview and infuses these more pragmatic institutions with the authority and legitimacy, which they require to be effective" (Helland, 1998, p. 53).

As revealed in the study, the reality in Borana shows *de facto* co-existence of two justice systems with their independent laws, institutions and procedures. But owing to lack of mutual recognition between the systems, the relationship between the *de facto* functioning indigenous

justice systems and the formal justice system has remained unfriendly to this date. This clearly shows the existence of *de facto* legal pluralism which needs to be changed to *de jure* legal pluralism. As shown by the experiences of many countries, it is possible to have legal pluralism without conflicts. In the normatively pluralistic Borana setting, legal pluralism will provide a better means of facilitating access to justice and upholding the rights of the people.

From policy perspective, the study shows that there is a need to move away from the current exclusivist State- centric policy that dismisses the role of indigenous justice system totally. In the area of criminal justice, Ethiopian policy makers should work towards crafting legally pluralistic criminal justice governance. This would require criminal justice reform that enhances the capacity of disadvantaged people so that they resolve their disputes in a manner that upholds their rights. The State should work towards enabling communities to handle their own conflicts.

In the context of Borana plural normative setting, the guiding principle for the leaders of both systems should be responsiveness to the needs of the people. The leadership from both systems is expected to create partnership and work towards nurturing the positive and weeding out the bad in both justice systems. This partnership would require shift in the previous approaches of the systems by way of being mutually supportive and accommodative of plurality of norms. On the part of Ethiopian State, undermining or disestablishing the authority of the Gada governance system should be stopped. The role of different levels of Gada councils for the resolution of conflict and the maintenance of peace should not be underestimated.

In the particular setting of clan-based and pastoral Borana, there is a need to recognize the role of the indigenous institutions for the management of natural resources and institutions of mutual assistance and redistribution of wealth. As indicated in the findings of the study, the Ethiopian State has excluded an effectively functioning and responsive Borana justice system

from handling criminal matters without having the capacity to replace the indigenous system or without being able to provide better justice. If the indigenous justice system is officially allowed to handle certain criminal matters, significant number of minor criminal matters could have been effectively settled out of court through reconciliation/*araara*/ which would reduce social cost.

Hence, the appropriate policy option should be establishing a defined partnership with Borana indigenous justice system instead of prohibiting and excluding the justice system. With mutually supportive linkage, the systems will provide Borana people the opportunity to make use of the restorative potential embedded in Borana indigenous justice system. The study will inform criminal policy reform in Ethiopia towards the creation of such partnership. Such creative partnership between both systems will enable the people to make the best use of the best of both systems. But the total dismissal of Borana indigenous justice system would amount to throwing the baby with the bath water.

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Appendices

A. List of Informants

Annex A: Elders

Name	Gender	Age	Educat.	Designation	Place	Date
1. Badaja Waariyyoo	M	50		Gadamooji	Haroo Bakke	Jul 28, 2013
2. Borbor Bule	M	63		Elder	Dubuluq	Aug 22, 2012 Aug 30, 2012 Aug 1, 2013 May 16, 2014
3. Dula Waariyyo	M			Elder	Haroo Bakke	Jul 28, 2013
4. Elias Galgalo- Yaaballo Woreda Culture and Tourism	M	62	BA	Elder	Gaayyo	Aug 30, 2012 Sept 6, 2012
5. Guyyo Goba (Abba Gada)	M	42		Abba Gadaa	Gaayyo	Feb, 22, 2012 Aug 20, 2012
6. Guyyo Halakee	M	40		Elder	Haroo Bakke	Jul 28, 2013
7. Jaatanii Diida- Borana Zone Culture and Tourism Bureau Chief	M	43	MA	Elder	Gaayo /Yaaballo	Feb 20, 2012 Jul 27, 2013 Jul 30, 2013 Aug 30, 2012 Aug 3, 2013 May 14, 2014
8. Kanu Jilo	M	53		Elder	Didaraat	Jul 31, 2013
9. Kutulo Huqa	M	46		Elder	Yaaballo	Sept 3, 2012

10. Malicha - Kebele Chairperson	M	55		Elder	Didaraat	Jul 31, 2013
11. Sora Simole	M	50		Elder	Gaayyo	Aug 30, 2012
12. Tura	M	48		Elder	Gaayyo	Aug 30, 2012
13. Waaqo Guyyo- Yaballo Woreda Culture and Tourism Bureau Expert	M	60		Elder	Gaayyo/Yaa ballo	Aug 30, 2012 Jul 30, 2013
1 FGD with Elders				EFG1	Gaayyo	Aug 30, 2012
2 FGD with Elders				EFGD2	Haroo Bakke	Jul 28, 2013

Annex B: Offenders -Interview and FGD Offenders

Name	Gender	Age	Desig	Place⁸	Date of Interview⁹
1. Ana Adola	M	30	OYP	Yaabballo	Jul 29, 2013 May 12, 2014
2. Areerii Jaldo	M	35	OYP		Jul 29, 2013 May 12, 2014
3. Boba Dula	M	19	OYP		Jul 29, 2013
4. Boba Duube	M	38	OYP		Jul 29, 2013
5. Buku Edema	M	34	OYP		Jul 29, 2013
6. Dulacha Jarsa	M	19	OYP		Jul 29, 2013
7. Dulo Waariyo	M	18	OYP		Jul 29, 2013
8. Duub Wariyo	M	20	OYP		Jul 29, 2013
9. Gutu Galgalo	M	28	OYP		Jul 29, 2013
10. Guyyo Jaarsa	M	18	OYP		Jul 29, 2013
11. Hala Galabu	M	35	OYP		Jul 29, 2013 May 12, 2014
12. Halo Quxana	M	19	OYP		Jul 29, 2013
13. Kanato Tune	M	40	OYP		Jul 29, 2013 May 12, 2014
14. Kuse Guutama	M	60	OYP		Jul 29, 2013
15. Lencho Ashkara	M	28	OYP		Jul 29, 2013
16. Oda Adola	M	30	OYP		Jul 29, 2013 May 12, 2014
17. Racho Borana	M	38	OYP		Jul 29, 2013
18. Rooba Xiqa	M	<u>32</u>	OYP		Jul 29, 2013 May 12, 2014
19. Saar Bonaya	M	18	OYP		Jul 29, 2013

⁸ All the interviews were made at Yaabballo Prison located in Yaabballo town.

⁹ All the interviews were made in August 2013.

20. Satana Boyya	M	27	OYP		Jul 29, 2013 May 12, 2014
21. Sora Guyyo	M	52	OYP		Jul 29, 2013 May 12, 2014
22. Tariku Waqo	M	30	OYP		Jul 29, 2013 May 12, 2014
22. Ture Safi	M	38	OYP		Jul 29, 2013
23. Waakala Uka	M	25	OYP		Jul 29, 2013 May 12, 2014
24. Xaxxacha Dida	M	56	OYP		May 14, 2014
FGD1			OYPPGD1		Jul 29, 2013
FGD2			OYPPGD2		Jul 29, 2013

Annex C Offenders not in prison

<u>Name</u>	<u>Gender</u>			<u>Designation</u>	<u>Place</u>	
1. Duub Wariyoo	M	37		ONP (offender not in prison)	Yaabballo	May 17, 2014
2. Guutu Galgalo	M	28		ONP	Yaabballo	May 17, 2014
3. W/o Yeshihune Kedir (Umar Kebede Family)	F	50		ONP	Yaabballo	May 15, 2014

Annex D Victims or Relatives

<u>SN</u>	<u>Name</u>	<u>Gender</u>	<u>Age</u>	<u>Education</u>	<u>Desig</u>	<u>Place</u>	<u>Date</u>
1	Arero Dida	M	36	Law Diploma	V	Yaabballo	May 13, 2014
2	Elema Halake	F	50		V	Dubuluq	May 16, 2014
3	Galmo Wariyoo	M	56		V	Yaabballo	May 17, 2014
4	Haro Boru	M	60		V	Yaabballo	May 17, 2014
5	Jaatanii Huqaa	M	43	BA	V	Yaabballo	May 15, 2014
6	Shane Kashano	M	50		V	Yaabballo	May 17, 2014
7	Genene Matewos	M	31	BA	V	Yaabballo	May 17, 2014
8	Getachew Matewos	M	34	BA	V	Yaabballo	May 17, 2014

Annex E: Justice Officers

Names of Participants	Gender	Designation	Place ¹⁰	Date of Interview
1. Abdo Gole Yaaballo Woreda court president	M	JO	Yaaballo	Jul 25, 2013
2. Abdub Haro (Police Chief)	M	PO	Dubuluq	May 16, 2014
3. Gudata Mamo	M	JO	Yaaballo	Aug 27, 2012
4. Guyyo Huqaa	M	JO	Yaaballo	Aug 27, 2013
5. Hunduma Police	M	JO	Yaaballo	Aug 29, 2012
6. Kadir Hassan	M	JO	Yaaballo	Jul25, 2013 May 13, 2014
7. Maalicha Nura	M	JO	Yaaballo	Aug 29, 2013
8. Mangasha Guddata	M	PP (Public prosecutor)	Yaaballo	Aug 23, 2012
9. Mohammad Kadir	M	JO	Yaaballo	July 25, 2013
10. Shimelis Sime	M	JO	Yaaballo	July 26, 2013 May14, 2014
11. Solomon Seyuom	M	JO	Yaaballo	July 25, 2013
12. Taaju Abdulhakim	M	JO	Yaaballo	Feb23, 2012
13. Taaru Seyoum	M	JO	Yaaballo	July 25, 2013
14. Tariku Legese	M	PO(police officer)	Yaaballo	Jul 24, 2013
15. Tola Moti	M	JO	Yaaballo	Aug 2012
16. Toshaa	M	JO	Yaaballo	Feb 24, 2012 Aug 23, 2012

¹⁰ All the interviews were made in Yaaballo which is the name of the district and the capital of the Zone.

Annex F: Others

SN	Name	Sex	Age	Educ.	Desig(Other Informants)	Place	Date
1	Asake Guyyo	F	40	-	OIF	Gaayyo	Sept 3, 2012
2	Galgalo Okotu	M	20	12 th	OIY	Gaayyo	Aug 30, 2012
3	Halake Dida	M	42	MA	OIE	Yaabballo	Sept 1, 2012
4	Mesfin Kafane	M	41	Dip	OIA	Yaabballo	Jul 24, 2013
5	Olaana Tashoma	M	27	BA	OIE	Yaabballo	Jul, 21, 2013
6	Ruuf Ana	F	36	-	OIF	Gaayyo	Sept 4,2012
7	Tadesse Dabale	M	31	BA	OIE	Yaabballo	Jul 26, 2013
8	Jaatan Malicha	F	35	-	OIF	Didaraati	Aug 2013
9	Hookan Abadana	F	45	-	OIF	Didaraati	Aug 2013

B. Consent Form and Interview Guide

Consent Form.

Title of the Study: Justice that Heals and Reconciles: The Potential of Embracing Borana Oromo Indigenous Justice System alongside the Formal Ethiopian Criminal Justice System

Researcher's name and contact address: My name is Aberra Degefa. I am a postgraduate student doing my PhD Dissertation at Addis Ababa University, School of Social Work.

Postal Address: P.O. Box 150003

Email: degefa3@hotmail.com

Telephone No. 0910439809

Purpose of the study

The study aims at exploring the potential of Borana indigenous justice system which the people think are useful in resolving criminal disputes. The researcher is currently engaged in collecting data and information from the people of Borana Zone regarding the potential of Borana Oromo indigenous justice system. You are being asked to participate in this research study by way of giving the required information. The data and information would assist the researcher to write a dissertation.

Confidentiality and consent

Participation in this research project is completely voluntary. You have the right to say no. You may change your mind at any time and withdraw. You may choose not to answer specific questions or to stop participating at any time. Every effort will be made to ensure confidentiality of any identifying information that is obtained in connection with this study. Your answers are completely confidential. Your name will not be written on this format if you don't want.

Procedures

In this study, the researcher will ask questions about Borana indigenous justice system, the people's appraisal of the system, its values and actual performance in resolving criminal disputes vis a viz the formal criminal justice system. This will take about half an hour of your time in one session. If need be, the researcher may possibly have another session. In order to get, detailed information as much as possible, tape recording and photographs will be taken based on your consent.

Possible risks or benefits

There is no risk involved in this study except your valuable time. There is no direct benefit to you also. However, the results of the study may help in finding ways of preserving the valuable potentials of the indigenous justice system.

If you have questions regarding your rights as a research participant, contact:

Dr Mengistu Legesse

School of Social Work, Head

Addis Ababa University
College of Social Science

Your signature below means that you voluntarily agree to participate in this research study. By signing below you acknowledge that that you have read and understood the above information. You confirm that the purpose of the research, the study procedures, the possible risks and discomforts as well as benefits have been explained to you and you had the opportunity to ask questions.

Signature of research participant

I understand that my participation is voluntary and that I am free to withdraw at any time, without giving reason.

I agree to take part in the above study.	Yes_____	No_____
I agree to be audio-taped	Yes _____	No_____
I agree to be photographed	Yes_____	No_____
I agree to be videotaped	Yes_____	No_____
I would agree that my name be used	Yes_____	No _____
I agree to the use of anonymised quotes in publications	Yes_____	No_____

Name of Participant_____

Signature_____

Date_____

Name of Researcher_____

Signature_____

Date_____

Interview guide.

Interview Guide IG 001

Interviewees: Gada Leaders & Elders

Interview protocol/PhD research project: Justice that heals and reconciles: The Potential of Embracing Borana Oromo Indigenous Justice System alongside the Formal Ethiopian Criminal Justice System

Interview Code: -----

Site: -----

Interviewer: -----

Interviewee:

Age: -----

Sex: -----

Date: -----

Start: ----- End: -----

A brief description of the research project: I am a researcher and a post graduate PhD student doing my PhD Dissertation at Addis Ababa University, School of Social Work on the above stated title. This research aims at gathering information about Borana indigenous justice system in resolving criminal disputes. The data and information would assist the researcher to write a dissertation.

Questions

A. General

1. To which clan and sub-clan of Borana do you belong?
2. Do you/did you have any position in any of the Gada leadership?
3. What is your current position in your clan now?
4. How long have you served?

B. Source, making, amendment and current status of Borana Indigenous laws

1. Other than the formal state laws do you have laws that are being used by Borana Oromo?
2. What are/were the sources /origin of these laws?

3. How are/were the laws made? Who makes them?
4. Are there differences or commonalities between religious rules/laws of God and your indigenous laws?
5. Are there amendment procedures?
6. How and when are these laws amended?

C. Application of the laws, Institutions for dispute resolution

1. What would happen if people disobey Borana indigenous laws?
2. Do you have indigenous institutions by which your laws are enforced?
 - a. What are the institutions?
 - b. How do you elect/choose persons who work in your indigenous institutions?
3. What specific indigenous institutions are responsible to settle disputes?
 - a. How are they established?
 - b. Do the institutions have hierarchy?
 - c. Do you have appeal system?
4. What is the role of women in dispute settlement?
5. What types of disputes are common in your society?
6. Are there differences between civil and criminal disputes?
7. What act of a person constitutes wrong in your society?
8. Where a person commits murder, how is the murderer brought before justice?

D. Procedural rules

1. How are disputes settled in your community? What procedural rules are there?
2. When and how do persons bring their cases before your customary courts?
3. Where a person refuses to obey your law or appear before the indigenous tribunal, what would you do?
4. How are the decisions of indigenous courts enforced?
5. In cases where a person refuses to abide by your adjudication and decision, what would you do?

E. Relationship between formal justice system and the Borana indigenous justice system

1. How do you explain the kind of relationship existing between ordinary court system and Borana indigenous justice system?
 - a. Are there cases where you seek the assistance of regular courts/police for enforcing decisions made by your elders?
 - b. Do they usually consent? Why or why not?
2. From the formal Ethiopian State laws and your laws, which one do you prefer? Why?
3. Are the indigenous laws being weakened or strengthened? Why?
4. Can you tell me the strengths and weaknesses of your laws?
5. What strengths and weakness do you see in the formal laws?
6. How can we make use of both systems?
7. What improvements you want to see in the existing criminal justice system?

Interview Guide FGD-002 Gada leaders & Elders

Interview protocol/PhD research project: Justice that heals and reconciles: The Potential of Embracing Borana Oromo Indigenous Justice System alongside the Formal Ethiopian Criminal Justice System

Interview Code: -----

Site: -----

Interviewer: -----

Interviewee: -----

Age: ----- Sex: -----

Date: -----

A brief description of the research project: I am a researcher and a post graduate PhD student doing my PhD Dissertation at Addis Ababa University, School of Social Work on the above stated title. This research aims at gathering information about Borana indigenous justice system in resolving criminal disputes. The data and information would assist the researcher to write a dissertation.

Start: ----- End: -----

Questions

A. General

1. Do you have indigenous laws that are being used in your community?
2. What aspects of the community's life are governed by these laws?
3. How are/were these laws made? What are the sources?
4. Are there differences or commonalities between *religious rules/laws of God* and your *laws*?
5. How and by whom are these laws made?
6. Do you have institutions by which your laws are enforced?
7. When do you change your laws and what are the procedures you follow to change your laws?

B. Dispute Settlement Institutions and procedures

1. Do you have institutions for dispute settlement?
2. How are they established?
3. Do they have structure?
4. What constitutes *wrong* in your community?
5. Do you make distinction between laws for *criminal wrongs* and civil *wrongs*?

How?

6. What is the basis of the distinction? What does the society do to a person who violate/infringe your indigenous laws and to a person who violates God's laws?
7. When people quarrel and cause harm to one another, how are they brought before the dispute settlement institutions?
8. When and how do persons take their cases before dispute settlement bodies?
9. What is the role of women in dispute settlement?
10. Where a person commits murder, how is the murderer brought before justice?
11. What is expected of the person who intends to submit his/her case before dispute settlement bodies?
12. How do the elders settle disputes submitted to them?
13. How are the decisions of elders enforced?
14. If a person refuses to obey the decision given by elders, what would you do?
15. Do you have appeal system?
16. What kind of people and in what situation do they prefer to take their cases to ordinary courts instead of elders?

C. Relationship between formal justice system and indigenous justice system

1. How do you explain the kind of relationship existing between ordinary court system and indigenous justice system?
2. Are there cases where you seek the assistance of regular courts/police?
3. Do they usually consent? Why or why not?
4. Does the Abba Gadas take part in dispute settlement? How and when?
5. What role do Qallus have in settling disputes?
6. If a person who committed crime is arrested by a police and you want the case to be settled according to your law, what would you do?
7. If the police and the court proceed with the case in disregard of your request, what do you usually do?

D. Preferred justice system

1. From indigenous dispute settlement and settlement in ordinary courts, which one do you prefer? Why?
2. What are cases in which the ordinary courts are better than your law?
3. In what ways are your favourable?
4. What are the strengths of your laws?
5. Are your laws being weakened or strengthened? Why?
6. Do you want your justice system to be preserved or replaced by the formal justice system? Why?
7. Are there possibilities of using the two systems in parallel? How can we make use of both?
8. If we want to use the two systems in parallel, what are the possible challenges and opportunities?

Interview Guide IGJ- 003

Judges of Regular Court

Interview protocol/PhD research project: Justice that heals and reconciles: The Potential of Embracing Borana Oromo Indigenous Justice System alongside the Formal Ethiopian Criminal Justice System

Interview Code: -----

Site: -----

Interviewer: -----

Interviewee: -----

Age: -----

Sex: -----

Status: -----Date: -----

Start: ----- End: -----

A brief description of the research project: I am a researcher and a post graduate PhD student doing my PhD Dissertation at Addis Ababa University, School of Social Work on the above stated title. This research aims at gathering information about Borana indigenous justice system in resolving criminal disputes. The data and information would assist the researcher to write a dissertation.

Questions

1. Are there practices/experiences in Borana Zone where criminal cases are handled by elders based on indigenous laws?
2. Are there cases you remember?
3. From your experiences, generally, do the people in Borana prefer ordinary courts or indigenous means for settlement of their disputes? Why?
4. If criminal cases decided by indigenous dispute settlement institutions are brought before ordinary courts with a view to seek enforcement, what would courts do?
5. If a criminal case is already in court but the parties request to settle it out of court, what do you usually do?

6. If the people want to settle their case based on indigenous law and you insist on giving decision based on formal law, what would be the outcome?
7. If both the offender and the victim have already settled their case out of court but you give your decision on the basis of the formal law and imprison the offender, what would you do about the *gumaa* /compensation/ the offender paid to the victim?
8. Does the fact that the case has been settled out of court through reconciliation have any bearing on the decision of regular courts?

Interview Guide IGOPP-004 others – (Police, prosecutor)

Interview protocol/PhD research project: Justice that heals and reconciles: The Potential of Embracing Borana Oromo Indigenous Justice System alongside the Formal Ethiopian Criminal Justice System

Interview Code: -----

Site: -----

Interviewer: -----

Interviewee:

Age: -----

Sex: -----

Date: -----

Start: ----- End: -----

A brief description of the research project: I am a researcher and a post graduate PhD student doing my PhD Dissertation at Addis Ababa University, School of Social Work on the above stated title. This research aims at gathering information regarding the potential of Borana indigenous justice system in resolving criminal disputes. The data and information would assist the researcher to write a dissertation.

Questions

1. Are there practices/experiences in Borana Zone where criminal matters are handled by indigenous courts/ elders?
2. Legally, what is the status of such decisions?
3. In case you don't give recognition to these decisions, what would you do if they come to the attention of public prosecutor or police?
4. Are there exceptional circumstances under which you give recognition/implement decisions given by indigenous courts or elders, if any?
5. If a crime is committed somewhere (assuming that the police knows it) but the victim, the offender and the community insist to settle the case based on their law, what would the police do?

6. From the offender and the victim, usually, when and which one wants criminal cases to be handled by court of law? Why?
7. Concerning crime committed in the society, how often and in what situations do communities need the assistance of the police?
8. What kinds of crimes are common in this area?
9. What is the extent of the discretion of public prosecutors to decide on whether or not a case should be settled out of court?
10. If you were to make recommendation for the choice from indigenous justice system and formal forums for settling criminal disputes, which one would you recommend? Why?
11. For what types of crime do you think Borana indigenous justice system (BIJS) would be appropriate?
12. What would the number of offenders who having paid *gumaa*, settled their cases through reconciliation have also been sentenced to imprisonment by regular courts?
13. Based on your experiences, if there are prisoners who are recidivists, how many of these are likely to be those who have settled their cases based on indigenous laws and how many are those who have been punished by courts?

Interview Guide IGOF-005 Offenders

Interview protocol/PhD research project: Justice that heals and reconciles: The Potential of Embracing Borana Oromo Indigenous Justice System alongside the Formal Ethiopian Criminal Justice System

Interview Code: -----

Site: -----

Interviewer: -----

Interviewee:

Age: -----

Sex: -----

Date: -----

Start: ----- End: -----

A brief description of the research project: I am a researcher and a post graduate PhD student doing my PhD Dissertation at Addis Ababa University, School of Social Work on the above stated title. This research aims at gathering information regarding the potential of Borana indigenous justice system in resolving criminal disputes. The data and information would assist the researcher to write a dissertation.

Questions

1. What was the case all about? Tell me about it.
2. How was the dispute case known by the police? (Who reported it, to whom)?
3. Have you been arrested by the police or you submitted yourself?
4. What did the police do?
5. Has the case been investigated and charge brought against you by prosecutor?
6. What was the sentence?
7. Haven't you tried to settle out of court? Why?
8. Why have you agreed to settle the case out of court? (if out of court)
9. Who took part in the process of reconciliation?
10. How were the members of elders constituted?

11. Have you participated in the process? Why?
12. What was the outcome?
13. Have you paid *gumaa* to the victim or victim's family?
14. Were you happy with the outcome? Why?
15. How has your relationship with the victim's family been since then?
16. In your view, when you compare the *araara*/reconciliation/ option (payment of *gumaa*) with imprisonment which has been imposed (could have been imposed on you), which one do you consider fair? Why?
17. In your view what are the weaknesses of BIJS?
18. How can these be improved?
19. What is your view of the existence of two systems in Borana?
20. Can the two systems possibly function together? If so how?

Interview Guide IGOF-006

Victims/ relatives

Interview protocol/PhD research project: Justice that heals and reconciles: The Potential of Embracing Borana Oromo Indigenous Justice System alongside the Formal Ethiopian Criminal Justice System

Interview Code: -----
Site: -----

Interviewer: -----

Interviewee:
 Age: ----- Sex: -----
Date: -----

Start: ----- End: -----

A brief description of the research project: I am a researcher and a post graduate PhD student doing my PhD Dissertation at Addis Ababa University, School of Social Work on the above stated title. This research aims at gathering information regarding the potential of Borana indigenous justice system in resolving criminal disputes. The data and information would assist the researcher to write a dissertation.

Questions

1. What was the case all about?
2. What did you do after the incident?
3. How was the case resolved?
4. Has the case been adjudicated by court or settled out of court (or both)?
5. If in court what was the final outcome?
6. Were you happy with the outcome? Why?
7. If out of court, who proposed for reconciliation?
8. How was the elders committee constituted?

9. Can you explain the reconciliation process?
10. Were you satisfied with the outcome? Why?
11. What are the strengths of the BIJS?
12. What are the weaknesses of the BIJS?
13. From reconciliation (out of court settlement) and imprisonment of offenders, in your opinion, which one is better? Why?
14. Do you want BIJS to be maintained or totally replaced by the formal criminal justice system? Why?
15. What do you think of the existence of two justice systems in Borana?
16. Are there possible ways of applying the two systems together?